In Pursuit of Religious and Legal Diversity:
A Response to the Archbishop of Canterbury
and the ‘Sharia Debate’ in Britain

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This article responds to the lecture given by the Archbishop of Canterbury, Dr Rowan Williams, entitled ‘Civil and Religious Law in England: a religious perspective’. Dr Williams argues that the legal system in Britain must engage constructively with the religious concerns and motivations of members of the diverse communities that make up contemporary British society. My own analysis focuses on the argument that ‘Muslim communities in this country seek the freedom to live under sharia law’, a claim that underpins the lecture and provides the framework for the Archbishop’s discussion of the ability of the English legal system to accommodate Islamic principles and law, in order to become more just and equitable for faith-based communities. My empirical analysis, I argue, is not only better equipped to analyse this complex issue but also demonstrates that Muslim engagement with sharia (in matters of family law) is a complex process that cannot be understood in terms of sharia versus state law, Muslim versus non-Muslims, or those considered as insiders of communities versus outsiders. Muslim engagement with sharia cannot be understood merely in terms of the need for legal rights and obligations to be reformulated to make faith-based minority communities more legally and socially inclusive. It is also necessary to understand the specific ways in which such legal orders emerge in the British context and, most importantly, the rights and motivations of those members of communities who seek to use faith-based dispute resolution mechanisms – in this case, focusing particularly on Muslim women.

INTRODUCTION

The objectification of Muslims and Islam as the ‘dangerous Other’ in contemporary western democratic societies is neither new nor, in the current political context, particularly surprising. Indeed the ideological underpinning of
a clash-of-civilisations discourse now dominates a significant proportion of social and political thinking and academic analyses. Perhaps nothing, however, expresses this renewed hysteria about the dangers presented by Muslims living in the West more than the response to the lecture delivered by the Archbishop of Canterbury. With headlines and media commentary warning of Islam threatening the very basis of Western civilisation – and shaping the perception that the enlightened modern West must see off this traditional pre-modern challenge – it is not an exaggeration to describe this episode as a modern-day ‘moral panic’ directed against Islam, Muslims and the Archbishop himself.

In his lecture, the Archbishop was using his constitutional position to comment on the contested issue of the extent to which religious identity and practice should be recognised and accommodated under a liberal legal framework, and much of his commentary focuses on the dilemma that sharia poses to the liberal legal framework and on sharia’s constitutional and social impact upon British society. In this way, the lecture aimed to ‘tease out some of the broader issues around the rights of religious groups within a secular state, with a few thoughts about what might be entailed in crafting a just and constructive relationship between Islamic law and the statutory law of the United Kingdom’.

As a British Muslim woman and legal scholar working in the area of Muslim family law, I (along with many other legal scholars) was asked shortly after the lecture’s presentation to comment on the claims made by the Archbishop. And, like many other scholars (both Muslim and non-Muslim), my immediate and serious concerns related to the ways in which the debates were being framed in the context of a dangerous Muslim Other and a disloyal Archbishop who was not only out of step with the concerns expressed by majority British society (including Christians) but was seeking to undermine Western liberal legality with demands for the recognition of plural systems of law. As the scholar Reza Banakar has noted,

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4 The phrase was first coined by Samuel Huntington in his book *The Clash of Civilizations and the Remaking of World Order* (New York, 1996). The discourse has been extensively critiqued: see, for example, Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA, 2003).

5 See pp 263–264 of this issue.

6 In an interview with BBC Radio 4, ahead of his lecture, Dr Williams explained that the recognition of certain aspects of internal laws of various religious communities by the British legal order could not be rejected casually as impossible, because there were already instances where UK law recognised the internal law of religious communities. Jewish courts, for example, already operated in Britain legally because there were ‘modes of dispute resolution and customary provisions which apply there in the light of Talmud’. Despite these clarifications, most headlines in both the broadsheet and the tabloid press suggested that the Archbishop was advocating the introduction of the whole of sharia law in Britain.
The Archbishop was criticised by the Government, his own Church and the representatives of other religions, including the Muslim Council of Britain and Liberal Judaism and other organisations. The British Prime Minister’s spokesman swiftly distanced the Government from the Archbishop’s proposal by declaring that British law had to be based on British values and ‘Sharia could not be used as a justification for committing breaches of English law, nor should principles of Sharia be included in a civil court for resolving contractual disputes’.\(^7\) Similarly, the Conservative party Shadow Minister for Community Cohesion stressed that ‘All British citizens must be subject to British laws developed through Parliament and the courts’.\(^8\)

Dr Williams’ predecessor, Lord Carey of Clifton argued that ‘there could be no exceptions to the laws of our land which have been painfully honed by the struggle for democracy and human rights’, adding, ‘acceptance of some Muslim laws within British law would be disastrous for the nation’.\(^9\) Finally, two members of the General Synod in London called for the Archbishop to resign, while other senior figures had remarked that ‘Dr Williams’s standing as the [Anglican] Church’s worldwide leader had been diminished’, thus making it difficult for him to resolve the other disputes within his Church.\(^10\)

Many commentators immediately pointed to the consequences of an ‘imposed Islamism’ (identified as the reaction of Muslim fundamentalists against the norms and values of secular societies and secular laws). Underlying their arguments was the belief that Islamic law was unreasonable and patriarchal whereas Western law was both secular and egalitarian. Unsurprisingly, perhaps, tensions were expressed via a focus on the issue of gender and gender relations, and the ‘subordinating’ effect that Islam has upon Muslim women. Western women were presented as ‘enlightened’ and bearers of liberal legal ideals such as equality and non-discrimination, while the Muslim female subject was presented as the ‘other’, a victim to cultural and religious practices in violation of her human rights.\(^11\) Law thus became the site where constructions of Muslims as the Other took shape, and where

\(^7\) Reported by *Times Online* in ‘Archbishop of Canterbury argues for Islamic law in Britain’, <http://www.timesonline.co.uk/tol/comment/faith/article3328024.ece>, accessed 5 March 2008.

\(^8\) These reports have been quoted from an unpublished paper by Reza Banakar, entitled ‘Culture, religion and freedom of speech’ presented at the Rights Discourse Workshop, Onati, 15–16 May 2008.


\(^10\) Ibid.

\(^11\) For an excellent critique of the representation of Muslim women in the West, see SH Razack, *Casting Out: the eviction of Muslims from Western law and politics* (Toronto, 2008).
internal traditions of dissent within Islam were sidelined and deemed anathema to western intellectual thought and reason.

The social and political context immediately after the lecture made it especially difficult to engage with the thoughtful issues and questions that the Archbishop raises in his lecture, regarding citizenship, identity, religiosity and the social concerns of Muslim populations in Europe, the presence and/or absence of religion in the public life of the modern nation state, and the notion of the liberal legal subject that underpins liberal legality but that can fail to recognise the heterogeneity of British society and may, in fact, limit pluralism and tolerance.

On a personal note, the hostile reception to the lecture made it virtually impossible for me to engage with the complex issues raised by the Archbishop. For example, one issue inadequately addressed in the lecture is the complex way in which sharia (in matters of family law) actually manifests and operates in contemporary British society within the private spheres of the family, the home and the local Muslim community. This omission must be viewed as significant for two key reasons: first, it underlies the implicit assumption made in the lecture that all Muslims (by virtue of being Muslim) are in favour of accommodating some form of sharia into English law. However, as I argue in this response, many Muslim women are critical of such developments and, as primary users of sharia councils, their narratives must underpin any such debates. Second, such a fixed and homogenous understanding of Muslim identity does not sufficiently engage with the complexity of British Muslim identity or with questions surrounding the emergence, development and establishment of sharia councils in British society. Again, there is a tendency to accept somewhat uncritically the idea that English law is unable to understand the motivations of Muslim believers and therefore unable to do justice in its deliberations to all members of society as equal before the law and as common citizens.12 Or, to put it another way, there is a strong essentialism underpinning the lecture’s anti-essentialist sentiment.

In a religiously diverse society, people may have many different reasons for subscribing to secular and/or religious beliefs and these differences must not only be understood as complex insofar as they are based upon different and often conflicting variables, but also as complex and contradictory in the ways in which they are manifested in people’s individual interactions with religious bodies such as sharia councils. So, for example, some individuals and communities may recognise that the state is not a neutral arbiter of disputes but nevertheless be extremely cautious of supporting moves towards the introduction of

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12 The point being made here is that the law is inherently contradictory and claims for justice inside the confines of positive law are misjudged and misleading. See, for example, A Norrie, *Law and the Beautiful Soul* (London, 2005).
forms of communal autonomy in matters of family law. I recognise and value the fact that the Archbishop drew upon the work of distinguished Muslim scholars such as Professor Mona Siddiqui and Professor Tariq Ramadan in order to understand better the flexibility and critical reasoning that underpins the application of sharia in Muslim countries, and that sharia cannot be accommodated into English law without fully subscribing to the democratic principles and due process of English law. However, Dr Williams does not extend his discussion to understand better the importance of context, place and space, which shape a very specific form of Muslim dispute resolution in British multicultural society. For example, sharia councils in Britain may in actual fact (and in practice) have very little in common with other theological arguments about and/or developments of sharia in Muslim countries. So the assumption implicit in the lecture – that accommodation of sharia could support the Muslim reformists in introducing a new interpretation and new practices of sharia that are in line with the democratic underpinnings of English law – seems to be questionable.

My response to this lecture therefore welcomes the insightful and thoughtful analyses of questions of faith, law and religion, and of notions of the liberal legal subject (which question the ontological and epistemological foundations of legal liberalism upon which the rule of law is based). I particularly welcome the lecture’s scholarly attention to the limitations of the universalist claims of liberalism and liberal legality, which can be contested by attention to the issues of difference, subjectivity and diversity at the heart of these debates. However, my response seeks to infuse a deeper interrogation relating to questions of agency, power and representation. Muslim engagement with the law and sharia must be read within the broader social and political context in which they operate, but must also not fall into the traps of cultural essentialism and homogeneity that reproduce the binaries that it seeks to dismantle and displace.

Indeed, these controversies over the place of alternative legal orders operating within the supposed uniformity of a single-state system are neither new nor unprecedented; however, there is new normative discourse, which stigmatises Muslims as the ‘Other’ – in conflict with, incompatible with and, most importantly, disloyal to the state. In this way, Muslims are presented as dangerous and pre-modern, and this is coupled with the perception of a rise of Islamic religiosity, a new ‘problem of Islam in Europe’ and the polemics of incompatible cultures and a clash of civilisations.

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13 Mona Siddqui is a leading expert on Islam and has published extensively. For an interesting discussion on the relations between religion/politics and plurality, see ‘Islam: issues of political authority and pluralism’, (2006) 7 Political Theology 337–350.

14 Tariq Ramadan is the leading thinker on issues concerning Islam in the West and Muslim engagement in Western democratic societies. See, for example, T Ramadan, *Islam, the West and Challenges of Modernity* (Leicester, 2004), and *Western Muslims and the Future of Islam* (Oxford, 2004).
I am therefore grateful to the Archbishop for bringing these discussions to the wider public arena and, although I am disappointed with the media response and press commentary distorting the core arguments of the lecture, nevertheless the lecture and ensuing controversy have also had the effect that many commentators are now actively questioning the troubling representation of Muslims as the ‘dangerous Other’: there is an emerging consensus that such representations must be resisted and challenged. However, if we are to consider seriously the question of accommodating aspects of sharia into English law (in family law matters), then we must begin with understanding the motivations and experiences of Muslim women who use these bodies to obtain an Islamic divorce. So, while the current totalising presentation of Islam by the media and the press is dangerous in its explicit Islamophobic tone, we must recognise that the relationships between religious practice, rights and faith on the one hand and freedom, democracy and equality on the other are a lot more complex than the insider/outsider trajectories currently presented. The current discourse on Muslim identity is based upon oppositional frameworks of integrated/separated that are totally at odds with the complexity of Muslim identity found on the ground.

As a British Muslim woman and legal scholar, I (along with many others) have been immensely troubled by the discussion of sharia in England as an all-or-nothing situation – for example, either you belong to the Muslim community and you seek or demand the accommodation of sharia into English law or somehow you are not fully absorbed into the needs and aspirations of the Muslim community and therefore remain happy to use secular state law – the classic religious-law-versus-secular-law conundrum. I argue against this approach and claim that we cannot take at face value the claims either of those who call for the introduction or accommodation of sharia into English law, or of those who fail to recognise the complexity of engagement between sharia and state law, if we do not take into account the complex ways in which Muslims engage with sharia in the UK. I conclude with a discussion on the need to achieve an inclusive dialogue on ‘the sharia debate’ with Muslim women, who are the primary users of these bodies and who express caution against strategies that seek to promote diversity over uniformity but which can easily and perhaps unwittingly fail to recognise alternative narratives within the minority group in question and thus lead to a new form of exclusionary politics.

JUSTICE AND THE CRITIQUE OF LIBERAL LEGALISM

Mainstream positivist jurisprudence associates the law with the state; however, the conceptualisation of law and legal relations as a lived social reality provides a clearer understanding of the dynamic nature of governance, authority and
power in Western liberal societies. This theoretical interrogation of the primacy of state law allows us to conceptualise multiple forms of ordering that may be perceived as ‘legal’ but do not necessarily rely upon state law to determine their power or authority. Thus, positive law’s conception of justice involves a process of forced abstraction, which differentiates justice into parts that are in practice inseparable from each other. This process of forced separation produces a series of one-sided, often false, oppositions.\footnote{See Norrie, \textit{Law and the Beautiful Soul}, p 11.}

In his lecture, the Archbishop draws upon these critiques in order to explore the tensions between individual and group rights, religious practice and the liberal legal standards of justice and equality before the law. He discusses the possible tensions that inhere between religious and faith-based practices and state law demands that all citizens must adhere to a common set of legal standards. He argues that ‘if the law of the land takes no account of what might be for certain agents a proper rationale for behaviour – for protest against certain unforeseen professional requirements, for instance, that would compromise religious discipline or belief – it fails in a significant way to communicate with someone involved in the legal process’.\footnote{See pp 266–267 of this issue, emphasis in original.}

Moreover, Dr Williams goes on to demonstrate the ways in which the law is both reluctant and contradictory in its desire to tailor the particularities of the different needs of groups and communities to the uniform standards of state law and liberal legality. State law may not explicitly express problems with certain cultural customs and/or religious practices and values but may more clearly express the ways in which these alternative ‘social and legal orders’ can be used to undermine the legal process. In this way, state law does demand uniformity and authority over its citizens at the same time as it reinforces state power. Dr Williams argues that a more inclusive understanding of religious practice in state law can lead to an inclusive promise of active citizenship, new communities and a renewed relationship between law, faith and religious practice for both majority society and minority ethnic and religious communities.

The significance of this analysis lies in the fact that the questions of individual agency and religious practice reflect a more complex picture of cultural and religious diversity within both majority and minority communities. In challenging the uniformity of liberal principles that predetermine the conditions upon which the rights and demands of religious communities are met, it becomes critical to understand better how cultural and religious practices are contested both within and outside the legal domain.

Normative challenge to liberal legalism and the liberal rights discourse is now well established by legal scholars, and in his lecture the Archbishop discusses
how the liberal legal subject occupies an unstable position within a culturally specific location. For example, the desire by the liberal rights project to produce an autonomous subject is challenged by individuals and groups who resist assimilation and the dominant assumptions underlying notions of citizenship, belonging and nationhood. In Britain, the migration of new commonwealth settlements has led to new engagements with the law, with competing demands as to how the law should accommodate demands of ethnic, religious and cultural difference.

Over the past three decades, legal scholars have analysed and critiqued the extent to which English law positively accommodates cultural and religious pluralism, and there is no need to rehearse these arguments here. However, it is interesting to note that these debates are often characterised by a ‘clash of values’ approach. In other words, that a given set of values, identity and interest claims is recognised by state law works in clear opposition to the demands made by minority religious communities in relation to the practice of their specific religious norms, values and customary practices.

More recently, political theorists have widened the debates to include a more rigid focus on the liberal rights discourse, where theorists discuss the problems of affording rights to minority groups who persistently seek to challenge and violate liberal notions of justice, equality and human rights. For most political theorists, the simple inclusion of gender and women’s rights in such discussions provides a powerful critique of arguments for a move from individual rights to recognition of the claims of community rights.

Regardless of the need to engage with a careful understanding of how cultural and religious traditions operate within minority groups, critics tend to centre much of their analyses on the distinction between the public and private spheres, the legal doctrine of legal inclusion and/or accommodation, and legal limits. For example the public/private dichotomy in English law remains central to constructing boundaries within which the free practice of cultural customs and religious beliefs is deemed acceptable. In basic terms, the law seeks not to intervene in matters that it defines as belonging to the private domain. More recently, however, the terms of the debate have shifted and anti-discrimination law in particular is deemed, as Lacy argues, ‘insufficient to guarantee the fair treatment of groups that have suffered a history of prejudice and discrimination’. Concepts such as the right to religious freedom and practice and equality of opportunity are seen by many to be ‘ideologically loaded’, providing limited de facto protection for members of minority groups. However objective or neutral the apparatus of the law may appear, its implementation will

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18 For a detailed discussion see Bano, ‘Islamic family arbitration, justice and human rights in Britain’.
always reflect the norms and values of the justice process, the judiciary and society.

In this way, legal scholars and practitioners have long recognised the social fact that the existence of different and varied social and legal orders operating within the context of the liberal legal framework can challenge the assumed legal centrality upon which Western law is based. In Britain, this critique of legal positivism also reveals a tension between the norms and values that underpin English law and challenges arising from cultural and religious pluralism in multicultural Britain. One theoretical challenge to the concept of law comes from ‘re-evaluating the concept of law in a culturally diverse, plural society’.\(^{20}\)

This approach draws upon a postmodern conception of law to explore the relations between cultural diversity, legal pluralism and state response to conflicts generated by the settled diasporic communities and their continued practice of cultural/religious norms and values that can produce conflicts with official state law rules and norms. This body of literature conceptualises contemporary legal conflict as a clash between systems of law (both formal and informal) and draws upon the origins and migration patterns of specific ethnic minority communities in Britain. In particular, the family and wider kin groups are presented as the two key sites upon which such legal conflicts are based. As Shah argues,

family and wider kin groups are the primary location of self-regulation, which also gives rise to conflict and negotiation in the wider British social order. Since Asian and African laws emphasise self-regulated societies rather than positivist top-down regulation, as the British state law does, there is a fundamental clash of basic values.\(^{21}\)

This raises the fundamental issue of the need to understand better the ways in which alternative/informal legal orders operate within British society.

**MUSLIM FAMILY LAW AND SHARIA**

As discussed briefly above, in his lecture the Archbishop argues that, in a multicultural and heterogeneous society, there must be a commitment to cultural diversity and pluralism in the area of family life, just as in other areas, and that the law should uphold and support a diversity of family arrangements, whether or not they are reflective of differences in race, culture or religion, as long as they do not violate common values and accepted liberal principles. This approach is echoed by many political and multicultural theorists, such as


\(^{21}\) Ibid, p 18–19.
Raz, who argues that ‘the phenomenon of a multicultural society goes beyond mere toleration and non-discrimination. It involves recognition of the equal standing of all stable and viable cultural communities existing in a society’. Raz suggests that we need a radical policy of liberal multiculturalism that would transcend an individualistic approach but would at the same time ‘recognise the importance of unimpeded membership in a respected and flourishing cultural group for individual well-being’. A redefinition of society would mean that there would no longer be majority and minority groups but rather a plurality of cultural groups each of equivalent worth.

As Dr Williams notes in his lecture, such arguments are further complicated by the relationship between the individual, the group and the state in Western liberal societies. He draws upon the work of the legal scholar Ayelet Shachar to point out that the traditional treatment of women sometimes becomes a cultural emblem symbolising a group’s authentic identity and ‘enormous pressure is thus put on women by insiders to relinquish their individual citizenship rights and to demonstrate group loyalty by accepting the standard interpretation of group doctrine as the only correct reading of their group’s tradition’. In Britain, there have been demands by some Muslim leaders for the establishment of religious personal law systems in Britain and of a single sharia council with state recognition to legitimise the group’s autonomy in matters of family law. Undoubtedly, the growth of these demands attests to increasing attempts by some individuals and groups to unify the ‘Muslim community’. In this context, communal autonomy takes the form of decision-making power, which maintains the group’s membership boundaries vis-à-vis the larger society. This project seeks to preserve Muslim identity, and it is the unique position of women within these groups as ‘cultural conduits’ that gives rise to the problem of gender-biased norms and practices that often subordinate women. The Archbishop also draws upon Shachar’s discussion of the concept of the ‘paradox of multicultural vulnerability’, ‘which arises when an identity group member’s rights as a citizen are violated by her identity group’s family law practices’.

Such discussions focus primarily on the relationship between the family and the state, and this raises questions of whether there is an irreducible core of family values to which everyone could subscribe or whether English family law has the ‘scope for accommodating a plurality of views about the family and family lifestyles’. More recently, the issue has moved to one of ‘rights’

23 Ibid, p 35.
and ‘participatory democracy’. In fact, the relationship between ‘family’ and liberal political theory has focused on the family threatening ‘citizenship’ and loyalty to the state: it is deemed to undermine democracy with its emphasis on loyalty to family networks rather than the state. Kurczewski explains,

Family, in the theory of liberal democratic politics, threatens the freedom and purity of individual judgment and decision. Under the influence of family, the citizen instead of voting according to his or her beliefs may vote for those whom he or she finds personally unworthy. Even worse, the family presupposes a bond that rivals the bonds of interests or communality of beliefs.  

This raises two key questions: to what extent is the law committed to multiculturalism in the family context? And should alternative dispute resolution mechanisms, such as sharia councils, be formally recognised in English law as fora where disputing couples can resolve matrimonial disputes?

In his lecture, the Archbishop argues that English law should accommodate parts of sharia into its corpus. He further points out that the accommodation of aspects of sharia into the law is ‘unavoidable’ and would, in his opinion, enhance community cohesion by making various religious minority communities part of the public process. He makes it clear, however, that he does not advocate an indiscriminate adoption of all aspects of sharia, and does not condone the inhumane way in which it has been interpreted and enforced in certain Islamic states with extreme punishments and the oppressive treatment of women. English law is in such a strong position in relation to sharia as to allow it to provide the right of appeal and the necessary safeguards against possible extreme and inhumane interpretation and application of sharia. Dr Williams adds that Britain does well to avoid situations where the law challenges ‘religious consciences’ over issues such as abortion and treats them as secular matters, saying ‘we have no room for conscientious objections’. Neither does Britain want a situation where, ‘because there’s no way of legally monitoring what communities do, making them part of public process, people do what they like in private in such a way that that becomes a way of intensifying oppression within a community’.  

There is a body of literature on the nature of Muslim legal practice in Britain that looks at the way official and customary laws interact to produce a new set of hybrid laws. One of the first scholars to explore this interaction was Werner

Menski. Based upon the analytical framework developed by the jurist Masaji Chiba, Menski reasoned that British Muslims have not simply given up Islamic law but combine Islamic and English law to form a new set of laws, which he identifies as ‘Angrezi Sharia’. Menski explores the dynamics of new forms of hybrid laws in Britain and describes a threefold process, generated by internal conflicts within South Asian communities, which led to the creation of Muslim laws in Britain. In Britain, Muslim family law is referred to as personal law because there have been some voices within the Muslim community in the UK demanding that a ‘personal regime of law’ be adopted for the Muslim community as a whole, within the area of family law.

As the Archbishop notes, Muslim family law is subject to interpretation by different religious leaders and communities. There is no one comprehensive Islamic legal system but varieties exist according to ethnic or religious backgrounds. For example, the Islamic personal laws that exist in the Indian subcontinent vary greatly in comparison with those that exist in Iran or Iraq. There are two main groups of Muslims in Britain – Sunni and Shi’a Muslims – and the practice of Islam within these groups varies in accordance with the different sharia schools of thought. There are also many class and sectarian divisions, however, operating according to different Islamic codes of laws; for example, Ismaili Muslims are part of the wider Shi’a group but practise distinct laws applicable only to them. It is therefore difficult to speak of ‘Muslim family law’ in Britain when it varies so widely according to ethnic and sectarian affiliation. Nielsen notes that the discussion of Islamic family law in Britain in the Muslim magazines centres on the ethics of the subject rather than the law. This means that the general principles highlighted in these texts are based on human relations. According to one interpretation, custom is dependent on place, time and circumstances; others regard the role of religious leaders as crucial in defining current sharia practice. Muslim feminists argue that there is a fundamental tension in Islam between its ethical or spiritual vision of sexual equality and the unequal hierarchies contained in family laws, instituted in early Islamic society and perpetuated over time by those holding power. Muslim family law, like other South Asian religious and customary corpuses of law, defines the position of women purely in relation to marriage, divorce, child custody, dowry and inheritance.

So what precisely are sharia councils? Sharia councils are neither unified nor do they represent a single school of Islamic thought but instead are made up of

32 Ibid.
various different bodies representing the different schools of thought in Islam. They operate as unofficial legal bodies specialising in providing advice and assistance on Muslim family law matters. In essence, the sharia council has three main functions: mediation and reconciliation; issuing Muslim divorce certificates; and producing expert opinion reports on matters of Muslim family law and custom for the Muslim community, solicitors and courts. Within this community framework of dispute resolution, sharia councils also act to manage Muslim presence and preserve Islamic legal principles in non-Muslim societies. The process of dispute resolution is therefore produced through various discursive practices and can only be understood in relation to the locus of power in which they are embedded as community regulatory frameworks. Moreover, they are the product of transnational networks and operate within a national and global space – by this I mean that they are part of a reconstruction of ‘homeland’ in Britain while differentiated along ethnic, social and cultural lines and based upon discrete notions of belonging and tradition. In this way the emergence, development and management of sharia councils in the Muslim community has to be considered as part of the process of cultural and legal contestation and the ‘hybridization of lived legal cultures’. For Muslim women, the primary motive for using a sharia council is to obtain an Islamic divorce. Under Islamic law, a divorce can be obtained in a number of different ways: talaq (unilateral repudiation by the husband); khul (divorce at the instance of the wife with her husband’s agreement, and on condition that she will forego her right to the dower or mehr); and ubara’at (divorce by mutual consent). In the present, revised English family law, there is only one way to obtain a divorce: on the grounds that the marriage has irretrievably broken down, after a two-year separation, when the decree is made absolute.

In Britain, sharia councils are closely associated with mosque formations and their structuring of privatised dispute-resolution discourse in this space has shaped their specific religious definition and identification. Ethnographic research reveals that Pakistani Muslims were involved in setting up sharia councils and continue to be actively involved in the administrative affairs of such organisations.

35 The four ancient Islamic schools of Sunni thought can be broadly categorised as Hanafi, Maliki, Shafi’i and Hanabali. For an in-depth analysis on the historical development of these schools, see NJ Coulson, The History of Islamic Law (Edinburgh, 1964).
36 Sharia councils also issue fatwas, which can simply be translated as rulings from a religious scholar to members of the Muslim community over contested issues. Observation research reveals that, at some of the sharia councils being studied, the scholars spend considerable time deliberating on issuing fatwas. The outcomes of these fatwas are not known, but this certainly raises interesting questions about how the community attempts to deal with local conflicts within the boundaries of the ‘Muslim community’ and the extent to which these processes may conflict with state law.
38 Shah, Legal Pluralism in Conflict.
as well as acting as religious scholars. The history of British sharia councils can be traced back to the 1980s, which coincides with the development of local religious and cultural organisations under the rubric of multiculturalism. While some studies attribute the development of these bodies primarily to state initiatives under state-sponsored policies of multiculturalism, others see the communities themselves as taking the initiative to forge closer ties between Muslim families and local Muslim communities. In his analysis on the relationship between the emergence of cultural and religious organisations and ‘ethnic governance’, Vertovec concludes that minorities have their own reasons for choosing their ‘idioms of mobilization’ as well as ‘their own orientations, strategies and levels of experience that affect the kind of state liaisons which they foster and maintain’.39

With the seemingly visible emergence of sharia councils in Britain, their role as dispute-resolution mechanisms has more recently come under scrutiny. Warraich points to the conflation of South Asian Muslim family laws, localised cultural practices in British Muslim communities and a rigid application of English family law as the contributory factors leading to the emergence of these bodies, ‘who have appropriated for themselves the role and position of parallel quasi-judicial institutions’.40 He argues that ‘the lack of space in the English system for appropriate solutions to dilemmas facing people’ has led to this confusing situation and, instead, state law must create the space within its existing framework and recognise and adapt to the complexities of diversity and pluralism inherent in the lives of individuals.41 In constrast, Yilmaz argues that ‘Muslims do not only wish to be regulated by the principles of Islamic law when they are living in a non-Muslim state; they also seek to formalize such an arrangement within the state’s own legal system’.42 Yet, empirical data in this study found little support or enthusiasm for such a development. The apparent unity of Muslims presented in such literature bears little resemblance to the diversity on the ground. For example, there are conflicts over the different approaches to dispute resolution, and differences over the interpretation of Islamic principles relating to divorce and interpersonal conflicts within these bodies. Geaves points to the conflicts between imams based at sharia councils and those who have attempted to resolve and conciliate in conflicts between different groups fighting for control of mosques in Birmingham, Bradford and Manchester.43 The fact that a sharia council...
council may provide space for Muslims to resolve marital disputes away from the context of a Western secular framework does not imply that these local settings predetermine a more suitable outcome.

As mentioned earlier, in matters of family law the primary function of a sharia council is to issue Muslim women with a Muslim divorce certificate in cases where a Muslim husband may fail to divorce his wife unilaterally. Divorce under sharia council conditions is available to Muslim women; however, this is neither the guaranteed nor the inexorable outcome. Interview accounts with religious scholars reveal an uneasy tension between the expectations of Muslim women seeking to obtain a Muslim divorce certificate\(^44\) and the concerns of religious scholars, whose primary objective was to ‘save’ the marriage. Mohammed Raza\(^45\) explained, ‘We act in the best interests of Muslim women . . . they come to us for advice and with guidance from Allah we help them as best we can’. Meanwhile, Sheikh Abdullah\(^46\) said

As Muslims, we have a duty to live according to the Qu’ran and Sunnah even though we may have chosen to live in non-Muslim countries. I think it is incumbent upon us to live up to this responsibility because of the effect of western influences upon our children and ourselves. It is easy to neglect our duties in this secular environment.

Thus, the language of choice, commitment and faith as described by the religious scholars fits in neatly with the discourse of belonging to a wider Muslim community (\textit{ummah}) and with the importance attached to the development and formation of a local Muslim community identity. In this way, the community space (inhabited by sharia councils) is deemed the obvious site upon which the long-established practice of Muslim dispute resolution should take place. And, in this respect, it seems clear that the religious scholars seek to establish authority with respect to family law matters and require all participants to take the proceedings seriously. While the process of disputing itself reveals

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\(^{44}\) For a discussion of why Muslim women consider it is important to obtain a Muslim divorce, see S Bano, ‘Muslim family justice and human rights: the experience of Muslim women’, (2007) 2:2 Journal of Comparative Law 38–66, and SN Shah-Kazemi, \textit{Untying the Knot: Muslim women, divorce and the sharia}, (London, 2001).

\(^{45}\) A religious scholar based at the Muslim Law (Shariah) Council in Ealing, West London. This sharia council was established in 1985 and, until recently, was run by the late Zaki Badawi. It operates from the premises of the Muslim College in Ealing, West London and is also affiliated to the Muslim Council of Great Britain.

\(^{46}\) A religious scholar based at the Shariah Council of the UK, which is based in Tottenham, North London. This sharia council was set up in 1992 and is co-ordinated by a group of local imams.
striking similarities to the development of family mediation in English family law, most religious scholars describe this process as distinct from the English family law approach to settling family disputes and it is in fact framed as in opposition to state law mediation practices. It is also conceptualised in terms of a duty upon all Muslims to abide by the requirements of the sharia and the stipulations of the sharia councils. This shared understanding stems from the belief that the secular space inhabited by English family law principles cannot bring about genuine resolution of matrimonial disputes for Muslims living in Britain. But what are the experiences of Muslim women, the primary users of these bodies?

Under Muslim law, women are permitted a divorce without the consent of their husbands but this must involve the intervention of a religious scholar to determine which kind of divorce can be issued. There is, of course, much diversity within the three major categories of divorce. Rather than embodying a singular set of shared cultural and religious norms, the sharia councils in my study were imbued with different interpretations of Islamic legal principles and differing power relations, revealing internal contestation, conflict and change among and between them. In this context, legal discourse reconfigures itself as ‘different levels of legality’. The disputants’ participation also raises our attention to the paradox of there being new ‘interdisciplinary dialogues around questions of state power, cultural domination, resistance and hybridity’. In my study, the religious scholars described themselves variously as a ‘Registrar’, ‘Imam’, ‘Sheikh’, ‘Maulana’ or ‘Qadi’. In this context, such titles were translated into ‘religious scholar’ and the variation reflects a general reluctance to associate such councils as on a par with official courts. Thus, the term ‘religious judge’ was not used by any of the religious scholars as it was deemed likely to confuse clients as to the legality of their verdicts under English law. In fact, the scholars were all keen to underline the fact that their verdicts were not legally binding under English law but served to uphold ‘the moral authority of the Muslim community’.

47 This perception of English law as being based upon secular principles is patently not true. A recent White Paper on constitutional reform reiterated the centrality of the Church of England to state–law relations. It stated: ‘the Church of England is by law established as the Church of England and the Monarch is its supreme governor. The government remains committed to this position’. See, The Governance of Britain (2007), presented to Parliament by the Secretary of State for Justice and Lord Chancellor, Jack Straw MP, July 2007, at para 25.
50 Dr Nasim, Chair of the Birmingham Muslim Family Support Service and Shariah Council based at Birmingham Central Mosque. The mosque was set up 18 years ago and acts as the largest sharia council in the West Midlands.
This also raises the question as to whether these new legal formations are creating new forms of governance in English law. It is true to say that the establishment of sharia councils illustrates the changing nature of the social and legal order for Muslims living in Western democratic societies. While state law continues to maintain hegemony on issues of power, control and the administration of justice in society at large and in relation to the limits of religious practice in the public sphere, the emergence of these bodies also reflects the differing socio-legal orders operating in society, which may both compete against and challenge the assumed centrality of state law. Yet such developments must also be understood in relation to their interaction with state law. For example, in his lecture, the Archbishop discusses the possibility of formalising sharia councils as civil dispute-resolution mechanisms pursuant to the Arbitration Act 1996 and thus operating in a similar way to the Jewish Beth Din. However, my study showed the sharia councils to be reluctant to be formally recognised; many deem the formal relationship to be ‘un-Islamic’ and against the ethos of the objectives of the sharia council.51 A sharia council operates as a complementary system of dispute resolution and I am very cautious about arguments that formalisation will lead to greater levels of accountability and justice.

THE EXPERIENCE OF MUSLIM WOMEN

In her groundbreaking study, *Untying the Knot*, Nurin Shah-Kazemi explored the reasons why women chose to use a sharia council. The single most important reason to emerge was their need to obtain a religious divorce certificate rather than a desire to save their marriages. Shah-Kazemi points out that the women who choose to use sharia councils see this use as part of their religious identity. However, this interaction was negotiated in different ways and their different cultural, ethnic and traditional backgrounds affected the way in which they sought to use the councils. Under sharia council conditions, for a Muslim woman to obtain a Muslim divorce she must first agree to be reconciled with her husband. Drawing upon empirical research, we can better understand whether such processes lead to forms of intracultural gender inequality. For example, is justice being administered in the ‘privatised space’ of sharia

51 *Al-Midani v Al-Midani* (1999) 1 Lloyds Rep 923 (1999) C.L.R 904. In this case, a dispute arose over the validity of a will that had been negotiated with parties at a sharia council based in London. The claimant had refused to recognise the sharia council in question as a legitimate judicial body and refuted the terms of the will. The courts held that the negotiators had not obtained the consent of all the parties involved and, as the arbitration agreement was not based on any statutory authority, it could not be recognised in law. This reasoning can be applied to the divorce certificates issued by sharia councils — certificates that are not recognised under English law. In *Sharif, Petitioner* [2000] SLT 294, with regard to the administration of the sharia council, the internal conflicts of power and dispute among sharia council members were revealed.
councils, effectively in the ‘shadow of the law’? Are women being encouraged to be reconciled with violent or dangerous partners? Are they compromising their rights in relation to custody of and access to children? Are they avoiding the use of civil law mechanisms in favour of privatised dispute resolution to settle matrimonial disputes? Or are they actively choosing community resolution and, if so, why?

With the exception of one interviewee, all the women I contacted had sought guidance from either family members, friends and/or an imam (based at the local mosque) before contacting a sharia council. In most cases, initial contact had been made via a telephone call to the sharia council but, interestingly, the intervention of family members and the imam seemed to suggest that their decision as to whether or not to contact a sharia council, and, if so, which one, may not have been entirely the women’s own. In fact, all the respondents in the research agreed that, prior to seeking a religious divorce, they had little if any knowledge of the existence of sharia councils and it was often family members who acted as the initial point of contact with the sharia council by providing an address or telephone number to the women.52

In relation to obtaining a Muslim divorce a number of women expressed surprise upon discovering that, under Islamic law, they had the right to instigate divorce proceedings against the wishes of their husbands. One interviewee recalled, ‘I remember saying to my uncle “Why didn’t you ever tell me about this before?” and he said “Well, you know,... it wasn’t really important that a woman can divorce her husband in the first place.” But for me it was’ (Yasmin, London). The primary intention here, therefore, is to question how women participated in reproducing unofficial legal norms and values within this privatised space of religious arbitration with the focus being the role of religious arbitration in reconciling the parties.

As discussed above sharia councils provide Muslim women with the opportunity to obtain a Muslim divorce without the express consent of her husband, but through this process the female applicant is also encouraged to enter unofficial reconciliation and mediation – which is facilitated by the religious scholar. During the process of obtaining a Muslim divorce, the question arises as to whether justice is being dispensed under the shadow of the law. It is clear from data analysis in this study that compliance with reconciliation and mediation within sharia councils can render some women vulnerable to physical and emotional abuse.

Under present family law proposals, there has been much debate on the ‘delegalized family obligations’ that have led to ‘a retreat from legal intervention into

52 As one interviewee explained, ‘The family got me the address for the sharia council. I didn’t know the process, I had an aunt who is like one of the eldest in the family and takes care of these things. She said to me I had to write to them and tell them my case and ask for a khula’ (Sameena, Birmingham).
private family arrangements’. Indeed, one of the key objectives in contemporary family social policy thinking is a renewed emphasis on developing initiatives that move away from resolving family disputes in the public sphere and towards ‘private ordering’. Consequently, there have been various attempts to redefine this notion, thereby forcing feminists to rethink the concepts of individual autonomy, choice and the public/private spheres in the light of transforming state law practices of resolving matrimonial disputes. In particular, the way in which private religious arbitration bodies such as sharia councils have occupied this space of privatised religious arbitration reflects feminist concerns of ‘justice’ being administered in private and under the ‘shadow of the law’. Thus, in the current climate whereby individuals are encouraged towards informal settlements achieved through negotiation, conciliation or mediation, it becomes imperative to explore these sites of ‘privatised dispute resolution’ from the perspective of women in order to better understand their experiences and to consider whether this does lead to a violation of their human rights.

Interview data with the sample of women in this study confirm the significance that sharia councils place upon reconciling the parties in the process of issuing Muslim divorce certificates. Similarly, this process of dispute resolution not only illustrates the centrality of gender relations – which underpin this process – but also and perhaps more importantly illustrates that this process is contested and resisted by the women themselves. For example, it is through this process of dispute resolution that some women were able to challenge cultural practices such as forced marriage as ‘un-Islamic’ and antithetical to the values of ‘being a Muslim’.

The religious arbitration process aims to reconcile the parties principally through establishing a dialogue with the female applicant and her husband. It is via this dialogic relationship that fieldwork data revealed evidence of some women being put at risk of violence and abuse from their estranged husbands. For example, content analysis of sharia council case files reveals the intervention of some solicitors who contact sharia councils in order to negotiate more favourable terms on behalf of their male clients in return for a unilateral Muslim divorce, a *talaq*. In most cases, these negotiations involved securing increased access of children to fathers even in cases where injunctions had been issued by civil law mechanisms to prohibit access. More worryingly perhaps, fieldwork observation found that in one case, and under the rubric of ‘diversity’, social workers were attending sharia council reconciliation sessions to understand how ‘Islam works’ to inform their decisions in cases where access to children was contested by fathers. Therein lie, at least, the seeds of the argument that the autonomy of the women who use these services may be undermined or

curtailed to some degree. Similarly, the language of reconciliation embodies dynamics of power that place emphasis upon the women’s divinely ordained obligations to stabilise marriage and family relations, and in this way the assumption remains that the women will seek reconciliation. Yet interview data also revealed the ambivalence that many women felt about the reconciliation sessions and opinions ranged from indifference, through outrage to one of genuine commitment. The extracts from interview data illustrate this varied experience:

They wanted me to meet with my husband. In fact they said that I couldn’t have a divorce unless we both met with the imam. But it wasn’t as bad as I thought. My husband took it very seriously... what the imam was saying. I think he needed a religious person to explain to him where he was going wrong and why I was leaving him. (Sabia, London)

I needed to explore the possibility of us getting back together from an Islamic perspective. I’m a Muslim so it helps if you can get advice and assistance from another Muslim. I think a Muslim woman would have been able to understand where I was coming from. (Humeira, London)

Thus, even though participation takes place in a space that is preoccupied with reconciling the parties, is male dominated and is often imbued with conservative interpretations regarding the position of women in Islam (as mothers, wives and daughters), some women did find this space useful. Interview data reveal, however, that this space created discomfort and unease for some women who were regarded by religious scholars as potentially dangerous participants, as they were perceived as unwilling to be reconciled. For these women, the contentious issue related to the lack of space and opportunity that they were given to participate in the process in an equal way, and many women reported that they were expected to be reconciled with their husbands and were encouraged to be more understanding of their husbands’ limitations because women were presented as nurturers of the Muslim family and more open to compromise. Under this model of reconciliation, husbands were given greater room for negotiation, which led to better outcomes for them. One interviewee explained, ‘it was weird but it felt as though I was the one being told off and when I tried to put across what I thought was wrong... it’s as though he [the imam] didn’t want to hear it’ (Hina, London).

In this way, for this interviewee, her position and participation in the process was predominantly characterised in relation to her gender and this was confirmed by other interviews and illustrates our understanding of how this process of reconciliation can marginalise women:
No, I didn’t find it was helpful at all. Just the way it was set up meant that things weren’t going to change. (Shabana, London)

They were right from the beginning on his side; they didn’t even listen to what I was saying. I mean, I do read books. I don’t go into it that much but I do know the basics – you know, what a husband has to do. I was really disappointed with the mulana because he just wouldn’t blame my ex-husband and I was blamed for everything. (Mina, London)

Perhaps an even more troubling finding related to the fact that, of the sample, ten women reported that they had been ‘coaxed’ into participating in the reconciliation sessions with their husbands even though they were reluctant to do so. More worrying still, four of these women reported that they had existing injunctions issued against their husbands on the grounds of violence and yet they were urged to sit only a few feet away from these violent men during the reconciliation sessions. Again, an extract of interviews reveals how potentially dangerous this may be for women and illustrates how husbands may use this opportunity to negotiate access to children and, in some cases, financial settlements, matters which are in effect being discussed under the ‘shadow of the law’.

I told him [the imam] that I left him because he was violent but he started saying things like “Oh, how violent was that? Because in Islam a man is allowed to beat his wife!” I mean, I was so shocked. He said it depends on whether he really hurt me! I was really shocked because I thought he was there to understand but he was trying to make me admit that somehow I had done wrong. (Shazia, London)

Empirical findings in this study confirm the existence of intra-group inequalities for the women, and sharia councils construct boundaries for group membership that rely upon traditional interpretations of the role of women in Islam, primarily as wives, mothers and daughters. Under such conditions, the multicultural accommodation of Muslim family law in Britain can lead to the violations of human rights for Muslim women. In effect, this privatised form of religious arbitration may mean the shifting of state regulation to the private domain, thereby giving religious leaders greater power to dictate acceptable patterns of behaviour. The women in this study echoed this caution but, in doing so, they articulated a wide range of differing opinions from the implications of being governed by a separate legal process to the impracticalities of bodies such as sharia councils administering ‘justice’ in resolving matrimonial disputes. In this way, the women were able to explore the contradictions inherent in the dichotomy of protecting group interests (community interests) against individual choice and freedom, and moved towards creating more nuanced and complex understandings of their ‘positionings’ and
participation in the religious arbitration process. While acknowledging that their criticism and/or support of sharia councils remained largely dependent upon their position within the family, home and community, some women did articulate a notion of belonging to the Muslim umma, although how they did this varied:

I’m a Muslim. I identify as one and anything that helps to validate and enhance my role as a Muslim in British society obviously I welcome and I will support it. (Yasmin, London)

To be Muslim is to be part of the Muslim umma. If they [sharia councils] are recognised, I think that’s great, an important development for all Muslims. (Sadia, Birmingham)

I don’t see it as belonging to the Muslim community. I mean, what does it mean in practice anyway? Muslims – just like all other groups are so bloody divided! I mean, I wasn’t aware of sharia councils before I needed to get a divorce but that didn’t mean I felt any less of a Muslim. (Anisa, London).

Thus, for some women it was the distinctiveness of sharia councils from other community bodies that acted as a focal point of reference to belonging to a wider Muslim umma. Seen in this way, these women defined the role of sharia councils as bridging the gap between older and younger generations and challenging intra-family inequalities such as forced marriage. It is also worth noting, however, a general point here – that, in principle, initiatives that facilitated relations between individuals and their families were welcomed by all the women; yet, at the same time, the women expressed a desire ‘to choose’ whether or not they wished to use the services offered by sharia councils:

I do identify myself as both British and Muslim, so I don’t want to support initiatives that mean that I have to choose between one kind of legal system and, you know, choose whether I’m British or not and then which legal system to go to. It’s just not feasible and anyway it’s not right. Reality is a lot more difficult than choosing between one or the other! (Parveen, Birmingham)

If it’s about community control, I think they [sharia councils] should be honest about that but I don’t know if it is. I mean women want the Islamic divorce and I guess they are providing a service. It’s just the way some of them do it that’s the problem. (Sabia, London)

54 For example, for six women who were not financially independent, this kind of ‘religious work’ deserved official recognition but it is interesting to note that this view did transcend class divisions. This sense of belonging was articulated in different ways and the social representation of sharia councils was important for some women as a link to Muslim communities and wider British society.
Hence, the observation holds that such bodies may fail to capture the complex realities of women’s lives and one consequence of this may be to unfairly situate Muslims on the periphery of British society by reducing their chances to gain ‘access to justice’ and be ‘equal before the law’, thus effectively undermining their citizenship rights. This becomes particularly important in relation to protecting the human rights of all women, including British Muslim women. From this perspective, formalising sharia councils may serve to essentialise the social and legal identities of Muslims as fixed and unchanging while undermining the Islamic precepts of individual autonomy, choice and free will. Moreover, and perhaps more worrying still, some of the interview extracts reveal the confusion that a small number of women expressed in relation to questions regarding the authority, power and jurisdiction of sharia councils in Britain. One interviewee explained:

I couldn’t understand ... they wrote me a letter saying that there was issues to be taken into account that was about child custody, which was about the house, which was about possessions, which was about ... all kinds of things. I thought, hold on, what jurisdiction do they have? I’ve already been through the courts; why do I have to go through a set of Islamic courts? Do I have to go through them again? It’s all been done and what if it means I can’t have custody? Who wins? English law or the Islamic Sharia Council? (Yasmin, London)

CONCLUSION: STRIVING TOWARDS AN INCLUSIVE DIALOGUE

The primary concern with this response has been to strike a note of caution concerning calls for the recognition and/or accommodation of sharia into English law. Apart from the significant practical difficulties in giving legitimacy to sharia councils, the narratives of Muslim women must underpin such discussions; and debates on accommodation of sharia must place at their very centre the experience of Muslim women, who are the primary users of sharia councils and the ones most likely to be affected by any form of accommodation.

Typically, there has been much discussion of the motivations behind the Archbishop’s lecture and much of this relates to what some commentators identify as his real desire to enhance a greater role of Christianity in public life.55 Others, such as Tariq Modood, argue that a new form of ‘practical multiculturalism’ must allow ‘for a nuanced understanding of the inter-relationship

of ‘secular’ and “religious” notions in civic life’. Modood supports the accommodation of sharia in the form of recognition of sharia councils as official arbitration bodies, as long as they are consistent with English law, human rights, gender equality and child-protection legislation. Yet even such thoughtful responses must draw upon the experiences of Muslim women who are reluctant for such bodies to be formally accommodated in English law.

The Archbishop should be applauded for tackling a complex and difficult topic and for his thoughtful insight into the heterogeneity of Muslim communities settled in British society and the complexity of Islamic jurisprudence and sharia as evolving and dynamic rather than as fixed and prescriptive. The lecture critiques the cultural essentialism inherent in state law and articulates a sophisticated understanding of the ways in which power and dominance have shaped the ideals of ‘equality before the law’ and the rule of law, which can legitimate dominant social and political discourse and practice that may exclude individuals and communities from equal access to the law and forms of justice. However, I also believe that this spirit of complexity and heterogeneity that underpins the lecture is somewhat undermined by assumptions that most, if not all, Muslims are in favour of accommodation of sharia into English law and the implicit presentation of a unified Muslim community, the Muslim umma. Clearly this is not the case, and what such arguments succeed in doing is privileging a particular religious practice as part of a specific Muslim identity. The problem with this approach is that it tends to ignore the possibility of alternative narratives within the Muslim community. Clearly there is a sense of belonging to a Muslim community, which the women in this study expressed. Yet these descriptions of belonging and community were articulated in different ways. Some women had been marginalised, others occupied a closer position to the acceptable dictates of community expectations and such discussions must therefore recognise the complex lived reality that Muslim identity entails.

Simply to analyse the relationship and conflicts between secular law and religious practice in relation to sharia misses out the key issues of conflict, change and diversity within the Muslim communities in question. The Archbishop was clear in his understanding of Islamic law embodying traditions of reason, critique and pluralism over the past 1,200 years; however, we must be cautious in conflating developments surrounding sharia in Muslim countries with how such processes develop and operate within minority diasporic communities as part of multicultural British society. This conflation, however small, also runs the risk of not understanding how these religious laws and cultural

56 Part of the Open Democracy discussions (see previous note). This response was entitled ‘Multicultural citizenship and the anti-sharia storm’, <http://www.opendemocracy.net/article/faith_ideas/europe_islam/anti_sharia_storm>, accessed 24 June 2008.
customs are reformulated within a British context to suit the specific Muslim
community in question.57

Religious arbitration bodies may provide spaces for new forms of govern-
ance to resolve marital disputes away from the context of a Western secular fra-
mework, but this does not imply that these local settings predetermine a more
suitable outcome for the parties involved. For example, religious and socio-
cultural terms of reference often marginalise women. Furthermore, the
space inhabited by these bodies is neither distinct from local communities
nor separate from state law in totality; instead, it is a space that intersects
with contested sites of local communal power and state law and in this way
is a unique formation of a British diaspora. Trying to understand these socio-
legal processes requires a critique of the underlying power relations within
family, community and state, and recognising that dialogue is often imbued
with power relations. The dichotomous approach that posits ‘law’ and unoffi-
cial law as opposite and in conflict consequently fails to explore the spaces ‘in
between’, the sites of resistance and change. Furthermore, as Sunder points
out ‘more and more people on the ground are challenging traditional cultural
and religious leaders to incorporate norms of equality, reason and liberty into
the private spheres of religion and culture’,58 but this does not itself mean that
Muslim women wish to formalise these bodies. This space is only used to
obtain a Muslim divorce and the women are fully aware of the need to
utilise state law to deal with issues concerning access, custody and financial
settlements.

The angry reactions sparked by Dr Williams’ lecture have also led to discus-
sions on ways in which we can develop a constructive dialogue with those repre-
senting the Muslim faith. Although in favour of such developments, I also stress
the need to include Muslim women in such debates and this requires a critique
of the underlying power relations within family, individual and community
bodies. We must recognise that dialogue is often imbued with power relations
and is constituted in relation to controlling family and communal boundaries;
so we must strive to develop an inclusive dialogue that includes the narratives
of minorities within a minority group. As Anthias points out, ‘effective dialogue
requires an already formulated mutual respect, a common communication
language and a common starting point in terms of power’.59 It is the
‘common starting point in terms of power’ that raises the dilemma of the multi-
cultural question of ‘how then can the particular and the universal, the claims of

57 Similarly, we must be careful with discussions of the Muslim umma and the presentation of a
community of believers that simply does not exist in the uniform way in which it is presented
by the Archbishop.
59 See F Anthias, ‘Beyond feminism and multiculturalism: locating difference and the politics of
both difference and equality be recognised?60 We must also address the potential conflicts and tensions that arise in different and, at times, conflicting social contexts, including intra-family relations. This study found the experiences of marriage, divorce and family and community relationships for the women to be messy, fragmented and complex. These findings suggest that, during the process of marital disputes, women cannot be stereotyped as requesting no family support or going down the road of nothing but family support. Instead, they are themselves negotiating the outcomes of their disputes. Muslim women have complex views about who they are and thus identity cannot be understood as a dichotomous variable of insider/outsider, Muslim/non-Muslim or resistance versus victim. Instead, the narratives produced by the women themselves justify attention to their participation, interaction and outcomes with these ‘unofficial’ bodies.

The troubled reception of the lecture also identifies the way in which contemporary liberal thinkers continue to be challenged with questions of how to manage cultural, religious and ethnic diversity in multicultural Britain. Such questions of religious identity, belonging and citizenship in multicultural societies now continue to dominate social, political and academic thought. Western commentators and legal scholars discuss at length the limits of religious practice and belief, and many query the need to accommodate and respect cultural and religious diversity in Western societies at all. For some, the politics of multiculturalism and the recognition of cultural difference has led to a rise in a politics of cultural separatism but, for others, the liberal principles of justice, equality and human rights justify the protection of all cultural and religious minority communities.61 Undoubtedly, we need to address these issues in the light of empirical findings rather than solutions based upon abstract theoretical discussions. We need to incorporate debates on complexity, difference and diversity to understand the realities of British Pakistani Muslim women’s lives. As this study demonstrates, women feel the contradictory pulls that these forces exert but their narratives must be heard. Some are happy to conform, others are not; some trade identities, for others the Muslim identity is primary. Many are suspicious of state intervention that challenges cultural

61 Recently, we have had two high-profile cases that seem to best illustrate this conflict between religious practice and public space, both involving Islamic dress code for Muslim women and the use of the Human Rights Act 1998. In Begum v Denbigh High School Governors [2007] 1 AC 100 (2006) UKHL 15 HL, the House of Lords ruled that the exclusion of Sabina Begum for her unwillingness to comply with school uniform requirements was not in violation of Article 9 of the Human Rights Act 1998. In Azmi v Kirklees [2007] WL 1058367, the tribunal found no indirect discrimination. These rulings have contributed to increased discussions on the extent to which religious communities are demanding ‘community rights’ for religious practices and cultural values in the ‘public space’ that may conflict with liberal legal principles of justice, equality before the law and common citizenship.
norms deemed oppressive because the state has not historically acted as the neutral arbiter of disputes. Furthermore, some women see ‘themselves strictly bound to submit to the dictates of Islamic law and the commands of the authorities charged with its execution’ and we must recognise this as their lived experience. The real conflicts are over power and how those competing voices for power and representation ignore the internal voices of dissent and change, most often the voices of women.

My response to the lecture has focused on three key issues: first, the claim that seeing culture and forms of religious practice as a mode of legitimating claims to power and authority dramatically shifts the way we understand the universalism–relativism debate. Thus, the view that Muslims increasingly seek the freedom to live under sharia is not only extremely problematic but fails to capture the complexity of British Muslim identity as fragmented, porous and hybrid. Second, anthropological scholarship points to the importance of locating gender and gender relations as key sites to the debate; thus, the ways in which Muslim women engage with sharia councils in Britain illustrates how processes and concepts of sharia law are mobilised, adopted and transformed. Underlying this process are power relations that define the nature of the interaction, define meanings of sharia within the sharia councils and construct the possibilities of change and action. Finally an essentialised understanding of Muslim religious practice does not reflect the experience of British Muslim women. A more dynamic understanding of British Muslim identity is required, which does not label the needs of Muslims to accommodate sharia as fixed but understands this process as temporal, with shifts from cultural to religious practice and vice versa.

My response is written with the conviction that Muslim women remain extremely cautious of initiatives to accommodate sharia into English law. I sum up with the words of one further interviewee:

They [sharia councils] serve a useful purpose but really when people ask for these councils to be formally recognised, alarm bells go off in my head. When you start bringing in special things I think there’s two things that can happen. One, I think you can have ghettoisation – you have a community within a community that is ostracised and marginalised and you then become a target for many other things. Secondly, I think why? Why would you need it? (Anisa, Bradford)

62 Hall, ‘Conclusion to the multi-cultural question’.