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Shelley, Catherine

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[vrh]*C. Shelley*[/vrh]

[rrh]*Islam and Christian-Muslim Relations*[/rrh]

[fn]Email: c.shelley@bham.ac.uk[/fn]

English, Christian or Muslim Law: Deconstructing Some Myths

Catherine Shelley

University of Birmingham Chaplaincy, Birmingham, UK

Archbishop Rowan Williams's 2008 lecture, "Civil and Religious Law in England: A Religious Perspective" has become an historic reference point for discussions about relationships between Islam, religious law and English law. One of the Archbishop's heart-felt pleas was for "deconstruction" of myths about both Islam and the Enlightenment. Continued stereotypes perpetuated by the "Trojan Horse" debate over Birmingham schools and the aftermath of the *Charlie Hebdo* event suggest the plea went unheard. This article aims to address factors that prevent objective assessment of the relationship between English law, religious laws, Islam and other faiths. It is hoped that this will help the deconstruction of myths by examining what the law says, the claims religious communities make and whether further change is needed. The relationship of religious laws, norms and courts to secular legal systems is a pertinent topic for Christian–Muslim dialogue to which it is hoped that this article might contribute. Amongst issues considered are the scope for more formal recognition or monitoring of religious laws that have an impact on the lives of some UK citizens, and arguments for recognition on the basis that a democracy should reflect all parties to its citizenship and protection of the most vulnerable. As calls for further recognition of religious laws arise, the deconstruction of myths can only smooth the way for their objective assessment.

Keywords: religious law; Sharia law; secular and religious law

In February 2008, Dr Rowan Williams, then Archbishop of Canterbury, gave a now infamous lecture at the Royal Courts of Justice, entitled "Civil and Religious Law in England: A Religious Perspective" (Williams 2008). The lecture considered the scope within English law for recognizing religious courts and laws, particularly Sharia-based law or tribunals. The media headlines that followed were hostile. To quote Mark Hill QC in an editorial for the *Ecclesiastical Law Journal* (2008), the "coverage was highly personal, deeply abusive and above all misinformed…" suggesting that it was "mischievous misreporting" that threatened social cohesion, not the Archbishop's speech.

The Archbishop's lecture has become an historic reference point for subsequent discussions about relationships between Islam, religious law and English law. The lecture itself, the subsequent questions and lecture series (now published in Griffith-Jones 2013) and later research raise significant issues for dialogue between Christians and Muslims. Despite the Archbishop's plea for the "deconstruction" of myths that fuel frictions over both Islam and the Enlightenment, such stories as, for example, the so-called "Trojan Horse" continue to perpetuate unhelpful stereotypes (see, e.g., Sellgren 2014; Trojan Horse 2014; Gilligan 2014), which affect all sides of the various debates, and prevent objective assessment of the relationship between English law, religious laws, Islam and other faiths. This article aims to contribute to the deconstruction of myths by examining what the law actually says, the claims religious communities are actually making, what further change is needed and how it might be achieved. The relationship of religious laws, norms and courts to secular legal systems could be a fruitful and constructive area for Christian–Muslim dialogue. It is hoped that this article may provide some useful reflection for that process.

What are the fears?

The questions and objections raised by the Archbishop's lecture reflect continued fears aroused by media reports about any suggestion of Sharia being recognized in English law, along with (mis)perceptions about both English law and the claims of religious groups seeking greater accommodation. A major concern to preserve the law as one and universal is raised from two different standpoints, those seeking to preserve English law's Judaeo-Christian heritage against erosion of "Christian" values and those seeking to keep the irrational force of religion out of law altogether. The latter objection goes beyond those who might accept some accommodation of religious law but fear what Williams (2013, 25) referred to as "vexatious appeals to religious scruples."

Both sets of concerns indicate fears around "British" or Christian identity, with the introduction of "alien" legal codes into English law. The ultimate spectre is the more punitive elements of so-called Sharia law, such as capital punishment for apostasy and extra-marital sexual relations, or the amputation of hands for theft. In reality, these most extreme examples are very rarely invoked (Esposito and Mogahed 2007), even in states that regard themselves as Islamic. There is no suggestion that such sanctions would be included in legal change within the UK, not least because they are all criminal penalties, areas of law reserved for the state's jurisdiction. Reservations with more foundation are those expressed from a number of perspectives, including secular, Christian and Muslim, about the impact of religious law on the protection and equal treatment of vulnerable groups within faith communities, particularly women and children.

From the Muslim perspective, there are also (justified) fears about Islamophobia and its impact on any attempts at recognition of Islamic law. There are also frustrations about perceptions of laws established in other cultures as inferior to English law (Shah 2013, 144) and failures to understand alternative legal systems' premises, leading to the treatment of religious law by way of tolerated exceptions rather than as making a positive or substantive contribution to legal debate and practice. One argument advanced for greater recognition and accommodation of religious law in general, and Sharia in particular, is the need for genuine democracy, which fully includes and

recognizes the contributions of faith communities and religious belief within a multicultural democracy. Yet, some Muslim writers who share the view that accommodating different laws must be approached from a stance of "equal citizenship" also voice concerns about parallel misunderstandings and stereotyping within Muslim communities. These critiques consider both ill-informed challenges to secular neutrality and "unIslamic" or irreligious interpretation of laws in the community (Sardar-Ali 2013, 157–158). For example, Dr Ghayasuddin Siddiqui (2009) of the Muslim Institute is guarded about religious accommodation within English law because of suspicions about Human Rights and equality. Those defending recognition of Sharia, however, point out that religious tribunals will continue to operate on a voluntary basis in any event, regardless of the law of the land. Thus, it is necessary to recognize the religious practices, laws and courts that do exist so as to monitor them and prevent injustices arising from non-recognition (see Edge 2013, 125–131).

The first task is to evaluate some of the perceptions and fears, establishing how substantial they are and considering what accommodation to religious laws already exists. This exploration identifies concerns and issues to be addressed in future dialogue and potential legal development. The final part of the article examines various models of legal accommodation and their merits and pitfalls, including possible obstacles to implementation. It is worth noting at the outset that the range of concerns and aspirations around religious law, the diversity of the communities affected and the piecemeal nature of the way existing English law accommodates religion, make the topic unwieldy. There are no tidy answers, nor do the arguments fall neatly into religious groupings or consistent "sides." For example, calls for ensuring that the law protects vulnerable parties arise just as much on the side of those calling for greater recognition of religious law as on the side of those opposing its recognition.

Addressing the fears

Despite the outcry, there is little evidence of calls within Muslim communities for wholesale implementation of Sharia in the UK, or for Sharia law to be a rival or parallel legal system. The spectre of English law being asked to accommodate Sharia-based corporal or capital punishments is also unfounded. The reality is that even amongst those states that describe themselves as Islamic relatively few countenance the imposition of such penalties, although occasional extreme cases give cause for alarm.[1] Whilst Muslims Against Crusades have called for Sharia law to be recognized in the UK, their Waltham Forest rally on 30 July 2011 in support of Sharia law mustered only 50 marchers (Curtis 2015).

Most calls for Islamic law in the UK seek accommodation by English law of practices relating to family and personal law, Muslim education and Sharia-compliant financial instruments. There are also calls for the recognition of Islam as consistent with human rights and democracy. A worldwide survey of Muslims entitled *Who Speaks for Islam?* (Esposito and Mogahed 2007) suggests that this perspective is widely supported amongst Muslims. UK research also suggests that, whilst support for Sharia in English Law is growing amongst younger UK Muslims, such supporters remain a minority.[2] Family law is the main area for which English legal recognition of religious law is sought, linked with the work done by Sharia courts. This reflects similar movements elsewhere in the Western world, for example in Canada (Boyd 2013) and Australia (e.g, the

[1] States that may impose *ḥudūd* punishments, such as the death penalty for apostasy or stoning for adultery, include Iran, Qatar, Brunei, Mauritania, Sudan, Yemen Saudi Arabia and Somalia. A recent example is the penalty of imprisonment and lashes imposed on Raif Badawi under Saudi Arabia's laws against apostasy (Green 2015).

[2] According to a GFK ONP poll, "Muslim Attitudes to Living in Britain," 34% of those aged 18–24, 32% aged 24–44, and 23% of those over 44 would prefer to live under Sharia (GfK NOP 2006).

Australian Family Law Service).[3] However, one of the most significant UK Sharia Courts, based in Birmingham, is not seeking legal recognition.[4]

Concerns raised about undermining the Judaeo-Christian character of English law tend to focus on changing attitudes towards sexuality, marriage and rising divorce rates, and Sunday work,[5] trading and sport. Civil partnerships and same-sex marriage have generated several cases brought by Christians with conservative attitudes towards homosexuality.[6] Other cases brought by Christian groups feature corporal punishment of children in Christian schools,[7] the wearing of religious symbols[8] and professionals expressing religious views to clients.[9] Whilst English law has developed within a Judaeo-Christian culture, it is almost two centuries since the law changed to allow non-church weddings, and over a century since Charles Bradlaugh became the first public atheist in Parliament. Secular neutrality as a policy enabling a role in the public square for all religions still allows Christian observance but no longer gives Christian institutions a privileged place. So, whilst some Muslims seek greater recognition in their calls for legal accommodation, some Christians fear erosion of their previously recognized place within the law and institutions. However, just as there

[3] For a study of a range of countries, see Nichols 2011.

[4] Nor do other religious courts examined in Cardiff University research (Douglas et al. 2011).

[5] For example, *Mba v London Borough of Merton* [2012] UKEAT 0332_12_1312.

[6] For example, *Ladele & McFarlane v UK* (App nos 51671/10, 36516/10); *McFarlane v Relate Avon Limited* [2010] EWCA Civ 880; *Ladele v Islington LBC & Liberty (Intervening)* [2009] EWCA Civ 1357.

[7] For example, *R v Williamson* [2005] UKHL 15.

[8] For example, *Eweida & others v. UK* (App no 48420/10, 59842/10, 51671/10 and 36516/10); *R (on the application of Lydia Playfoot) v Millais School Governing Body* [2007] EWHC 1698.

[9] For example, *GMC v Dr Richard Scott* (http://www.gmc-uk.org/news/13333.asp; accessed April 8, 2015).

are few voices in Islam calling for wholesale adoption of Sharia, so the Christian voices bemoaning the demise of established Christianity are in a minority.

A key question in assessing whether there is any basis for fears that Islamic or other religious law might undermine English law concerns the degree to which religious laws diverge significantly from overarching principles of English law or European human rights law. There are opposing views illustrated in two lectures from the series at the Temple begun by Archbishop Williams. Mashood A Baderin (2013) defends an "evolutionary interpretation of Islam" as compatible with both democracy and human rights. By contrast, Dominic McGoldrick (2013) states: "In modern, secular-based European states…" Muslims "along with other religions and religious believers" will "face a difficult battle" arguing for "recognition and respect in the public space." Baderin's view that Islam is compatible with democracy, human rights and the values of English law and capable of accommodation is supported by several other Muslim writers, including Tariq Ramadan (2004; 2013), Abdullahi An-Na'im (2013), Tariq Modood (2013) and Shaheen Sardar-Ali (2013), as well as by Western thinkers including Rowan Williams (2013), Ian Edge (2013) and Christopher McCrudden (2013). Some writers go further, arguing that reluctance to acknowledge legitimate calls for recognition undermines democracy by denying equal treatment and religious freedom to the beliefs and practices of diverse UK communities, although, as indicated above, reservations have been expressed about the Muslim community's readiness to accept human rights or equality and thus accommodation (Siddiqui 2009).

At one level, the facts speak for themselves; the review of the law that follows suggests that a significant measure of accommodation has been possible, in the words of Edge (2013, 143), "with the minimum of fuss and publicity." The range of religious beliefs and practices accommodated in various areas of law suggests that there is some compatibility between Islam (and other religions) and English law. The fact that individuals from several religions, notably Christians, Muslims and Sikhs, have defended religious practices by recourse to the Human Rights Act demonstrates that at least some faith communities are content to use human rights to support their faith.

Existing religious accommodation

Arguably, some religious plurality in English law goes back at least to Lord Hardwicke's Marriage Act 1753, which recognized Jewish and Quaker forms of marriage as exceptions to marriage in the established church. The secularization of society and recognition of increasingly diverse faith communities makes contemporary religious accommodation more complex! In theory there is broad acceptance of freedom of religion; all citizens are free to practise their religion. Human rights and equalities legislation offers more explicit and comprehensive recognition protection for religious belief and practice than ever before;[10] in some instances religion is privileged over other rights or protected characteristics.[11] However, the right is qualified rather than absolute, so accommodating religion will always remain subject to negotiation with wider policy and other rights. It is when particular religious practices conflict with the established norms of wider society that the limits on religious freedom become apparent.

The impact of observing religious laws that necessitate practices at variance with dominant culture is apparent in many areas of life. For the most part, it is minority faiths that experience conflicts between religious belief and practice and the norms or laws of the dominant culture, although trade and sport on Sundays and at Christmas and Easter show that Christian observance is no longer the dominant framework either. The following overview of religious practices tested under the Human Rights Act or protected by other legislation may look piecemeal, but it is the tip of an iceberg of practices accommodated without litigation through policies at school and work.

[10] The Human Rights Act 1998 provides a qualified right to manifest religious belief and practice, which is weighed against other rights. The Equalities Act 2010 makes religion a protected characteristic, alongside e.g. race, gender, sexuality, pregnancy, age, disability.

[11] E.g. gender and sexuality in the case of religious groups and their leadership.

Other laws address concerns about vulnerable groups within faith communities. The list is not exhaustive but illustrates a breadth of religious accommodation within English law.

Many people, with or without faith, seek to reflect their values in ethical finance. Muslim laws against usury have led to the development of interest-free financial instruments, including a Sharia-compliant Government bond, that comply with Islamic law. Contracts and banking are private law agreements, recognized and enforced by the state through the courts or arbitration under the Arbitration Act 1996. Arbitration is open to all communities and had been used by the Jewish community for many years prior to the concerns about Sharia.[12] Recognizing commercial agreements that comply with Muslim or other religious laws places Muslims and faith communities in no more advantageous a position than the rest of the population. The courts consider agreements in the light of public policy and due process to ensure compliance with overall principles of English justice.

Many areas of religious law and practice are personal but are manifested in the public sphere. Accommodating belief at work has two main aspects; one is enabling employees' religious practices, such as wearing particular clothing. Headscarves and veils have been worn for centuries in Britain by nuns, nurses and (at least since the nineteenth-century Acts of religious emancipation) Orthodox Jewesses. Jewish men have worn the *kippa* without legal challenge for decades,[13] and Sikh men established the right to wear turbans under the 1976 Race Relations Act.[14] More recently human rights cases have considered the wearing of headscarves and face coverings by Muslim

[12] Arbitration Act 1996 s.46 allows parties to choose their own law, including religious law (Douglas et al. 2011, 22.

[13] Although anti-Semitic violence has curtailed freedom for some without legal sanction.

[14] For example, in school: *Mandla (Sewa Singh) v Dowell Lee* [1982] UKHL 7; at work: *Singh v Rowntree MacKintosh Ltd* [1979] ICR 554, EAT.

women,[15] Christian crosses,[16] chastity rings[17] and the Sikh Kara bangle.[18] The right to wear religious dress covers minority as well as majority interpretations of faith, provided the belief is genuinely held,[19] freely chosen by the wearer[20] and does not impede public policies in areas such as health and safety or professional duties.[21] However, where there are alternative means of accommodation, such as moving to a different school or adjusted working practices, alternative provision should be accepted.[22]

Other religious observances protected in schools and workplaces include diets, food preparation and fasting, although concerns are expressed about the impact of fasting, particularly on young school children (Trepanowski and Bloomer 2010). Reasonable accommodation is also

[15] For example, *R (Begum) v Denbigh High School* [2006] UKHL 15; cf. *R (X) v Y School* [2007] EWHC 298.

[16] For example, *Eweida v British Airways* [2010] EWCA Civ 80; *Nadia Eweida and Shirley Chaplin v* UK [2011] ECHR 738.

[17] For example, *R (Lydia Playfoot) v Millais School Governing Body* [2007] EWHC 1698.

[18] For example, *R (Sarika Angel Watkins Singh) v Aberdare Girls High School and Rhondda Cynon Taf Unitary Authority* [2008] EWHC 1865.

[19] The nikab, jilbab, Kara bangle and Christian cross have been recognized as expressions of religious belief; the chastity ring has not.

[20] For example *R (Begum) v Denbigh High School* [2006] UKHL 15; cf. *R (X) v Y School* [2007] EWHC 298.

[21] As examples, see the General Medical Council guidance for doctors at http://www.gmc-uk.org/guidance/ethical_guidance/21171.asp; and *Azmi v Kirklees MBC* [2007] ICR 1154.

[22] As ruled regarding schools, for example, in *R (Begum) v Denbigh High School* [2006] UKHL 15; cf. *R (X) v Y School* [2007] EWHC 298; and, regarding alternative forms of the cross: *Nadia Eweida and Shirley Chaplin v UK* [2011] ECHR 738.

permitted to attend Sunday services, Jum'a prayers, salat and Shabbat and but not necessarily the whole of Sunday as a Sabbath.[23] The law has also long protected leave from school and work for Holy Days and religious festivals such as Eid, Sukkot and Rosh Hashana. As a means of agreeing which days are holy, calendars of religious festivals have been adopted in many workplaces and schools.

Issues of belief and conscience that conflict with others' rights are more problematic. Several cases brought under the Human Rights Act and Article 9 of the European Convention on Human Rights (ECHR) have weighed the rights of those who are lesbian, gay, bisexual and transgendered (LGBT) against religious objections from Registrars,[24] relationship counsellors[25] and "bed and breakfast" owners.[26] Potential adopters have also found their beliefs in conflict with local authority norms.[27] In each case, religious belief has been qualified by protection for those who are LGBT. An alternative means of protecting religious belief has been through conscience clauses in abortion legislation and for Church of England clergy over re-marriage of divorcees, examples that pre-date the Human Rights and Equality Acts. The Equality Act 2010 exempts religious organizations from provisions about gender equality and sexual orientation, protecting those with conservative doctrines about female leadership and sexual orientation.

It is the latter exceptions that raise concerns about protecting vulnerable groups and have led to several pieces of protective legislation. The possibility of obtaining injunctions to prevent forced

[23] For example, *Mba v London Borough of Merton* [2012] UKEAT 0332_12_1312.

[24] For example, *Ladele v Islington LBC and Liberty (Intervening)* [2008] UKEAT; [2009] EWCA Civ 1357.

[25] For example, *McFarlane v Relate Avon Limited* [2010] EWCA 880.

[26] For example, *Bull v. Hall and Preddy* [2013] UKSC 73.

[27] For example, *Eunice & Owen Johns v Derby City Council* [2011] EWHC 375.

marriages became law in 2007,[28] and further legislation is before Parliament to create criminal offences. Female genital mutilation (FGM) was first criminalized by the Prohibition of Female Circumcision Act 1985, and laws were strengthened by the Female Genital Mutilation Act 2003. Measures have also been passed under the Divorce (Religious Marriages) Act 2002 to support women trapped by husbands' refusals to grant a religious divorce. These are issues that underlie and to some degree justify concerns about recognition of religious law.

Marriage, family law and divorce are the areas for which there have been most calls for recognition of religious law and they gave rise to some of the earliest legislation allowing legal plurality, with provision for Jewish and Quaker weddings as early as Lord Hardwicke's Act 1753, as mentioned above. Contemporary law protects marriage and family life under the Human Rights Act by Articles 8 (right to family life) and 12 (right to marry)[29] of the ECHR, although the content, definition and formalities are determined by member states. Grounds and procedures for divorce and nullity are also set by national laws. At one level, all citizens are free to marry through ceremonies conducted in accordance with their religious tradition, but only those conducted according to the rites of the Church of England, Jewish law or Quaker tradition are recognized in law. Religious weddings in other faiths have no legal validity per se and require a civil ceremony to ensure legal status. It is open to other faiths to register places of worship for weddings and celebrants as registrars; however, few Muslim, Sikh or Hindu places of worship have been

[28] The Forced Marriage (Civil Protection) Act 2007 and the Family Law Act 1996 (Forced Marriage) (Relevant Third Party) Order 2009 enable parties and local authorities to apply for injunctions. S.120-122 Anti-Social Behaviour, Crime and Policing Act 2014 amends the provisions in the 1996 Act to make breach of a Forced Marriage Order a criminal offence.

[29] "Marriage" is interpreted as heterosexual marriage within most of Europe but European Law provides a margin of discretion for national states' own definitions of marriage, including provision for same-sex relationships.

registered.[30] For parties unaware that their religious wedding does not count in the eyes of the law, problems can arise if they believe they are married when they are not. This is one of the matters that most concerned Rowan Williams in his Sharia lecture.

Similarly, all citizens are free to divorce, but the criteria applicable for divorce in several religious communities differ from those of the state. Differences relate to the grounds and procedures for divorce and to the ancillary consequences of separation, such as finances and care of children. Several faith communities, notably Judaism, Roman Catholicism and Islam, have fora in which divorce is considered according to the laws of the faith community. Such fora effectively grant religious divorce or annulment and a religious licence to re-marry, but their decisions are not recognized in law, so civil divorce is also needed (see Douglas et al. 2011). Interestingly, although the Church of England can perform legally recognized marriages its Consistory Courts, the only religious courts that are recognized in English law, do not deal with divorce,[31] so no religious court has jurisdiction over divorce in English law. Having said which, insofar as the law does not ban Sharia, or other religious courts such as Roman Catholic Canon Law Courts and the Jewish Beth Din, they are accommodated and allowed to function. In practice, the Cardiff research found that religious courts generally only consider terminating the marriage rather than ancillary matters such as property and care of children, although advice might be given by Sharia courts about how to deal with *mahr* or dowry (Douglas et al. 2011, 47).

Religious divorce tribunals therefore operate in tandem with the state's divorce jurisdiction in the limited area of dissolving the marriage and do not seek a larger role. Ironically, given headlines about the threats of Islam and Sharia law, the Sharia court was the most likely of the

[30] Office of National Statistics (2010, Table 3.43) figures show that there were 164 Muslim, 161 Sikh and 281 "other" places of worship registered for weddings across England and Wales in 2007, out of 40,405 registered buildings (see also Douglas et al. 2011, 13 n. 35).

[31] They deal with institutional matters such as Church property and clergy discipline.

tribunals considered in the Cardiff research to recognize civil divorce as if it were religious, accepting it as evidence that the marriage was over (Douglas 2011, 40). Roman Catholic tribunals avoid conflict with the state by requiring the parties to obtain a civil divorce before seeking canonical annulment. The Beth Din's divorce process also recognizes the need for a state divorce and is now linked with the civil courts through the power to make civil divorce conditional on husbands granting a *get.*

Another way in which Sharia courts are more similar to the civil process than other religious tribunals is in their use of mediation, as English law encourages mediation to settle matters of property and care of children following divorce.[32] The difference is that mediation in Sharia cases establishes whether the marriage is over, whilst civil divorce establishes marital breakdown largely as a paper exercise. In the vast majority of civil cases, mediation concludes with a Consent Order, made by judicial approval of a consensual agreement. It is in theory open to parties to include aspects of their personal law in the mediation, so a Consent Order could include Muslim or other religious law. Civil courts can hear expert evidence when considering religious matters so that, although whilst not adjudicating on its merits, they can make informed decisions about applying religious law in particular cases. On the other hand, civil courts may also override religious provisions in parties' agreements if they are not satisfied that there is adequate provision for the wife and children, for example, if only the wife's dowry or *mahr* is returned. Religious law may also be considered under the Children Act 1989 s.3 in childcare law assessments of children's cultural and religious needs.

Another campaign focus has been for the use of the Arbitration Act 1996 to enforce Sharia-based agreements, as is possible for enforcing contracts and other private law agreements. However, fears about the Arbitration Act being used to circumvent the principles and protection of

[32] Except in cases of domestic violence, mediation is mandatory for those seeking Legal Aid and is strongly encouraged for privately funded parties.

family law are unfounded as the family courts' jurisdiction under the Matrimonial Causes Act 1973 cannot be ousted.

Some of the confusion about the recognition of religious marriage and divorce may arise from the fact that marriage and divorce contracted within another state are recognized by English law, provided they comply with procedures for legal recognition in the contracting state. For some faith communities, one way to ensure that a marriage or divorce complies with their religion and is recognized in English law might be to marry or divorce abroad, which many do. However, this is not always possible for reasons of cost and residence. Some might argue that this creates a double standard by recognizing some marriages or divorces under religious law but not those contracted in the UK. The distinction is that recognition of marriage in another state is recognition of that state as much as it is recognition of the marriage. However, the distinction may be lost on some people, so that some, particularly the most vulnerable, do not realize that their religious wedding in England is not recognized at law like the weddings of relatives married abroad. Discussion below considers how the law might develop in this area.

As regards parenting in family law, parental rights to determine children's religion and religious education have long been recognized, although until the Guardianship Act 1925 as a father's rather than a mother's prerogative! Parents can choose religious schools for their children's education and withdraw them from lessons that conflict with parental religious beliefs, a right exercised over sex education, use of audio-visual technology, computers and physical education – not just religious education and collective worship. Parental rights to choose their child's religion and upbringing in a particular faith were honoured under the Adoption Act 1976 s.7 even when a parent relinquished a child for adoption. The Adoption Act 2002 s.4(5) has reduced the strength of this right as religious preference is qualified by other factors in finding a suitable adoptive placement, but the need to consider a child's religion remains when assessing welfare in disputes between parents (Children Act 1989 s.3), for fostering (Children Act 1989 s.22(5)(c)) or adoption (Adoption Act 2002 s.4(5)).

Case law shows an acceptance of extensive parental discretion around children's upbringing and what constitutes welfare, including perspectives informed by faith. Cases cover issues about religious upbringing such as circumcision, diet,[33] religious names,[34] attendance at services and raising children in particular religious communities.[35] English law does not rule on the merits of religious belief, but requires joint parental consent to operations such as circumcision, both affirming the tradition in which children are raised and encouraging upbringing that enables children to make their own religious decisions when older.[36] The welfare principle accords with Muslim law and other faith traditions insofar as all seek children's best interests but what constitutes "welfare" or "best interests" varies between traditions (An-Na'im 1994). An example of such difference is that Islam prescribes maternal care for younger children and paternal care for older boys, except in cases of adultery or apostasy, although precise rules vary with different schools of *fiqh*. By contrast, English law no longer prescribes gendered norms for childcare, nor does it make a moral judgement on which parent caused the relationship breakdown. One area in which Jewish and Muslim law differs significantly from secular law is adoption. Judaism and Islam do not recognize the severance of legal ties between natural parents and children that takes place under English law. Since 2005, this difference has been recognized in the Special Guardianship Order, a means of kinship care consistent with *kafāla* and Jewish adoption, as well as adding another mechanism for long-term foster care to English law.

[33] For example, *Re U sub nom J* [2000] 1 FLR 57.

[34] For example, *Re S* [2004] EWHC 1282.

[35] For example, *Re B&G* [1985] 1 FLR 134 (regarding Scientology); *Re B-M* (Care Orders: Risk) [2009] EWCA Civ 205 (regarding Asian Islam); *Re R* [1993] 2 FCR 52 (regarding Exclusive Brethren).

[36] For example, *Re S* [2004] EWHC 1282.

Parental rights are subject to child protection and criminal law, but the state will only intervene if parenting causes a child significant harm in cases, for example, of beating that inflicts injury or of sexual abuse, serious neglect or emotional harm. Cases in which religious views are seen as undermining a child's welfare are relatively rare but include, for example, Jehovah's Witnesses opposing blood transfusions, or neglect because parents favour faith healing over medical treatment. Corporal punishment is another issue over which religion has clashed with secular law. In *R (Williamson & Others)* ([2005] UKHL 15) a consortium of Christian schools, supported by parents defended the right to use corporal punishment in their schools arguing on the basis of the biblical injunction that "to spare the rod is to spoil the child" (Proverbs 13.24; 23.13–14). The Supreme Court accepted the practice as supported by a genuine although minority religious belief but held that it was outweighed by children's rights to protection from the risk of cruel or unusual punishment.

Going forward...

This review has shown that accommodation of religious law, including law based on Muslim sources, is possible in English law. Religious courts are also accommodated to the extent that the law allows them to function as voluntary organizations exercising significant influence in people's lives. In some instances, developments that have accommodated religious practice, such as Special Guardianship and Shari'a compliant investments, have also benefitted the wider community. Finally, accommodating religious law from other traditions does not undermine legal protection for religions, essentially Christianity and Judaism, that have historically had some legal protection. Legal changes affecting Christianity are secular developments such as Sunday trading and changes to marriage law, the first of which was legislation about divorce, not same-sex marriage.

Yet, despite the fact that accommodation of religious law and belief has been achieved in a range of areas with a "minimum degree of fuss" (Edge 2013, 143), challenges and differences of view remain to be addressed over the recognition of religious beliefs and laws. At a practical level,

there remain concerns about both the recognition of religious marriages and the operation of religious courts, particularly in the sphere of divorce. At a more theoretical level, there are questions about what accommodation of religion means or what level of accommodation is possible in a pluralist state that seeks to observe secular neutrality. Finally, there are questions about how to take forward any further accommodation.

Recognition of marriage

There are some areas in which further legal recognition of particular practices might be appropriate, such as the contracting of marriage. This is an area of concern because marriage unrecognized by the state can leave parties, particularly wives, destitute and defenceless on divorce or the death of a purported spouse. It is hard to assess how many people are affected by this, but the continued practice of first-cousin marriage to first-generation immigrants makes it likely that some purported spouses are affected. Another group of spouses with expectations but no protection in law are those who see themselves as polygamously married. Immigration legislation has limited the scope for such couples to enter the UK, but there is evidence that some divorced women or those marrying late opt for polygamy rather than no marriage at all.

Unrecognized religious marriages affect not only spouses but also their children, finances and housing, suggesting that there are policy reasons for considering changes to recognize some religious marriages that are currently unprotected. In some cases, courts have recognized monogamous religious marriages under the doctrine of "presumption of marriage" where the parties have cohabited and held themselves out as married over time.[37] However, this is an uncertain doctrine. Prakash Shah (2013) considers that non-recognition of religious marriage highlights the limitations of accommodation on the host countries' terms. He argues that registering places of

[37] For example, *Chief Adjudication Officer v Bath* [2000] 1 FLR 8, cited in Douglas et al. 2011, 12–13.

worship and celebrants is inappropriate for Muslims as neither buildings nor celebrants are necessary in Muslim law; instead the parties' own exchange of vows should be recognized.

Whilst this may protect some at risk from mistaken trust in unrecognized religious marriages, there are concerns about evidence both of the marriage and of ensuring valid consent, precisely the concerns that Lord Hardwicke's Act addressed in 1753. Growing awareness of the incidence of forced marriage highlights the need to ensure genuine and free consent. However, provided that evidence of the marriage can be provided, recognizing that marriages in most Muslim countries require some formal registration for state recognition (Pearl and Menski 1998), there seems no reason why *nikāḥ* marriage should not be recognized. Jewish and Quaker weddings have had alternative forms of recognition for some centuries. However, in the light of concerns about forced marriage[38] and other coerced practices such as FGM,[39] safeguards would also be needed to protect and evidence genuine consent. It is less likely that English law would recognize polygamy as it would change English law's understanding of marriage as two individuals' mutual commitment, although some might argue that recognition of same-sex marriage was just such a major change.

Divorce, Sharia and religious courts:

As discussed above, all citizens divorce according to the same, civil law but if they also feel bound to a religious community divorce according religious law is also possible on a voluntary basis. Marital disputes and dissolution of marriage provides 90% of the work of the Sharia courts,

[38] The Forced Marriage Unit dealt with 1,302 cases during 2013 https://www.gov.uk/government/uploads/.../FMU_2013_statistics.pdf (accessed November 2014).

[39] The British Medical Association (BMA) suggests that significant numbers of women are affected by FGM in the UK. For example, in 2004 BMA research identified 9,032 pregnant women as suspected of having undergone FGM (British Medical Association 2011).

amounting to 150 cases per year (Douglas et al. 2011, 29–26) and 100% of Roman Catholic Canon Law courts.[40] Some religious communities, particularly some Muslims, would like the role of religious courts to be recognized as an alternative to civil courts, substantively recognizing peoples' personal law rather than acknowledging it within civil processes. This aspiration was reflected in Rowan Williams's lecture. Concerns about such recognition are that it would lead to the creation of a two-tier divorce process entailing different terms for divorce from English law and that imbalances of power affecting the granting of divorce and its terms would be outside the law's oversight. There are also practical obstacles to recognition of religious courts, not least their diversity. However, it can also be argued that failure to recognize such courts leaves religious legal processes unmonitored, despite their significant role in peoples' lives.

In principle, plural court systems are possible and there are both historical and contemporary examples. The Ottoman Empire's *millet* system allowed non-Muslim citizens to regulate family and private contracts according to their own religious laws and courts. In British colonial India, a plural system allowed several choices of personal law as deviations from the British colonial norm. A similar plural system still operates in modern Israel, allowing parties to opt for Jewish, Muslim or state courts. Plural jurisdictions allow cases to be decided according to the parties' own religious law but even in modern Israel this can lead to differential laws regarding, for example, ages for consent to marriage (Sebba and Douglas 1998). Such plurality operates on the basis that citizens can choose by which law they want their personal affairs to be regulated. However, the fact that plural systems have operated in some states does not mean that they are without their challenges.

In proposing accommodation that recognizes religious courts, and not merely practices and processes, Williams cited the work of Canadian Ayelet Shachar (2001), whose theory of transformative accommodation proposes parallel legal systems. Shachar argues that, if parties can

[40] The Beth Din has 110 cases per year but this is only 20% of its work as they also deal with food regulation and conversion (Douglas et al. 2011, 32–33.

choose between religious and state courts, the process will encourage "power holders [to] compete for the loyalty of their shared constituents…" In theory, choice of jurisdiction will promote transparency and competitive upward adjustment of rights and legal standards whilst recognizing religious allegiances. Shachar's work, from the Canadian context, is significant in the wake of failed attempts to recognize and regulate the Sharia courts in Ontario (Boyd 2013). Concerns expressed about her theory and plural jurisdictions are discussed later, but it is arguable that, like religious accommodation, legal pluralism already exists in the UK.

To an extent, the fear that recognizing religious tribunals will create plural legal systems instead of a single standard of law for all citizens is unfounded. The UK already has a plural legal system insofar as there are several voluntary or regulatory bodies, besides religious tribunals, that exercise quasi-legal jurisdiction over peoples' lives. Professional disciplinary bodies such as the Law Society, the General Medical Council (GMC), the Dental Medical Council and the Bar Council exercise jurisdiction over peoples' careers through complaints processes, codes of conduct and fitness to practice. Members of those professions are subject to the jurisdiction of their professional bodies as a condition of their practice. The role of professional tribunals in determining fitness to practice operates in tandem with state jurisdiction over criminal proceedings and civil courts in cases, for example, of allegations of professional negligence. The Church of England's Consistory Courts operate in a similar way in relation to clergy discipline.

In an alternative voluntary sector context, sports clubs and local leagues, national bodies such as the Football Association (FA) and internationally the International Olympics Committee and the Fédération Internationale de Football Association (FIFA), make decisions about peoples' careers and livelihoods, following drugs tests, for example, in and club transfers. Like religious organizations in the UK, they are all voluntary bodies, their jurisdiction based on the understanding that members choose to belong to them and to comply with their codes of conduct and membership. They operate according to legal frameworks bound by natural law, due process and evidence and are accountable to the wider law via judicial review. Recognizing a variety of tribunals allows

distinctive organizations, communities and professions to regulate themselves within the overarching framework of a single judicial system. It is arguable that religious tribunals could be subject to similar accountability within the spheres of their remit and competence.

Yet in some ways religious communities and the religious courts they operate are different. They have jurisdiction over far more weighty issues in most peoples' lives than do sporting organizations, as decisions about relationships, marriage and family have consequences for families and property. Another issue is that of membership. In the case of sporting organizations and professional bodies, members do genuinely choose to become involved, whereas people are in many cases born into religious communities with significant implications for their self-understanding, education and worldview. This means that the potential for imbalances of power between members in religious organizations may be higher than in equivalent voluntary organizations. In some cases, the jurisdiction of religious courts does also extend to parties who are not members; for example, a non-Catholic who marries a Catholic can find him/herself involved in the annulment process if the marriage fails. These factors suggest that recognition, monitoring and accountability are needed to a greater extent in the case of religious organizations than for voluntary bodies with less significant impact on citizens' lives.

Concerns about imbalances of power within religious communities and tribunals have led to significant critique of and objections to their recognition. Again, however, recognition and monitoring may be a more effective way to deal with these concerns. There are suspicions, for example, that within the Sharia court mediation process issues of domestic violence are not being addressed and complaints are silenced in the interests of keeping marriages together, although it is worth noting similar fears about the balance of power in secular divorce mediation. If records were kept, enabling greater transparency, these suspicions could be addressed. Shachar's theory assumes parallel jurisdictions with monitoring of standards enhanced by the parties' choice. The current system in England has parallel jurisdictions without choice, leaving those of a religious persuasion to seek divorce in both fora and giving religious courts with a monopoly on divorce or licence to re-

marry in that tradition. Parallel regulated and recognized systems, following Shachar, might reduce this monopoly.

However, even if a regulated parallel system of religious courts could be achieved, Shachar's theory assumes sufficient autonomy for choices between courts to be made. The conservative bias of some communities that operate religious courts may make it difficult for vulnerable parties to opt for the civil rather than the religious legal system. Evidence from existing practice suggests that the option may not be exercised for several reasons, including lack of awareness that choice exists and pressure to opt for the religious jurisdiction, dressed as loyalty to the community. Evidence of such communal pressure and lack of awareness of rights is seen in the work of the Forced Marriage Unit. The dilemma is illustrated by two cases concerning women in their teens. Miss AB[41] grew up in Pakistan, the well-educated daughter of a British father. Her mother died when she was young; her father died when she was in her teens. An uncle, acting as guardian, decided to marry Miss AB to a man believed to be violent and an alcoholic. When Miss AB became aware of this man's reputation she sought help from the British consulate, exercising her right as a British citizen, to avoid the marriage. The consulate applied to the High Court to make her a ward of court extra-territorially, allowing her to escape to a half-brother and other relatives in Glasgow.

By contrast Miss K,[42] from an Afghani family, was married at the age of 15 to an older man, who abused her. Social services removed her from him under child protection powers and the court annulled the marriage. Despite breaching English law regarding the age of marriage, the court decided not to punish her family as they were ignorant of the law about the age of consent, though ignorance is not usually a defence to breach of the law. Despite her experience of abuse, the young woman herself continued to state that she wanted marriage, arranged by her father, as the only

[41] *Re AB* [2008] E WHC 1436.

[42] *Re K sub nom LA v N& Others* [2005] EWHC 2956.

option for her future life. Miss K was held to have consented to marriage, despite her age, bearing in mind that she had inadequate information about the violent husband. The lack of sanction for the under-age marriage subsumed child protection norms of minimum marital age to cultural ignorance. By contrast, Miss AB had the autonomy and information to seek help to avoid a potentially abusive marriage and was thus protected. The cases illustrate that there is legal protection for those with sufficient autonomy to seek help but not for those like Miss K whose cultural context means that the capacity to make decisions independent of family expectation is questionable.

Another objection to parallel jurisdictions with standards monitored by the state is that religious law is distinct from secular areas like professional practice; in addition, standards in the latter are determined by the state in the interests of public service. Religious law and doctrine are distinctive to faith communities and civil courts or secular authorities are not competent to interpret or comment on them, except where property issues or charity law are involved.[43] Accordingly, religious communities might object that subjecting religious tribunals to national standards of judicial accountability and monitoring would impose alien criteria on them, undermining authentic accommodation of religious law and infringing the freedom of religious associations and members to manifest their belief under Article 9 of the ECHR.

Yet insofar as such standards and procedures seek simply to ensure due process, valid evidence, and knowledge of the law to be applied, the substantive body of religious law would be comparatively little affected. Any limitations on religious law would reflect those already imposed by the wider law on religious practice; marriage would not be extended to polygamy, for example. Religious courts would still be able to make religious decisions that cannot be adjudicated by the civil courts, as is the case in the Church of England Consistory Courts, which are already part of

[43] For example, *Blake v Associated Newspapers* [2003] EWHC 1960; *His Holiness Sant Baba Jeet Singh Maharaj v Eastern Media Group* [2010] EWHC (QB) 1294; *Forbes v Eden* [1867] LR 1 Sc & Div 568, considered in Douglas et al. 2011, 10–12.

English law. Whilst such regulation might add more formality than in some existing tribunals, it would not necessarily affect the integrity of religious legal reasoning.

In the UK, an alternative to creating a choice between parallel courts might be to retain the current system requiring both religious and civil divorce, but bring religious tribunals within the framework of administrative law. This would ensure that religious fora observed procedures compatible with natural law and evidential standards as in other quasi-legal tribunals. It would also avoid the choice between jurisdictions in Shachar's model of transformative accommodation, which is problematic for those who are most vulnerable and least likely to be able to exercise that choice. The downside of such an approach is that any appeal would be by way of judicial review, which can be costly and raises the same concerns about autonomy and choice as an elective system. On the other hand, if the minimum procedural standards set by English law around evidence, independence and fair hearing, were adopted, the need for appeals might be limited.

The Cardiff research (Douglas et al. 2011) suggests that there are some real procedural issues to be addressed, as the ways in which religious tribunals operate do not necessarily follow standard judicial processes. For example, the Catholic Canon Law court does not afford the defendant to a petition for nullity the opportunity to respond to evidence gathered by the investigating judge or to defend huim/herself. In the Sharia court, preliminary mediation with the Family Support Service is oriented towards saving the marriage, raising the suspicion that more vulnerable parties could be pressurized into withdrawing complaints about domestic violence. Objective hearing of evidence seems to be overlooked at this point of the process, with the result that the courts operate with different approaches to the resolution of a case than is standard in the English legal system.

The state of Ontario provides a case study into the safeguards that might be needed to create a workable plural system and take some account of some parties' limited autonomy or power. Canada, the context from which Shachar (2001) writes, operates as a plural jurisdiction as between Federal and Provincial courts. Marion Boyd, chairing the commission that responded to fears of

jurisdictional UDI by Canada's main Sharia court, recommended improved training, minimum qualifications for arbitrators and essential evidential and recording requirements (Boyd 2013). In addition, agreements concerning family arrangements and children were to be approved by the family courts. Education was also to be provided to reduce the risks of parties being disadvantaged. Misunderstandings, fears about what was being suggested and polarized views about recognition of any form of Sharia court meant that the commission's proposals were not implemented. This left the Sharia court and other religious courts operating in people's lives but without wider accountability or monitoring, leaving unprotected those the proposals were designed to support.

The reality is that members of faith communities will continue to use religious fora for dispute resolution and advice, whether out of conviction or ignorance of alternatives, as is demonstrated by the Ontario case and the Cardiff research into the UK's religious tribunals. For English law to recognize such tribunals and factor them into the English judicial process and wider public life does not require the establishment of new courts but simply the acknowledgement of existing practices. Such recognition would enable monitoring, remedies, avenues of appeal and protection for those dissatisfied with the decisions of such tribunals, whether through power imbalances, lack of advice or other causes. It is lack of monitoring and accountability that creates two-tier legal systems because it leaves tribunals that have an impact on peoples' lives outside the law of the land.

However, there are significant practical issues to address. Introducing legislation does not necessarily bring change, as is illustrated by the lack of prosecutions for FGM three decades after the practice was first criminalized. Continued monitoring and cultural change are also needed. The fact that part of the community has campaigned for protective laws whilst other forces militate against their enforcement illustrates one of the dilemmas regarding recognition of religious law and courts. No community is homogenous, so courts need to reflect diversity, as is illustrated by the Sharia Court and Beth Din considered in the Cardiff research. The fact that, in Sharia courts, rules vary between different schools of *fiqh* illustrates the complexities of implementing a single Sharia

code (Pearl and Menski 1998; An-Na'im 2002; Esposito and DeLong-Bas 2001). The number of different courts within each religious community also makes recognition of particular courts challenging in practice, regardless of concerns about protection.

Given that religious courts in the UK are not themselves requesting recognition, there is also a question of how to ensure transparency and accountability against tribunals wishes. In the case of the Ontario Sharia court, recognition was requested, creating a platform for discussion of the terms in which it might be given. However, in the UK the tribunals themselves seem less concerned to acquire state recognition and many would oppose such recognition on the basis that it would give such courts greater power or legitimacy than are appropriate in a secular legal system. Yet, as noted elsewhere, religious tribunals de facto exercise power over peoples' lives by holding the licence to re-marry within that religious tradition. Requiring religious organizations, which are voluntary organizations, to sign up to recognition would be problematical, politically if nothing else, unless they agreed. On the other hand, a voluntary registration system could lead to problems of some being registered and others not, creating a two-tier system with some more protective than others. The history of self-regulation giving way to state regulation in the financial services and media industries illustrates the difficulties of imposing state regulation that is not wanted by a particular sector. It would be interesting to see how the debate around recognition of religious tribunals or courts might change should questions be raised of compulsory recognition and licensing. There are both calls for recognition of courts and concerns that might justify recognition and regulation so as to increase transparency in that area.

Concerns about the overlap of religious tribunals with the civil law system seem to be unfounded at present, as all three courts examined in the Cardiff research recognize or require civil as well as religious divorce. Greater conflict might arise should religious courts be given the authority to grant a divorce recognized by the civil law. However, conflicts resulting from plural jurisdictions already occur in the UK in, for example, the crossover between criminal law and disciplinary tribunals such as the GMC, the FA and the Clergy Discipline Measure. Occasionally,

apparent conflicts arise if the criminal courts acquit someone on the balance of probabilities but they are still found liable by the civil standard of proof in a tribunal. These apparent conflicts are not irresolvable, as the reality is that different jurisdictions exercise different roles, namely fitness to practise versus criminal determination and punishment. Another concern is forum shopping, as the Cardiff research highlighted, given the range of tribunals within particular communities and the diversity of judgements those communities would accept. Again, however, such challenges should not be insurmountable, given that conflicts of jurisdiction already arise in cross-border cases and in federal states, such as Canada. Rules and procedures for which court or tribunal takes priority can be developed.

Another practical issue is the extent to which accommodation genuinely recognizes religious law or accommodates a limited version compatible with English law, as discussed above in the context of the low take-up of marriage registration for non-Christian places of worship. An essential question is what accommodation means. Is religious difference tolerated as a variation from standard norms and assumptions, an additional extra or acceptance of plural understandings and worldviews? The current law is mixed, but most accommodation is limited to the scope of English law rather than acceptance of alternative norms. For example, arranged marriage, Jewish and Quaker marriages and exemption for religious organizations from celebrating same-sex marriage are variations accepted within the bounds of an English understanding of marriage; polygamous marriage is not. Similarly whilst the hijab is a generally accepted form of veiling in the UK (although dramatically not in France, Turkey and other parts of Europe), the nikab is more controversial. On balance, it could be said that most UK religious communities have adapted to the current scope of accommodation, which is greater than in some other European countries.

Considering broader issues of religious accommodation, including but not limited to religious courts, the assumption that the religious difference is a minor diversion from the norm is misplaced and may explain why laws to address issues are in some instances ineffective. For example, in childcare law, religious difference regarding children's upbringing is acceptable unless

it crosses the threshold of "significant harm" that justifies intervention by safeguarding authorities (Eekelaar 2004; Ahdar 1996). The assumption that religious difference is an additional extra to agreed norms about what constitutes harm, fails to recognize wide variations in what is considered harmful. Those seeking to use corporal punishment in the Williamson case[44] believed that sparing the rod is harmful, contrary to social work norms that regard corporal punishment as harmful. Such differences of understanding need to be recognized and negotiated if there is to be genuine engagement with religious difference and transparency about the extent to which accommodation is possible (An-Na'im 1994). This reflects Shaheen Sardar-Ali's (2013, 157–158) call for honest exploration of "priorities where there is real or perceived divergence of thought or action between British Muslims and the majority non-Muslim population." She calls for systematic analysis of differences, to find "mechanisms for… consensual resolution" of differences, "from the starting point of equal citizenship." Echoing Williams, Sardar-Ali also calls for attention to language and mutual translation of concepts to reduce misunderstandings. Expert evidence in court can aid translation and religious literacy in particular cases, but broader education in religious literacy and deconstruction of stereotypes is needed across societies' various communities. Sardar-Ali recognizes that there are parallel misunderstandings and stereotyping in her own Muslim community.

Such engagement can bring about genuine alternatives to accommodate religious beliefs. One example is the development of alternative treatments to blood transfusion that are acceptable to Jehovah's Witnesses. Whilst they may not be the best option, their use can maintain life and provide a treatment acceptable to parents who oppose transfusion (see Fortin 2009, 363–429. Sometimes such engagement brings about not simply pluralist alternatives for a particular group but additional resources for wider society, as seen above with Islamic banking and the Special Guardianship Order. The possibility of positive legal developments in the wider community by

[44] *R v Williamson* [2005] UKHL 15.

accommodating alternative legal instruments and resources is often overlooked. Prakash Shah (2013, 144) argues that this is due to "a well-established… theme in western culture" about "the moral deficiency of those who subscribe to non-Christian religions," making non-Christian legal systems tolerated exceptions rather than positive contributors to the debate. Whilst this may be true in some instances, his suggestion that marriage be established simply on the basis of the parties' understanding rather than through legal formalities fails not on moral but on practical grounds. Whilst such recognition may be workable where the parties' understanding coincides, it does not assist where understandings differ.

It is worth noting, however, when considering moral high ground, patriarchy and power that secular courts also have mixed records in protecting minorities. Re K[45] is an example of the secular court failing to invoke its own jurisdiction to sanction an under-age and effectively forced marriage. A 2001 case[46] also raises questions about whose views secular courts take into account in understanding religion. The case was an Attorney General's appeal to increase a sentence for rape on the basis that the stigma attached to an Asian victim of rape would be greater than in other communities and would make her unmarriageable. The Court of Appeal increased the rapist's sentence but did nothing to challenge the assumption that the victim was "damaged goods," thereby effectively upholding patriarchal constructions of honour. These illustrations again highlight concerns about whose understanding of religion is applied, whether in religious fora or in secular courts.

Conclusions

There is little support for the wholesale incorporation of Sharia or other religious law into English law, although there are more calls for recognition of personal or family law. Some accommodation

[45] *Re K sub nom LA v N& Others* [2005] EWHC 2956.

[46] *Attorney General's Reference 51 sub nom R v C* [2001] EWCA Crim 1635

of religious laws and practices has already taken place in English society since the eighteenth century and more recently through the Human Rights Act, policy, case law and statute. This suggests that religious arguments and sensibilities are taken with a measure of seriousness, while allowing some accommodation has not led to Islamic or religious takeover. It also suggests scope for negotiation about further areas of accommodation and deconstruction of the stereotypes and fears that present obstacles to such negotiations. Whilst there has been limited formal recognition of religious courts, other than their freedom to operate, there is increasing awareness of their operation and impact on peoples' lives.

Given that such tribunals will continue to have an impact on peoples' lives there is an argument for recognition on the basis that a democracy should listen to and reflect the full range of parties to its citizenship. A more protective argument for recognition, monitoring of tribunals and changes to recognition of religious marriages is precisely the concerns about vulnerable parties that leads some to oppose religious tribunals. The reality, however, is that, despite the headlines, there is little call from religious tribunals or even religious communities themselves for state recognition; they view their role primarily as catering for the religious community, leaving most aspects of divorce and separation to the state to adjudicate.

In the absence of a clear and coherent call from the relevant religious tribunals or communities, trying to impose monitoring or regulation is likely to be counter-productive and politically difficult. The most appropriate way forward may be to continue to engage with all sections of religious communities in respectful conversation so that issues can be addressed on the basis of the realities rather than in response to headlines, myths and stereotypes. As and when there are calls for further recognition of religious law, whether through specific legislative change or recognition of religious tribunals, the deconstruction of myths can only smooth the way for the changes needed.

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