Shari'a Councils and Muslim Women in Britain

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Shari'a Councils and Muslim Women in Britain

Rethinking the Role of Power and Authority

By

Tanya Walker

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List of Abbreviations

BSC	Birmingham Shari'a Council
FAC	Family Affairs Committee
ICE	Family Affairs Department of the Islamic Centre of England
IKWRO	Iranian and Kurdish Women's Rights Organisation
ISC	Islamic Shari'a Council
MAT	Muslim Arbitration Tribunal
MLSC	Muslim Law (Shari'a) Council

Introduction

Certain events at the beginnings of this new century have dramatically and indelibly altered the world stage and a global public consciousness, although the decade and more that has passed since the events of September 11 show that we are dealing with a fast changing and increasingly complex landscape. A heightened focus on the 'Muslim presence' in the West has been but one of the resultant effects. Whilst large-scale security concerns have taken pride of place, dominating the media and indeed the public imagination, there has simultaneously been a less profiled, though equally complex, search for and redefining of questions of identity, freedom and equality. Many issues have emerged in the complex arranging and re-arranging of both public and private space as migrant communities settle in new lands, and as host societies are forced to adapt in light of the changes that such developments bring. It is however the heterogeneous, quasi-legal entities that have become broadly defined as 'Shari'a councils' in Britain that have been amongst the most controversial of these over the past years,[1] and which provide the focus for this present work.

In February 2006 an ICM survey conducted for the Sunday Telegraph (Hennessy and Kite 2006) polled 500 British Muslims on a variety of emotive issues, but the focus of the headline was a telling precursor of what was to emerge later in the year with regards to the existence of "a network of Shari'a councils in the UK" (Bowen, Innes 2006). The headline ran "Poll reveals 40pc of Muslims want Shari'a law in UK" (Hennessy and Kite 2006).[2] Nine months later, on 29 November 2006, the BBC Radio 4 programme *Law in Action* highlighted the issue of alternate "ethnic and religious courts" in Britain. Whilst the programme was framed in language that considered the use of Jewish, Islamic and customary law (the case in question was in fact decided according to Somali customary law) the media flurry that followed focussed on Islam, with the Telegraph running a second article: "Shari'a law is spreading as authority wanes" (Rozenberg 2006) – a headline that was to shape the beginnings of this research as it framed the debate in terms of the concept of authority.

1 The unofficial settling of disputes according to variations of Shari'a law in the United Kingdom is not a new phenomenon (some councils have been running for some thirty years), but their increasing profile and formality is a more recent development.

2 It is, of course, difficult to ascertain the significance of such a statistic with regards to the understanding and motivation of respondents (what is understood to be signified by 'Shari'a law' for example?) Note also that the same poll revealed that whilst 40% of British Muslims were in favour of the implementation of some form of Shari'a law, 41% were opposed to any such move.

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In the end it was to be the events of 2008 that were to seal the place of Shariʿa councils on the front lines of British Muslim debates. The lecture given by the then Archbishop of Canterbury (Williams 2008) at the Royal Courts of Justice in February of that year sparked months of highly emotive debate across the nation, culminating with The Sunday Times announcement on 14 September 2008 that the British government had "quietly sanctioned the powers for Shariʿa judges to rule on cases ranging from divorce and financial disputes to those involving domestic violence" (Taher 2008). The article went on to say that the rulings issued by the "Shariʿa courts" are binding by law provided that "both parties in the dispute agree to give it the power to rule on their case", and that these rulings "are enforceable through the county courts or High Court."[3] Although there were important factual errors in the press reports,[4] the backlash against these announcements, and the extremity of the response against Dr Williams due to his comments earlier in the year, (the BBC referred to the Shariʿa debate from that point as the "Shariʿa law row"[5]), help to demonstrate the extent of the emotion and controversy attached to the question of Shariʿa law in the United Kingdom.[6]

It is by now evident that Shariʿa councils are increasingly carving out a space for themselves within the British state, but this space is a highly complex and contested one, both in the public and in the private sphere. Significant tensions surround all aspects of the work and in fact the very existence of the Shariʿa councils, not only with regards to the interface of these councils with the official structures of the British state, but also as they are experienced within the Muslim communities of which they are part.

It is these councils, and their interactions with the Muslim women they claim to serve, that are the focus of this present study. In presenting an ethnographic study of the British case, focused on the reasoning and the motivations of the individual Muslim women in their interactions with the Shariʿa councils, and explored through considerations of authority, power, agency and resistance, this book diverges from much of the literature on the Shariʿa councils

3 Although note the subtle rebuttal of their own claims in Pollard (2008).

4 There had been no "government sanction" other than that which was present in existing legislation that covered arbitration procedures (the Arbitration Act 1996). Furthermore, both family law (including divorce) and criminal law (including domestic violence) are protected areas of law and cannot currently be subject to an arbitration agreement.

5 See for example: "Cameron steps into Shariʿa law row" *BBC News*, 26 February 2008.

6 See Grillo (2015a) for a rich review of the Shariʿa councils and the surrounding controversy as documented in the press.

in Britain.[7] These works have considered the legal and political issues raised by Shari'a law in the United Kingdom (the possible interactions, conflicts and accommodations of such a law within the British state) focusing primarily on group and community dynamics, the issues of legal pluralism and multiculturalism, and considerations of faith in the public square. Empirically based research considering the Shari'a councils themselves (in the British context) and, in particular, the individuals who use them, is very limited.[8] This remains the case despite the growing number of ethnographic works published on Shari'a courts around the world,[9] and the considerable public, political and academic interest in the British case.

In the British context two studies of a more ethnographic nature (Shah-Kazemi 2001 and Bano 2004) have led the way (although to varying degrees), but there have been important differences in approach. Shah-Kazemi's *Untying the Knot* (2001) provided the first study of its kind, and addressed a similar research problem to the present study – the experiences, motivations, perceptions, and needs of Muslim women as they approached one particular Shari'a council with their marital disputes.[10] Despite broad similarities in the research problem however, the two studies present highly differing approaches. Shah-Kazemi's analysis relies heavily on the official language in which the women make their claims and attempt to gain a particular outcome through the Shari'a council,[11] and fails to problematise this public discourse (Scott 1990).

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7 See *inter alia* Carroll (1997), Giunchi (ed.) (2014), Griffith-Jones (ed.) (2013), Grilllo (2015a), King (ed.) (1995), Malik (2012), Menski (1993), Pearl and Menski (1998), Poulter (1992), Shah (2013), Shah and Menski (eds.) (2006), Yilmaz (2001), and Zee (2014, 2016). Ahdar and Aroney (eds.) (2010), Grillo et al (eds.) (2009), and Nielsen and Christoffersen (eds.) (2010) consider the issues posed by legal diversity more broadly in the West. I refer to the more ethnographic literature in this field shortly.

8 See Bano (2004, 2008, 2010, 2012), Billaud (2014), Bowen (2009, 2010, 2013b), Douglas et al (2011), Keshavjee (2008), Shah-Kazemi (2001), and Zee (2016). Of these, only Bano and Shah-Kazemi address specifically the viewpoints of the women who use the Shari'a councils (as opposed to that of community spokespeople or the 'judges' of the Shari'a councils).

9 Bowen (2003), Hirsch (1998), Mir-Hosseini (2000), Peletz (2002), and Shehada (2005), are but a few of the collection.

10 Shah-Kazemi's research was conducted at the Muslim Law (Shari'a) Council (MLSC) and is two pronged. It considers the motivations of the Muslim women involved, and explores "what measures need to be taken to ensure full access to the divorce facilitation process for the Muslim community in the UK" (Shah-Kazemi 2001:5).

11 The focus of Shah-Kazemi's empirical material is primarily content analysis of the case files of the MLSC (she considered some 287 files). Although twenty-one in-depth

As a result her work provides a limited understanding of the deeper dynamics that are involved in the women's choices (the power structures that inform the women's lives and make up the context in which they make their decisions), and there is an absence of appropriate questions of power and resistance.

The work of Scott (1990, 2009) and Mir-Hosseini (2000) present a needed redress to Shah-Kazemi's approach. Mir-Hosseini writing of the Iranian family courts for example, makes precisely the point that the official language that the women use to present their marital disputes in court, and the official basis on which they present their claims and requests for a divorce "must not be taken at its face value". She writes:

> It would be misleading to make any deductions about the cause and nature of marital conflicts on the basis of what the table[12] reveals in terms of demands made by petitioners. These categories, rather than revealing the real nature of marital conflicts, reflect the legal avenues open for expressing grievances and seeking legal solutions to them.
>
> MIR-HOSSEINI 2000:44

The following analysis seeks to incorporate this more nuanced understanding. Thus methodological choices were made with a desire to gain access to both the public performance as it exists in the interactions of the women with the personnel in the Shariʿa councils themselves (primarily through observation), and the hidden thoughts of the women (as much as they were comfortable to intimate) in in-depth interviews done in private.

A related caution needs to be raised with regards to the way in which the work of Billaud (2014), Bowen (2009, 2010, 2013b), Douglas et al., (2011), and Keshavjee (2008) is used in the debate on Shariʿa councils. Whilst these studies focus on a combination of the public performance of the Shariʿa council setting, and the opinion and viewpoints of the 'judges', it has become common not only in the public debate around Shariʿa councils, but in some of the academic literature, to conflate the narratives of the Shariʿa council judges, with the viewpoint of the disputants. Thus, for example, Billaud (2014:160) writes:

> As one imam told me, Shariʿa councils "care for the soul," whereas mainstream justice is perceived as procedural, confrontational and somewhat

interviews were also conducted, the tenor of these seem to have been largely shaped by the understanding formed through the case files.

12 Mir-Hosseini (2000) presents a number of summarised tables of the claims and justifications that individuals cite when corresponding with the court and when appearing there in person.

> distant from Muslims' ethical concerns. Muslims making use of Shari'a councils therefore seek to cultivate an ethical self by actively engaging with the values, norms and codes of conduct they perceive as essential to the nurturing of their faith.

This jump from the articulations of the Shari'a council judges to the assumed motivation and consideration of the disputants themselves is questioned in this present book, as is the significance of the public transcript.

The pursuit of inquiries that draw on understandings of power and agency brings this study more in line with the work of Samia Bano. This book seeks to build on her analysis of the contested nature of the spaces of official and unofficial law, with a more focused consideration of the reasoning and the tactics of the women themselves. Bano touches on these themes,[13] but her greater focus has been to challenge essentialised or homogenised understandings of communities and norms (asserting instead the complex, evolving nature of identities), and to consider the issues of legal pluralism and multiculturalism from the perspective of feminist writings and intra-group diversity and contestation (see for example, 2004, 2008, 2010, 2012). More specifically, Bano has sought to highlight the plurality of experiences of Muslim women as they encounter the Shari'a councils and thereby challenge the "perceived inherent marginality of Muslim women in this process of dispute resolution" (Bano 2010:181). As a result, considerations of power and contestation, and the extent to which, and ways in which, women are constrained in the field, remain a less developed part of the discussion. As will be clear, there is much that provides the basis of a shared understanding of the dynamics of Shari'a councils between this work and hers (and I draw on her insightful studies throughout this book where relevant). Nevertheless, there are differences in nuance that have at times a significant impact. This is so in particular with regards to our understanding of the reasoning and motivation of Muslim women as they approach the Shari'a councils, the experiences that lead them there, as well as their experiences within these fora (in short, the areas of focus for this present book).

One key question guides the following analysis: "Why do individual Muslim women living in Britain choose to take up their disputes in the unofficial fora of the Shari'a councils?" The question as posed, although not explicitly

13 See for example Chapter 5 of her PhD thesis (2004) published and developed in Bano (2010:173–181). Bano writes that previous studies "fail to explore the active engagement of women in developing strategies, negotiations and interrogating spaces that challenge the hegemonic power inherent within both official and unofficial law" and goes on to note "these spaces can act as sites of resistance, struggle and change" (2004:152).

articulated, forms part of the agitating backdrop to much of the public discussion that surrounds the Shariʿa councils in Britain. This is largely so because the answer, particularly in its positioning of the freedom and the agency of the women involved, has important political implications within a liberal state. Thus in pursuing these enquiries, I am not only seeking to explore questions of freedom, agency, power and resistance; but the implications of the experiences of the women in this study for the broader political debates which have surrounded the Shariʿa councils in Britain.

There remains a pronounced need for further studies in this field not only of an ethnographic nature (to increase the pool of first-hand information from which much of the debate has been drawing), but of ethnographic work which takes into account the voices of the women in these contexts – alongside cogent sociological, legal and political analysis of these trends due to their significance for the United Kingdom. This study, based as it is on fieldwork across four councils, with observational data from one hundred cases, and interviews with forty-three women who brought their cases to the councils, together with interviews and further conversations with the personnel involved in each of the institutions studied, thus plays an important role in an increasingly charged field.

This introductory chapter begins by first setting the scene for the broader context within which questions regarding the Shariʿa councils emerge, both with regards to the Muslim presence in Britain, and with regards to the responses of the British state to its Muslim minorities. A number of potential answers to the central question of this study are then introduced, together with a discussion of the theoretical framework that undergirds these preliminary answers and which makes clear their political implications and significance. Finally, I present a brief overview of the coming chapters.

The Muslim Presence in Britain

Although the presence of Muslims in Britain is a centuries-old phenomenon, post-second World War migration patterns to the United Kingdom brought an exponential increase in the numbers and the diversity of Muslims in Britain, thereby precipitating modern day debates regarding questions of identity and ideology for host country and immigrants alike. Recent estimates suggest that the Muslim population has grown from some twenty thousand in 1950 (Suleiman et al., 2009:21) to around three million at present, or about 4.4% of the population (Office for National Statistics 2013).

A rich literature traces these developments,[14] and I will not replicate the detail of the discussion here but rather make two related comments. Firstly, it is important to note that the immigration history of the United Kingdom is not a one-time event, but rather that the latter half of the 1900s saw what Rex (2002:52) calls "successive waves of Muslim immigration". Whilst the initial impetus for such migration was primarily economic (as a result of the significant labour needs of post-Second World War Britain (Vertovec 2002:19)) the past decades have seen a more complex and interwoven mixture of motivations. Family connections and considerations enabled by the family reunification policies of the 1960s and 70s, arranged (and forced) marriages abroad, as well as the seeking of political asylum from many different parts of the world, have been prevailing factors alongside economic incentives. We have, as a result, a Muslim presence in Britain marked by diversity – not just with regards to varying impetus for immigrating to the United Kingdom, but proliferated by distinct ethnic and sectarian affiliations as well as differences in socio-economic background, varying levels of religiosity, levels of education, interpretations of Islam, schools of law, and responses to the West (Rex 2002:52; see also Ansari 2000).[15] Thus even a cursory understanding of Muslim communities in Britain must refuse neat dichotomies and guard against essentialised understandings either of Muslims or of Islam. Indeed many social scientists have been at pains to combat homogenising tendencies that speak of 'the' Muslim community in Britain, in disregard for what is in reality a great diversity of communities. This diversity is key in evaluating both the claims and the broader implications of the Shari'a councils.

Secondly, these communities are no more static than they are homogeneous. The *Contextualising Islam in Britain* Report talks of "communities within communities, which are ever-shifting and adapting to their environment" (Suleiman et al., 2009:37). This "ever-shifting" adaptation – the developing

14 See for example: Ansari (2000), Nielsen (1992, 2004), Nonneman, Niblock, and Szajkowski (1996), Rex (2002), Vertovec (2002).

15 Various scholars address the proliferated responses of Muslim communities to the West. Shadid and Koningsveld (1996:89–91) for example, discuss the diversity of contemporary Islamist thought and practice on Muslims living as minorities in the West. They talk of four broad responses: pragmatic, idealistic, modern and traditional, and these various responses are in turn representative of a range of attitudes regarding the classification of the land itself (in reference to the traditional dichotomy of *Dar al-Islam* and *Dar al-Harb*) and the recommended Muslim response. Meanwhile Geaves (2005:67) elaborates on the potential political projects of Muslims caught between "isolation, rejection, and participation".

and constructing of a Muslim identity in Britain – is key to understanding not only the Muslim communities of the United Kingdom, but the processes and dynamics that have led to calls for the instigation of Muslim personal law in the context of the Shari'a councils. Many have noted that the initial population of Muslim immigrants to Britain understood their presence in the West as being "primarily if not exclusively" motivated by economic factors (Smith 2002:4), and that they would soon be returning 'home' (Anwar (1979) has called this "the myth of return"). As a result, little was invested in engaging with the British state or society, or even in appropriating Islam in this foreign context, and early immigrants did not have a significant public presence (see Vertovec 2002). Hellyer (2007:92) writes cogently of these dynamics:

> The first migrants, even if they were quite committed to Islam… may still have treated the idea of applying Islam in a minority context with some apathy… To residents who viewed themselves as temporary residents rather than permanent citizens, the usefulness of such a discipline may have seemed rather limited.

The myth of return has thus been a powerful demotivating factor in keeping first-generation immigrant Muslims from fully engaging in the public sphere or from attempting to find ways of incorporating Islam into their new environment (see for example Anwar 1979).

The family reunification policies of the 1960s and 70s brought about a marked development in this field. The joining of wives and children to working men, and the newfound understanding of being 'here to stay' brought the Muslim community in contact with the public sphere in a hitherto unprecedented way, as an increasingly diverse and far-reaching range of issues came to be of importance to the newly settled communities.[16] Thus the past decades have seen Muslim groups lobbying on the provision of halal food; the building of mosques; the provision of Islamic education (both in terms of the existence and the funding of faith-schools, and in terms of changes to the national curriculum); blasphemy laws and the incitement to religious hatred laws; issues surrounding the veiling of women; anti-war protests, and, of course, the instigating of Shari'a law.[17]

16 Nielsen (1992:2,3) puts it as a "major expansion" of the "contact surface between the immigrants and the host society".

17 Grillo (2015:15–17) traces the development of calls for the Shari'a councils from their early inceptions by The Union of Muslim Organisations of UK & Eire in the 1970s to the present day.

Ramadan (2002:207) writes:

> Today, it is clear that Islam is part of Europe's demographic and cultural landscape. Europe's Muslims are no longer guests that one day will return home, but rather Europeans of Muslim faith, who will remain a permanent part of Europe's social and political fabric.

He goes on to comment on the second- and third-generation of European Muslims in particular, that they not only consider themselves to be "at home" in Europe, but that they "see themselves as having the right to make the most of their environment" (Ramadan 2002:159).[18]

As a result of these developments, and as a growing Muslim population lives out its citizenship in the West, it has been noted that terms such as 'immigrant' and 'diaspora' are losing their explanatory potency as the neat boundaries of identity implied in such terms become increasingly obsolete. Novel, more fluid constructions of self-identity as well as understandings of 'host' and 'home' nation have altered the field, and brought about an increasingly confident Muslim presence in the West (see Bowen 2004:879, Ballard 2009:300, Haddad 2002).

Early attempts to assert this newfound confidence and to demand a response were faltering and at times counter-productive. Thus the Rushdie affair of the 1980s, for example, only served to foment a greater sense of alienation on behalf of Muslim communities, and reinforced a sense of their 'otherness' for 'indigenous' Britons.[19] The misunderstandings of context and culture that led to the ill-conceived book burnings of those protests, however, have been overcome in more recent mobilisations of Muslim communities in Britain. Muslim groups have demonstrated a growing ability to engage with and to use the idioms, power structures, and language of the West – using the opportunities afforded by a democratic, liberal state, to ensure their voices are heard. This was evidenced, for example, by the instrumental role of Muslims

18 The work of Tariq Ramadan (see for example 1999, 2002, 2004) is particularly instrumental in encouraging such a development, but note also the 2004 directive of the European Council for Fatwa and Research, recommending that "If the conditions for religious security existed in non-Muslim states, it was not only permissible for Muslims to reside there, but they should actively take part in helping the wider society as part of a social pact for progress" (in Hellyer 2007:100). Note that whilst these broad trends have been evidenced across Europe, distinctive cultural expressions have emerged within individual states as a result not only of the structures of the host country, but of the socio-political background of immigrants. The calls for institution building at the level of the Shari'a councils have been most loudly heard in the British context (Shah 2013:64, 65).

19 See for example McRoy (2006) and Nielsen (1989) for a discussion of these events.

in the anti-war coalition, and the strength of the Muslim lobby in ensuring the passage of the otherwise unpopular 'religious hatred' legislation.[20] As we shall see, calls for the existence of and recognition of Muslim family laws in Britain, raised as they were initially in reference to a reformulated understanding of group rights to equality, and now increasingly looking to the core liberal tenet of freedom of religion, are a continuation of this trend.

These changes in the modes of political engagement by certain Muslim groups form part of a political and cultural project encouraged by leading Muslim figures. Public figures such as Tariq Ramadan recommend that, in the pursuit of political engagement with the host society, Muslims "'translate' specifically 'Islamic values' into an idiom and set of principles that people who are not Muslims and do not have access to the same frames of reference can appreciate and understand ('universal values')" (in Hellyer 2007:100).[21] These developments should not be seen de facto, however, as the assimilation of Muslim communities into Britain, or even of their espousing of 'British values' (although it undoubtedly connotes this in some cases). Werbner (2000:309) for example, considers Muslim political participation in Britain over the past thirty years as the "development of [a] Muslim British civic consciousness and capacity for active citizenship" (see also Suleiman 2009:65), and denies any intrinsic antithesis between Muslim minorities and Western democratic practices. These, however, need to be understood as limited claims. As Geaves (2005:75) notes in his discussion of the views of young British Muslim women:

> [Their] politicisation…arose primarily out of their Muslim identity… [and] their "Britishness" rose to the fore only in the context of their feeling that their nation of birth [the United Kingdom] provided them with the right to be Muslims and publicly express their democratic right to oppose government policy.

The use of democratic processes then may be understood in some cases as pragmatic calculations of the processes deemed most effective in the course of protest, and do not necessarily indicate shared values as to the ends to be achieved. In fact, a clash of values on issues of freedom of speech has been the precipitating factor in some of the most visible clashes with particular sections

20 Muslim groups were very influential in the passage of the Racial and Religious Hatred Act (2006). The bill was passed despite several years of counter lobbying by a broad and unlikely coalition of opposing groups who voiced concerns regarding the chilling effect of such legislation on the freedom of speech. See Addison (2007), Werbner (2005).

21 See also Bowen (2004:886, 887), Soysal (2002), and Suleiman et al., (2009:30, 31).

of the Muslim community in Britain over the past thirty years. Now, in the context of the Shari'a councils, differences in understandings of women's rights, of citizenship and the rule of law, as well as of ultimate authorities are proving to be contentious factors.

To understand the complexity of the political context of these tensions it is vital to understand that the dividing lines on these issues do not simply run across boundary lines between 'Muslims' and 'non-Muslims', but within and between groups in multiple ways. However, some of the foremost scholars considering the Muslim presence in Britain nevertheless point to a sustained difference between cultures and communities that presents an overarching narrative of group cleavages and dynamics. Ballard's (1994) seminal work *Desh Pardesh*, speaking specifically of South Asian communities in Britain,[22] notes for example, the disdain with which certain British characteristics and practices are held within the South Asian community and the felt superiority of their own cultures (one might add "and religions"). Ballard (1994:8) writes that "New minorities have become an integral part of the British social order... *on their own terms.*" He goes on to argue that many British Asians have become "skilled cultural navigators" who often effortlessly combine living in Britain with reconstructing particular Asian ways of life (1994:30, 31). Thus secularist assumptions that immigrants would throw out their "cultural luggage" at the door have proven false (Menski 1993:257).[23] Similar dynamics pervade the religious field, with Pearl and Menski appropriating parallel developments in the field of Shari'a law when they write:

> It may appear today, from the outside, that Muslims in Britain are following English law, but in effect they are following a path which *they* consider appropriate... a new hybrid form of Shari'at was needed to avoid breaking the official law of the new home... *angrezi Shari'at*[24]... which remains officially unrecognised by the state but is now increasingly in

22 Note that an estimated seventy-five per cent of Muslims in Britain are from South Asian origin, with the biggest grouping being Pakistani, followed by Bangladeshi and then Indian communities (see for example Runnymede Trust Report, *Islamophobia A Challenge For Us All* 1997). Conversely, all people of Pakistani and Bangladeshi origin and thirty per cent of those from Indian origin are assumed to be Muslim by the Muslim Council of Britain (Muslim Council of Britain statistics, http://www.mcb.org.uk/library/statistics.php#1 [accessed 3 October 2011]).

23 See also Nielsen 2004:154–158.

24 Referring to the Shari'a councils that sit across the United Kingdom, as well as more informal dispute resolution mechanisms in the Muslim community.

> evidence as a dominant legal force within the various Muslim communities in Britain. (1998:58)

The growing political skill of Muslim groups in using the cultural idioms of the West as they lobby the state for various advances, would be misunderstood, then, if considered as a break away from Islam (any more than being intrinsically a break away from culture). In fact it has become commonplace for commentators to refer to the processes of "re-Islamization" that form part of the social, religious and political environment of our day.[25] Furthermore, even as some note the use of the language of the West in communicating with an "external audience", others have noted an increased tendency to use "the normative language of Islam" when talking to an "internal" audience (Eickelman 2004:24). It must be noted again, however, that these developments should not be over-stated as to encompass the whole Muslim community in Britain. The increasing secularisation of some Muslim youth, and their alienation both from the culture and religion of their parents, and from the British state, is a growing phenomenon (see for example Lewis 2002, 2007; and Kabir 2010). We are, in short, witnessing diverse developments of identity and responses of the Muslim community to living in Britain.

Neither should this diversity and development be considered purely the remit of Muslims as a minority in Britain. British responses and identity are similarly diverse.

Responses of the State

The past half a century has brought about significant changes in political will and direction from the British state in dealing with the increasing challenges perceived to emanate from the Muslim population. Early responses of Western liberal democracies to an influx of immigrants were based on "strongly assimilationist" policies (Kymlicka 2002:354), and the application of a strict and formal equality under the law. The intention of these policies was to eradicate 'difference' between immigrant groups and host society by requiring immigrant groups to conform to the image of the host nation. Kymlicka (2002:34) notes however, that such approaches have become increasingly questioned as "neither necessary nor justifiable", imposing "unfair costs" on immigrants. As a

25 Thus Fetzer and Soper (2005:150) write, for example: "Far from abandoning their Islamic faith… many second-and-third-generation Muslims in Europe are embracing it, even as they attain economic and educational mobility" (see also Cherribi 2003).

result, a fresh consideration of the issue of 'equality' has arisen with regards to the status of minority groups. It has been argued that the *same* treatment for all is something distinct from the *equal* treatment of all, and thus a reconfigured understanding of this key term 'equality' is necessary. The growing body of literature loosely grouped under the heading of 'multiculturalism' considers these developments,[26] and its theoretical concerns have been echoed in political discourse and policy. Poulter (1995:81) writes:

> Britain has been officially propounding a policy of multiculturalism or cultural pluralism since 1966, when the Home Secretary announced that integration of ethnic minorities no longer entailed "assimilation" but rather "equal opportunity, coupled with cultural diversity, in an atmosphere of mutual tolerance."
>
> POULTER is quoting from JENKINS (1967:267)

Meanwhile Bouchard and Taylor (2008:23,24), writing more recently in the Quebec context, note:

> [A] new tradition has taken shape in the realm of law. The traditional conception of equality, based on the principle of uniform treatment, has given way to another conception that pays closer attention to differences. Little by little, the law has come to recognize that the rule of equality sometimes demands differential treatment.

They go on to note that this conception is reflected in the "legal provision called reasonable accommodation" (2008:24).[27] As this latter quote makes clear, the articulation of these concerns regarding citizenship and rights are, of course, enmeshed in deliberations regarding the highly interrelated legal sphere. Questions of legal pluralism, and the extent to which the cultures and customs of minority groups can be accommodated or recognised within the dominant legal framework, have, in particular, formed the backdrop to the debates surrounding the Shari'a councils. A spectrum of voices advocating for legal pluralism has emerged from those "working within the framework of liberal democratic politics" (Ahdar and Aroney 2010:23). Whilst some argue for a

26 See for example the work of Barry (2001), Kukathas (1992), Kymlicka (1989, 1995), Modood (2005), Parekh (2000), Taylor (1994), and Young (1989, 1990) amongst others. It must be noted that this grouping does not present a homogenous whole as individuals within the group critique one another, and focus on different nuances.

27 See footnote 36 and related discussion below for an elaboration of this concept.

"fully fledged parallel system of justice operating alongside existing state law", others advocate "more qualified accommodations… [which] involve certain 'safeguards'" (Ahdar and Aroney (2010:23); see also Bader (2009:50,51) for a typology of pluralist positionings). Werner Menski is a leading figure amongst those arguing for a more robust pluralism within the British legal sphere, and arguing that this plurality, already a reality of British life, needs to be accounted for in law (see for example Menski 2000, 2002, 2011). In the seminal *Muslim Family Law*, Pearl and Menski (1998) argue that the assimilationist model of law, with its underpinnings in legal positivism, does not achieve the uniformity to which it endeavours, but simply ignores sections of the British population that do not conform to its demands (1998:68). Thus, they note, "the Western model of uniform legal regulation is increasingly seen and experienced as inadequate for vastly diverse populations", who rather manifest a growing "respect for the religious and social" outside the formal legal sphere (1998:67). Pearl and Menski (1998:77) conclude: "Answering such real needs has by now led to the emergence of a complex network and hierarchy of Muslim dispute settlement fora in Britain." Their view is corroborated by Badawi's (1995:77) explanation of the emergence of Shari'a councils:

> Having recognised that the official legal system has hesitated to solve their disputes in the context of Islamic family law, Muslims have established informal conciliation mechanisms… they interpret Islamic law according to the needs of the Muslim community in Britain.

Although offering a more limited appeal to pluralism than that found in the work of Menski and others, perhaps the most controversial articulation of these concerns in recent years was presented by the then Archbishop of Canterbury in his lecture at the Royal Courts of Justice on 7 February 2008.[28] Dr Williams (2008:263) noted that "there remains a great deal of uncertainty about what degree of accommodation the law of the land can and should give to minority communities with their own strongly entrenched legal and moral codes". He asserted:

> There is a position… which says that to be a citizen is essentially and simply to be under the rule of the uniform law of a sovereign state, in such a way that any other relations, commitments or protocols of behaviour

28 The Archbishop gave the foundation lecture of a series of lectures entitled "Islam in English Law" (see Williams 2008).

> belong exclusively to the realm of the private and of individual choice. As I have maintained in several other contexts, this is a very unsatisfactory account of political reality in modern societies, but it is also a problematic basis for thinking of the legal category of citizenship and the nature of human interdependence. (2008:265, 266)

The Archbishop's thoughtful and thought-provoking lecture went on to argue that whilst a measure of accommodation would not be "simple", nevertheless,

> It would be a pity if the immense advances in the recognition of human rights led, because of a misconception about legal universality, to a situation where a person was defined primarily as the possessor of a set of abstract liberties irrespective of the custom and conscience of those groups which concretely compose a plural modern society. (2008:273, 274)[29]

Multiple configurations of these concerns have been presented in the academic debates surrounding multiculturalism and legal pluralism (I return to some of these configurations shortly). Despite the growing academic and political engagement with these debates however, there has simultaneously been a two-pronged attack on the multicultural discourse.[30] First, critiques have come from those who draw our attention to the diversity *within* minority groups, and who speak of the potential conflict between group rights and individual rights. A second attack emerged through the growing public unease with multicultural propositions in the wake of September 11 and July 7, as 'multiculturalism' was blamed for the ghettoisation of communities and the engendering of fundamentalist identities.

Okin's acclaimed essay *Is Multiculturalism Bad for Women?* (1999) has presented one of the most influential critiques of the notion of group rights from a feminist perspective that privileges individual rights. She writes:

> On closer inspection, multiculturalism resists easy reconciliation with egalitarian convictions. After all, some cultures do not accept, even as theory, the principle that people are owed equal respect and concern (of course, no culture fully practices the principle). (1999:4)

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29 The Archbishop's comments have been the subject of much discussion which space does not permit me to consider. As well as Bano's critique discussed here, see in particular Ahdar and Aroney (eds.) (2010), Griffith-Jones (ed) (2013), Shah (2009) and Zee (2016).

30 See for example Joppke (2004) and Phillips (2007) for a discussion of the issues.

Okin (1999:10) goes on to argue that there is a "considerable likelihood of tension" between multiculturalism and feminism. Central to Okin's critique is the understanding that groups are not simply to be differentiated one from the other, but that there are significant differences *within* groups that need to be accounted for. Thus she criticises "defenders of multicultural group rights" for "treat[ing] cultural groups as monoliths" and for not recognising that groups are "themselves gendered" (1999:12).

Where Okin raises concerns on the grounds of gender, Kukathas (1992:114) writes more broadly:

> From a liberal point of view, the divided nature of cultural communities strengthens the case for not thinking in terms of cultural rights. Cultural groups are not undifferentiated wholes but associations of individuals with interests that differ to varying extents. So within such minorities are to be found other, smaller minorities. To regard the wider group as the bearer of cultural rights is to affirm the existing structures and therefore to favour existing majorities.

These scholars agree that group rights entrench particular interpretations of a culture. As a result, they hinder the natural development of individuals within a culture as they engage with alternative cultures, and thus impede "the kind of change from within that might otherwise occur" (Okin 1999:117, 118). Meanwhile it has been argued that these entrenchments are most often in favour of the traditional and conservative at the expense of the "non-conformist" or "dissenters" (Tamir 1999:48).[31] This, as I will argue, is evidenced by the discussions that emanate from within Muslim communities regarding the Shari'a councils.

The appreciation of diversity and complexity within minority groups is particularly relevant to our current context and forms one part of the analysis of these various debates. Calls for group rights for 'The Muslim Community' are articulations that take much for granted and greatly distort the reality of the contestation that is present. Bano's (2004, 2008) excellent discussion of these issues, and her considered critique of the Archbishop's comments (Bano 2008) highlight the complexity and difference that is subsumed within 'Muslim' identity in the context of Shari'a councils. She writes in critique of the work of some legal pluralists, that they understand "culture and religion… as fixed, bounded and indeterminate" and comments:

> [T]he debate in Britain has been closely framed around the construction of a homogeneous "Muslim identity" that leads to the demands of

31 See also Eisenberg and Spinner-Havel eds. (2005) for a broader discussion.

> a parallel legal system, which presupposes a deeply felt cultural and religious conviction, without providing adequate analysis of the complexities that identity entails.
>
> BANO 2004:268,269

Meanwhile she writes profoundly regarding the Archbishop's assumption that there are "Muslim communities in this country that seek the freedom to live under Shari'a law" (an assumption that she questions) noting: "[T]here is a strong essentialism underpinning the lecture's anti-essentialist sentiment" (Bano 2008:286).

Whilst Bano talks specifically of the viewpoints of Muslim women in her study who did not (on the whole) wish to see the Shari'a councils given formal recognition in English law, other sources show a broader consensus. Several surveys have shown that the majority of Muslims do not wish such a law to be instigated in Britain,[32] whilst Oliver-Dee (2012:162, 163) cautions:

> Muslims such as Khalid Mahmood, the Labour MP for Birmingham Perry Barr criticized the Archbishop's views, saying that "*Muslims do not need special treatment or to be specially singled out. This would not contribute to community cohesion.*" (Emphasis in original)[33]

Meanwhile, in a round table discussion of The Arbitration and Mediation (Equality) Services Bill in July 2011,[34] several Muslim voices put forward their concerns regarding the Shari'a councils in Britain. Yasmin Rehman[35] for example noted that British Muslims had lived comfortably in the United Kingdom for some decades, legitimately using the courts for their disputes (family and otherwise), before "fundamentalist and medieval" interpretations of Islam (interpretations that insist on separate dispute resolution mechanisms for Muslims) took hold. She argued that many Muslims stand opposed to the instigation of Shari'a law in Britain, and deny any need within Islamic teaching

32 The Civitas Report (MacEoin 2009:12) notes the 2007 Policy Exchange survey of 1000 British Muslims: "[R]esearchers asked the question: 'If I could choose, I would prefer to live in Britain under Shari'a law rather than British law.' Respondents gave different answers according to age groups, but there was a broad consensus that Shari'a was unsuited to the UK." See also ICM poll of February 2006 (Hennessey and Kite 2006).

33 See also Millbank (2010:45) for similarly negative responses from Muslims to the Archbishop's comments; also Kabir (2010:169–198).

34 The discussion was chaired by Baroness Cox of Queensbury at the House of Lords on 18 July 2011.

35 Former Director of Partnerships and Diversity for the Metropolitan Police, and a campaigner against violence against women.

for such a manoeuvre (sentiments that were echoed by representatives of several Muslim groups around the table). Shaheen Sardar Ali (2013:160) writes cogently along similar lines. Discussing divorce as "an area for which, it is said, Muslim communities are asking for a parallel legal system" she comments:

> … such a supposed request would be alien to Islamic tradition itself. Marriage in Islam is a civil contract… in which Muslim country is it that men and women in Muslim communities arrange marriage and divorce outside that country's legal system? Why is an English couple less Muslim for accepting, in their divorce, the jurisdiction of the English courts?

Sardar Ali goes on to note "It is often the most extreme and stereotypical forms of culture and religion that become stark and visible binaries proclaiming themselves as 'authentic' representations of groups and communities."

Thus the understanding of Islamic law as being in need of recognition within the British system, although presented as fact by Pearl and Menski (1998:162, 163), is strongly contested ground. Advocates of group rights that have linked those rights to the implementation of Shari'a in the United Kingdom have lost sight not only of the majority of British Muslims who have made their feelings clear, but of the reality of the contestation and diversity that is a hallmark of the considerations of Islamic jurisprudence.

For their part, advocates of the accommodation of group rights have attempted to navigate critiques that conceive of group rights in opposition to individual rights in a number of ways. Primarily, these attempts have centred on the recognition that there would be certain "normative" as well as "practical limits"[36] to the admission of group rights (Modood, 2009:180, 181; see also Bouchard and Taylor 2008; Parekh 2000; Poulter 1995, 1998; and Taylor 1994).[37] These normative limits are said to safeguard the rights of individuals within

36 Bouchard and Taylor (2008:26) for example are careful to note that the "duty of accommodation is not limitless" and would be subject to two "highly restrictive" constraints. Firstly, for any such duty to exist, "discrimination as conceived by the charter [Referring to the Quebec Charter of Human Rights and Freedoms] must first be present." Secondly, any such request "may be rejected if it leads to… 'undue hardship,' which can take different forms such as unreasonable cost, upsetting an organization's operation, infringing the rights of others or prejudicing the maintenance of security and public order."

37 Note that Taylor's (1994) and Bouchard and Taylor's (2008) writings attempt to phrase the discussion with regard to a focus on individual rights, and a pursuit of individual equality (as opposed to conceptualising rights in reference to groups), as does Kymlicka (1995). These scholars insist however that the group affiliation of individuals is a significant part of their well-being and identity, and thus forms an important part of these considerations.

groups (and, in fact, all of the scholars referenced specifically mention equality between genders as a value to be protected in discussions regarding the limits of group rights). Thus Dr Williams (2008:268) asserted that there would be no "blank cheques" given to minority communities. Furthermore, in considering avenues through which "increased legal recognition of communal religious identities" could be instigated, he argued that we must "[make] sure that we do not collude with unexamined systems that have oppressive effect or allow shared public liberties to be decisively taken away by a supplementary jurisdiction" (2008:270).[38]

Moreover as Kymlicka (1995) expounds, and as is taken up by Dr Williams (2008) in his lecture, it is argued that these 'rights' would be of such a nature as to be taken up or to be set aside by individuals as they so desired, and would not interfere with their access to universal rights applicable to all. Thus Kymlicka (1995:41) writes of immigrants being able to "choose for themselves whether to maintain their ethnic identity" or not, and asserts that policies in this regard would "support" their ability to do this. Meanwhile Sachar (2001:124, 125) writes of the "real threat of selective exit" which "peripheral" members of groups can pose if their needs are not being met and where there is competition between various service providers (in this context, the state and the group).

Opposing voices however, raise caution regarding these seemingly straightforward, but rather simplistic claims, noting that such an option of exit from religious jurisdictions may not be available *in practice* to vulnerable members of minority communities, and belie an overreliance on theoretical alternatives (Okin 2002).[39] The relevance of these concerns is evidenced in the context of the Shari'a councils in Britain. The findings of this study suggest that rather

38 Note that Zee (2016) raises some characteristically blunt questions in response to these discussions. She writes "many multiculturalists advocate that Shari'a family law should be possible, 'as long as it does not endanger women's rights'. But is that possible?" (2016:125). Zee maintains that whilst multiculturalists are vague in their presentation of "Shari'a family law" and problematize the concept in such a way as to do away with negative connotations regarding gender, the leading proponents of the Shari'a councils are not at all vague regarding their understanding of the position of women within Shari'a law and benefit from the space created by these abstractions. She argues for clarity and specificity in the debate – a closer look at the concrete reality of the Shari'a councils in Britain – to move us away from the equalities made to seem possible by abstract theorisations.

39 See also Okin (1999) and Phillips (2007:133–157). Note that Phillips (2007:133) ultimately cautions that "a version of multiculturalism that relies on the individual's right to exit as the main protection against undue cultural pressures… does not attach *enough* significance to cultural belonging" and warns of "the risks of treating culture as something that can be readily put on or taken off."

than multiplying the number of choices open to women in obtaining their divorces, the very presence of the Shari'a councils served to foreclose other options for several of the women interviewed. This was so because the Shari'a council was interpreted as 'the Islamic option', by its very existence invalidating all others, and forming the woman as rebellious if she chose to go elsewhere.[40] Alternatively, where no such councils exist, the English court system is felt to be adequate, because the broad Islamic notion of 'necessity' validates such a route under Islamic law also.[41] Thus the very presence of these choices can work to legitimate certain power structures within communities that leave vulnerable members with limited options. The realities of power exercised in these communities must therefore bring a needed redress to otherwise abstract theoretical articulations.

Where this first strand of critiques of multiculturalism, in its various forms, has raised complex questions for politicians, a second strand has proved to be more potent in reframing the policy issues. These critiques emerged out of heightened security fears in a post July 7 Britain, where one focus has been on ghettoised communities, and on the role of multicultural ideology in encouraging the segregation and fragmentation of society. Modood (2005:17) wrote somewhat optimistically that, having given way under pressure from the right, "in recent years it [multiculturalism] has made a comeback", but he could not have foreseen the events of 7 July 2005, and the reaction they would elicit. Bano's later contribution reflects more accurately the policies of post 2005 Britain: "For many the politics of multiculturalism and the recognition of cultural difference has directly contributed to a rise in the politics of cultural separatism, the rise of segregated communities and the upsurge of home grown terrorists" (2007:3).[42] Following these events, the language of the political class

40 These dynamics are echoed in the Canadian context. Griffith-Jones (2013:190) writes of Syed Mumtaz Ali (the President of the proposed Muslim Court of Arbitration in Ontario) "[laying] down a striking and contentious challenge: once the court was in place, Muslims would be faced with the choice, 'Do you want to govern yourself by the personal laws of your religion, or do you prefer governance by the secular Canadian family law?'"

41 Sardar Ali (2013:167) discusses the mechanisms which exist within Islamic jurisprudence to make such an accommodation possible. Similarly, M. Shahid Raza (a leading judge of the MLSC) noted in one interview during fieldwork that should the Shari'a councils be outlawed by the British government, the Muslim community, governed by the expedient of 'necessity', could be justified in taking their family disputes to British courts. This scenario was not seen to present an inherent problem to the living out of life in submission to Islam.

42 This change regarding the reception of multicultural ideologies can be seen in the key political speeches and announcements of Government in the years immediately following

evinced a shift in focus away from "multiculturalism" and towards the ideals of "integration" and "creating cohesive communities".[43] Meanwhile, David Cameron's speech at a security conference in Munich in February 2011 proved to be a significant political moment as he set out a commitment to "muscular liberalism", emphasising core values that must be safeguarded (Cameron 2011). It is clear that these debates are far from settled, with a security landscape that is evolving at a fast pace, and political manoeuvrings that attempt to adjust and adapt in response. Nevertheless, regardless of how the debates around multiculturalism develop, it is clear that the British state is reconsidering its position.[44] In our present context, one outcome is that discussions that look to group rights to call for the recognition of Shariʿa councils in Britain would appear to be made against this repositioning of political will.

Here a major theme of this book becomes pertinent. As multiculturalism and the concept of group rights are losing the political potency they once enjoyed, the Shariʿa councils are also reframing the debate. This book suggests that they have done so into terms that cannot be argued against by liberal feminists such as Okin, by drawing on the discourse of authority and, in its connection, the notion of *individual* freedom of religion. Moreover, the claims of the Shariʿa councils have been drawn to include the protection of women's rights – the very sphere of concern that has dominated much of the academic discussion regarding group rights. Thus the current language of the Shariʿa councils presents an alternative approach, an alternative conceptual framework and political language, to the same political objective.

The question of women's motivation and experiences in using the Shariʿa councils is of central importance to the success of these claims as they are

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the July 7 bombings in London. In December 2006 Tony Blair gave a speech entitled "The Duty to Integrate: Shared British Values", which amounted to what many called a "*volte face*" (see for example Johnston 2006), significantly reshaping, if not altogether abandoning the multicultural policies that the Blair Government had previously championed. Johnston notes that Blair was not alone in such pronouncements, with Jack Straw, Ruth Kelly, John Reid and Gordon Brown all "play[ing] their part in a concerted revision of the Cabinet's stand".

43 See in particular the work of The Commission on Integration and Cohesion. Two key reports were: *Our Shared Future* (14 June 2007) and *Building Cohesive Communities* (21 December 2007). Both indicated a move away from multicultural policies, focusing instead on the role that local authorities had to play in "maintaining the cohesiveness of communities".

44 See Ballard et al., (2009:11,12) for their discussion regarding the "growing scepticism about multiculturalism and increasing hostility to difference". Grillo (2015b) and Vertovec and Wessendorf eds. (2010) trace these developments in detail.

conceptually indebted to the freedom and rights of individuals. Thus considerations surrounding the central question of this book do not simply serve as an anthropological enquiry into the considerations of Muslim women as they approach the Shariʿa councils, but also as an avenue to better analyse and understand the political dynamics that surround the councils. As we shall see, the various answers that may be given have widely differing political implications.

Answering the 'Why?' Question

A number of conflicting narratives as to the motivation and the situation of the women who approach the Shariʿa councils with their disputes have been presented in the public discourse on Shariʿa councils in Britain and elsewhere. The first is put forward by proponents of the councils. They suggest that the women who approach the Shariʿa councils do so because they consider the councils to be *authoritative*.[45] These women, it is said, find themselves in disadvantaged and difficult circumstances (as a result of unscrupulous husbands who exploit the gap in the provision of Islamic law), and desire to settle their disputes, and to live their lives, according to the dictates of Islam. Thus they freely choose to seek out an authority (the Shariʿa councils) that will adjudicate their disputes in line with these dictates, and therefore in accordance with the demands of the women's own consciences. It is claimed that the state lacks the requisite authority for this role, and that (given the religious beliefs of the women themselves) without the existence of the Shariʿa councils the women would be left without recourse.

Speaking at a meeting in the House of Commons in June 2011, Omer El-Hamdoon, President of the Muslim Association of Britain, was a representative voice:

> Shariʿa councils are serving the very part of society that [another speaker] says they are discriminating against, that is women. Women can go to the English law courts and get their divorce… but because the Muslim women have a religious belief and their doctrine and nobody's forcing this on them; this is something they believe in. They want to be divorced Islamically under the eyes of God… If there are no Shariʿa councils the woman may stay married under Islamic law, but she's divorced under

45 As we shall see, this suggestion has significant implications within the liberal state, linking directly to considerations regarding the freedom of religion and to the idea(l) of the autonomous self.

> English law, and for her she cannot get remarried, not because anyone is forcing her… Her belief is that she wants to get an Islamic divorce, and this is why more men are complaining about Shariʿa councils [because] they are empowering a woman to get a divorce.
>
> IN GRILLO 2015a:150

The narrative thus centres on women's desire to navigate their lives in accordance with their own religious beliefs, and draws on the liberal commitment to freedom of religion, as well as, paradoxically for the Western mind-set, liberal commitments to women's rights (which it is said will be sacrificed if the councils are not given space to operate). As such it is a political narrative, used in part to call on the state (at the very least) to refrain from interfering in these processes, or, as in some formulations, to actively recognise these processes in law.[46]

A detailed critique of this narrative will form the substance of the discussion in Chapter 2 and I consider the undergirding conceptual framework on which it relies presently. Suffice for the moment to make a number of brief evaluative statements to summarise the argument that will be presented. This book questions the discourse of the Shariʿa councils on the basis that the vast majority of the women interviewed did not consider the Shariʿa councils to be authoritative in their lives (within the understanding of authority alluded to by the councils), and did not constitute their reasons for going to the councils in reference to freedom of religion. In short I will argue that narratives that rely on the notion of authority and the freedom of religion do not account for the felt experience of the women in this study, and the struggles for power that exist at the heart of their interactions with the Shariʿa councils, with their own husbands and with their communities.

A second narrative is directly opposed to the first, although it draws on a similar liberal framework in its understanding of key terms of the self, authority, power and freedom, and on an equally essentialised idea of Islam (with widely different conclusions). Here it is assumed that Islamic law is oppressive and patriarchal, standing against women's rights, and that any interaction with the Shariʿa councils, far from restoring these rights, is a means of further oppression. Thus the news that it is in fact women who form the vast majority of

46 Note of course that the Shariʿa councils in Britain do not present a homogenous narrative, and the views here are broadly reflective of the councils that are more active with regards to a political agenda. A few of the judges interviewed in this study, particularly in the BSC and the ICE, presented a more nuanced view that potentially allowed for a greater complexity of motivations and reasoning by the women themselves.

plaintiffs who approach the Shari'a councils,[47] coupled together with the understanding that these councils are unofficial 'voluntary' bodies (in that they hold no legal force and no enforcement mechanisms), has been a deeply puzzling one, resulting in assumptions of some more subtle or subliminal form of power at work. Mahmood (2005:5) notes that it "would not have been unusual in the 1960s to account for women's participation in such movements [her study refers to an Islamist mosque movement in Cairo] in terms of false consciousness or the internalization of patriarchal norms through socialization." She writes:

> One of the most common reactions is the supposition that women Islamist supporters are pawns in a grand patriarchal plan, who, if freed from their bondage, would naturally express their instinctual abhorrence for the traditional Islamic mores used to enchain them. (2005:1, 2)

Although questions have been raised about the problematic nature of such claims, reformulations of a less totalising flavour continue to have resonance. Lukes (2005) for example presents a modern variant on this theme in his "radical view" of power, which distinguishes between the "real interests" of subjects and interests which they mistakenly believe to be their own, but are actually formed by his "third dimension" of power. He writes that the seeming absence of external conflict (of *resistance*) should not necessarily cause us to believe that no coercive power has been exercised over the individuals in question, and that they are thus acting in reference to their 'true' selves.[48] Meanwhile, Okin (1999:125) writes more broadly and in slight exasperation of what she sees as a lack of appropriate questioning of individuals' stated desires even in extreme cases where those desires seem to subject the individuals involved to oppressive or abusive mechanisms:

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47 This was verified by all four councils in this study and corroborates the data from Shari'a courts in studies from elsewhere around the world also. Others explain such a statistic in reference to the unequal power that is enjoyed by the different genders in Muslim family law (see Mir-Hosseini 2000, Peletz 2002).

48 Lukes (2005:28) expounds on this:

> "Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they would accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial? To assume that the absence of grievance equals genuine consensus is simply to rule out the possibility of false or manipulated consensus by definitional fiat."

> Thus to Parekh's question about the sane, adult women who wish to freely undergo clitoridectomy after the birth of their last children, as a way of regulating their sexuality, to be mothers foremost and wives only secondarily, or as a form of religious sacrifice, I suggest: respond to her just as one would to a father who wanted his penis amputated for any of these reasons. Before heading off to the surgeon, go and talk to a psychiatrist or a marriage counsellor.

Going on to argue:

> One need not rely on the Marxist theory of false consciousness to recognise that persons subjected to unjust conditions often adapt their preferences so as to conceal the injustice of their situation from themselves. Liberals from John Stuart Mill to Jon Elster, Amartya Sen, Cass Sunstein, Uma Narayan, and Martha Nussbaum have written of such adaptation.
>
> OKIN 1999:126

This second narrative also has its political implications, with the potential to call on the state to outlaw the processes of the Shari'a councils in order to protect the otherwise vulnerable from abuse. In fact, although the claim was not built on false consciousness, the formal removal of the possibility of 'faith-based arbitration' in Ontario, Canada, was the result of just such a campaign by women's rights groups (including Muslim ones) who argued for the need for state intervention to ensure the rights of the vulnerable were upheld.[49]

This study finds discussions regarding the 'false consciousness' of individuals to be problematic ones. These discussions not only obscure the ways in which women constitute as actors in the current field (although it must be recognised that it was a field of struggle for them), but raise important questions regarding paternalism and the privileging of the viewpoint of the observer, which seem intractable. Insurmountable methodological difficulties surround research that is conducted with a view to examining the 'real interests' of individuals or groups in contexts where no observable conflict of interests between the supposedly misguided subject and her 'oppressors' are found.[50]

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49 See Kortweg and Selby eds. (2012), and Razack (2007) for a detailed consideration of the Canadian case.

50 Haugaard (2002:39, 40) writes of some of these concerns:

> "…[T]he concept of *false* consciousness and *real* interests… [has as an] implicit premise that the diagnostician of this pathology him- or herself possesses true consciousness in the form of privileged access to a transcendent realm of real interests. To many

It must be noted, of course, that the difficulties of recognising and pinpointing instances of false consciousness do not preclude the existence of such a mind frame. Nevertheless, although I briefly note this concern in the following discussions where the women interviewed themselves raised it, I will not pursue this line of questioning as it draws us into conjectures that cannot be substantiated, and relies on problematic notions of 'real' and 'true' interests in the abstract. In any case, as has already been intimated, the traditional ground for such an analysis has been the seeming *lack of* resistance (the absence of grievance or conflict in Lukes' model) or struggle against forces that seem coercive and inimical to women's 'genuine' rights and interests. This is not the context of the majority of the interactions that surround the Shari'a councils. Far from what the public imagination has assumed, fieldwork data showed that rather than the total subsuming of conservative Islamic theologies within the women's own thought processes, and the absence of conflict imagined, the women talked openly of power struggles and battles for control. These struggles – as the women resisted patriarchal laws, cultural processes, and the coercive influence of various figures that inhibited their desired outcomes – were managed, however, in subtle and creative ways, as the women worked within the bounds of what was felt to be possible within their own context. The women's interactions with the Shari'a councils were, in brief, extremely complicated and intricate ones. As such they presented something of what Kandiyoti (1988) insightfully terms "patriarchal bargains" whereby women make tactical choices "within a set of concrete constraints" in order to "maximize their life choices" (1988:274, 275), thus bringing constraint and agency, power and resistance together.[51]

This understanding leads us to a third, more nuanced interpretation. This third narrative is in line with the work of leading scholars of Shari'a courts elsewhere in the world (particularly Mir-Hosseini's (2000) work in Iran and Morocco, and Peletz's (2002) studies in Malaysia),[52] and the work of feminists

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Westerners some of the traditions and religious practices of other societies appear obviously "false", furthermore, these practices legitimise hierarchies and power relations. Yet, the perception of these beliefs as "false" and contrary to "real" interests would appear to entail an ethnocentric privileging of the status of Western ideas as "truth" and "real"."

51 See also the work of de Certeau (1984) for a related argument. De Certeau writes that "*what* is used" must be distinguished from the *way* in which it is used (1984:35), arguing that the dominated employ "tactics" whereby the "laws, practices, and representations" of a particular framework of power are manipulated and traversed in ways that are counter to the intentions of the dominating class (1984:32).

52 It must be noted that the British (and, more generally, emerging *Western*) case provides a distinct context in that the Shari'a councils are 'councils' and not courts operating as part of the state legal system. As such, they do not have any legal sanction or recognition (see

and scholars of subaltern studies that have considered the "operations of human agency within structures of subordination" (Mahmood 2005:6).[53] One of the central questions undergirding the various narratives discussed above is a consideration of freedom: are these women 'free' or 'not free' when they make a decision to come to the Shari'a councils? The two narratives considered thus far answer in the affirmative and the negative respectively. This third interpretation – the ground on which this book will propound its own argument – suggests that the dichotomy is too simplistic and does not account for the complexity of the relationships involved, the multiple identities of the women, and the multifaceted modalities of power. In short, the women are both 'free' and 'not free' simultaneously. Mir-Hosseini (2000) and Peletz (2002) discuss the unequal structures of power and the constraints (religious, cultural, economic and otherwise) that leave women at a structural and legal disadvantage as they seek to make their own life choices and to pursue their own ends. These scholars note the limits of resistance within the realms of seemingly binding boundaries. Neither scholar, however, in discussing and analysing their extensive fieldwork, presents the responses of the women as the submissive or passive taking on of religious and cultural norms as authoritative in their own lives. Neither do they present the responses as those of women ultimately subjugated and coerced. Rather, both elaborate on the multifarious ways in which women act to negotiate and navigate their way through these inequalities – reinterpreting, subverting, and manipulating hegemonic norms

Chapter 1). This is in contrast to the Shari'a *courts* elsewhere in the world referred to in the literature cited in this book by way of comparative study. Furthermore, the studies referred to relate to differing times as well as places (Mir-Hosseini's work, for example, was first published in 1993, and the revised edition on which this book relies did not include new ethnographic material). Thus the comparisons made with ethnographic literature on Shari'a courts are not intended to indicate a uniformity of context and experience across time and space, and should be understood to have been used with these important qualifications in mind. A closer look at Shehada's study (2005) for example, which shares some of the concerns of this study, demonstrates that the particularities of context, legal and political structure, make for important distinctions in the types of discourse and the reference points drawn upon in family disputes, and the ways in which the litigants manoeuver their responses. Nevertheless, the comparisons remain pertinent and useful as the studies reveal that the experiences of Muslim women using these processes of dispute resolution (whether Shari'a councils in the United Kingdom, or Shari'a courts referred to elsewhere) hold some important themes in common, as do the overarching attempts to exercise agency through negotiations at the interface of law, custom and community norms. Thus the insightful analysis of scholars focused on Shari'a courts elsewhere in the world can serve to illuminate some of the themes and dynamics that are pertinent to Muslim women as they use the Shari'a councils in the United Kingdom.

53 See for example the work of Scott (1990, 2009).

and praxis to their own desired ends in creative and instructive ways.[54] Scott's studies (1990, 2009) add a further dimension by considering the ways in which individuals who appear to have consigned themselves to subordinate roles within certain structures of power, nevertheless navigate spheres of autonomy and agency. Scott (1990) distinguishes between the "public" and the "hidden transcript". He argues that a seeming lack of conflict in the public realm should not be read as the subservience of the subordinated classes to hegemonic norms. Rather, this lack of conflict is part of a calculated and pragmatic tactic on behalf of the dominated class to carve out space for independent action within a given order. Thus the "powerless" use "the language of the dominant class" – the norms and the discourses of the powerful – in the public sphere in ways that are ultimately subversive, manipulating the very discourses of power against the powerful, whilst conversing in the language of resistance and conflict in private (see also de Certeau 1984).[55]

The considerations of this third narrative greatly resonate with the fieldwork observations, interviews and analysis of this present study. Thus this book seeks to build on the findings of scholars who have considered these themes elsewhere in the world with a fresh consideration of the British case, and with

54 Kandiyoti (1991:30, 31) puts forward a similar argument, presenting the women "as active participants" in a "process of reinterpretation and cultural negotiation" – a view that she argues "exercises a corrective influence on depictions of Muslim women as passive victims of patriarchal domination."

55 Note that de Certeau (1984) makes a distinction between "strategy" and "tactics". He writes of "strategy" as the privilege of the dominant: those able to operate within the "proper" relations of power as envisaged by the disciplinary system and able to impose and to carve out particular space and processes of action. Meanwhile "tactics" are the remit of the dominated: those dependent on rules and space which are instituted by others, but who nevertheless use and manipulate these rules towards their own ends. He writes (1984:30) "Strategies are able to produce, tabulate, and impose these spaces, when those operations take place, whereas tactics can only use, manipulate, and divert these spaces." In the following discussions I broadly retain this distinction in my use of "tactics" (rather than "strategies") with regards to the women's considerations of the options and opportunities afforded to them for action. Nevertheless the recognition of the helpfulness of such a distinction should not be understood as a wholesale adoption of a rigid dichotomy between dominated and dominating, or between particular types of actions and options. As will be argued, the discourses of power in which the women in this study were caught up, and the processes that form these discourses, do not stand as entirely distinct from the women themselves. Rather I note that a particularly interesting facet of these dynamics was the extent to which the women themselves were implicated in the construction of the discourses, which greatly reduced the field of possible action for them and their contemporaries as they contemplated a divorce.

a renewed consideration of the ways in which power pervades the field of action. It will be argued that the women in this study are caught up in discourses of power that provide the structure and constraints within which they feel they have to navigate, as pragmatic choices of power. These discourses do not stand as entirely distinct from the women however, but are taken on, affirmed, and constructed by them in intricate ways, as they negotiate their own desires as well as community expectations and norms. Thus it will be argued that we are not in the remit of simple dichotomies of domination and resistance alone, but in the subject-forming discourses of power. With this in mind, I turn to a final component of this introductory discussion: some theoretical considerations that undergird the following analysis.

Some Theoretical Considerations: Authority, Power, Freedom and the Self

The notion that the women who choose to take up their disputes in the councils do so because they consider the Shari'a councils to be *authoritative* is a claim with significant political ramifications. The modern political theory literature has distilled the essence of authority to one defining sentence: "The right to command and the duty to obey" (see Friedman 1990, McLaughlin 2007, Raz (ed.) 1990, and Wolff 1990 amongst others). In arriving at this definition the literature builds ultimately on the work of Weber (1978)[56] in distinguishing power from authority by bestowing on the latter the central notion of legitimacy. Weber writes that whereas domination[57] involves a command-obey

56 Quotes from Weber are taken from the 1978 edition by Roth and Wittich. I will reference direct quotes from Weber with his name, followed by the page number in that edition (as opposed to 'Roth and Wittich 1978:x'). Where I am quoting analysis or footnotes by the editors, however, I will continue to use the standard 'Roth and Wittich 1978:x'.

57 Weber (1978) presents "domination" (*herrschaft*) as a concept narrower than power, but broader than authority. Power is defined as "The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests" (1978:53). Domination, however, refers specifically to command-obey relationships: "the probability that a command…will be obeyed by a given group of persons", again, regardless of the basis on which the probability rests (1978:53). It must be noted however, that there is a spirited debate in the literature regarding the translation of the word *herrschaft* in Weber's work, and that the choice of translation has a defining impact on Weber's conceptualisation of authority. Roth and Wittich (1978) argue for a translation of *herrschaft* as "domination", and only "legitimate domination" to correspond to "authority". This would greatly increase the correlation of

relationship in which obedience is based on "the most diverse motives of compliance", authority relations speak to obedience that results from a sense of *legitimacy*, which creates a *binding duty* to obey. This binding duty remains regardless of the command given[58] and persons under authority have a duty to "surrender" their own evaluative judgement on the content of the command itself.[59]

The result, then, of power or domination[60] (which admit of violence and coercion as well as a host of persuasive mechanisms to obtain compliance), can appear outwardly to be the same as that of authority – namely the obedience of the individual which occupies the subservient position in this hierarchical relationship. Nevertheless, the *mechanisms*, the motivation and processes of authority, built as it is on an understanding of the legitimacy of the order and a resultant duty to obey, are claimed to be entirely distinct (see Arendt 1961, Friedman 1990, and Wolff 1990).

This distinction is important within our current context. Liberal understandings of freedom as regards the 'self' are constituted in reference to 'autonomy'.[61]

Weber's work with much of the writing on authority over the past half a century, and is the view that this study has taken. To define *herrschaft* as "authority" as Matheson (1987) and Uphoff (1989) have done draws Weber towards functionalist conceptions of authority, making it possible to talk of "coercive" or "reward based authority" (Matheson 1987:200) and relegating the notion of legitimacy to be the basis of just one type of authority amongst others.

58 The authority relationship itself is said to produce "content independent reasons" for obedience – by this indicating that the *content* of the commands given are not relevant to the obedience expected (see for example Raz 1981:114, 115).

59 The literature refers to this as the "surrender of private judgement." See for example Friedman (1990), Laird (1993), Raz (1981), Watt (1982). Friedman (1990:64) summarises the understanding of the "surrender of private judgement":

> "The idea being conveyed by such notions as the surrender of private judgement or individual judgement is that in obeying, say, a command simply because it comes from someone accorded the right to rule, the subject does not make his obedience *conditional* on his own personal examination and evaluation of the thing he is being asked to do. Rather, he accepts as a sufficient reason for following a prescription the fact that it is prescribed by someone acknowledged by him as entitled to rule. The man who accepts authority is thus said to surrender his private or individual judgement because he does not insist that reasons be given that he can grasp and that satisfy him, as a condition of his obedience."

60 See footnote 57 above for Weber's definition of both terms.

61 The 'self' of liberal thought is conceived as being self-constituting and autonomous, envisaged as pertaining to a 'true' inner core often referred to as "transcendental" or "unencumbered". (See Dworkin (1977), Gutmann (1992), Rawls (1971), Sandel (1982, 1992), and Taylor (1992, 1994), for both proponents and critiques of this position.) For such a subject to be free, their thoughts and actions must be chosen autonomously. Taylor (1994:28) writes of

Thus relations of power where one commands and the other obeys are inimical to the freedom of the individual. The claim to authority however has the potential for a very different outcome. Despite espousing the binding duty to obey as its central component, authority relations salvage the freedom of the individual through a two-fold process. Firstly with a recognition of the pivotal role assigned to the individual subject to authority within the literature, and secondly with an understanding of the individual as autonomously assenting to the normative framework on which the authority is built (recognising the order as conforming to their own true interests and beliefs). Whilst those suspicious of authority relations would focus on the commanding right of *A*, it is in fact the recognition of *B,*[62] the thoughts, beliefs, and perspectives of *B*, that play the determining role in discerning whether or not an authority exists, and what kind of authority it is.[63]

Moreover, the structure and normative understanding of the authority relationship is logically prior to any authoritative directive from *A* and provides the deeper reason for obedience on the part of *B*. Thus, whilst the command of *A* can be understood to be the *immediate* impetus for obedience, it would be more accurate to conceive of the legitimacy of the broader normative framework (the "legitimate order" (Weber 1978:32)), as understood in relation to *B's* own beliefs, as the *overall* reason. A distinction emerges, therefore, between norms that are agreed upon and are 'authoritative', and individuals who come to be in/an authority as a result of the outworking of these norms.[64]

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this tradition in reference to the language of "authenticity" and being "true to myself and my own particular way of being." Meanwhile Mahmood (2005:11) notes that "in order for an individual [the liberal self] to be free, her actions *must* be the consequence of her 'own will' rather than custom, tradition, or social coercion."

62 Much of the literature refers to subjects *A* and *B* as corresponding to the person in authority and the person subject to authority respectively. This is, of course, a highly simplified model used for the sake of coherence on the broader discussion for the moment, rather than intended to indicate that there are rigid and distinct, clearly demarcated roles in such a fashion.

63 See for example Green (1990), Raz (1986), and Watt (1982). Chester I. Bernard goes so far as to say: "The decision as to whether an order has authority or not lies with the persons to whom it is addressed, and does not reside in 'persons of authority' or those who issue these orders" (in Mandeville 1960:113).

64 Friedman (1990:71) elaborates on this:

> "The authority relation may be depicted as a complex structure consisting of two tiers: at the first level, there is the special kind of influence one person is exerting over another person, at the second level, there is the recognition and acceptance of certain criteria for designating who is to possess this kind of influence… It implies that there exists some mutually recognised normative relationship giving the one the right to command… and the other the duty to obey."

In short, authority relation exists only where *B* recognises and receives this authority as legitimate. Moreover, where *B* does this freely, and in relation to her own true thoughts and beliefs (in effect, *autonomously*), *B* can be said to be free. This is so regardless of the content of the authority she so subscribes.

This forms in part the framework of the narrative of the Shariʿa councils, and an understanding of authority so defined brings us to an appreciation of the political relevance of the discourse on which the Shariʿa councils rely in their apologetic for the existence (and in some cases the recognition) of Shariʿa councils in Britain. I have already noted the climate of scepticism that surrounds considerations of group rights as an avenue towards the recognition of plural legal provisions. Here the same political objectives are achieved through an appeal that does not rely on contested notions of group rights, but rather on the most foundational of liberal tenets – that of individual freedom. Individual Muslim women, it is said, freely assent to the normative framework, to the hierarchy of the relationship with the Shariʿa councils, and in doing so exercise their freedom of religion and freedom of conscience. Thus although this exercise is considered by outsiders to limit the freedom of the individuals involved (as they are then bound by the dictates of Islamic law on which it seems liberals frown), this is in fact not the case, because they have so chosen to be bound, in line with their own beliefs and aspirations. In short, they have chosen autonomously.

This is a challenging and ultimately political claim in the context of a liberal state, with its intense focus on the freedom of the individual, and the challenge is all the more potent where procedural, rather than substantive, notions of freedom are espoused (such as in the work of Rawls 1971, 1993; Dworkin 1977; and others). Rawls' *Theory of Justice* (1971), perhaps the most influential text on liberalism of the past half a century, argues that in the context of states which host a plurality of "comprehensive doctrines" (he specifically envisages a society which holds to differing and even conflicting understandings of religious and moral absolutes, much like the United Kingdom), the state should remain neutral between such conceptions. He elaborates that the role of the state on this front should be to protect the individual's right to choose, reflect on, revise and otherwise pursue his or her own conception of the good life. He writes: "The right [as in the right process of politics] is prior to that of the good [whatever conception of the good]" (1971:396) – propounding a procedural rather than substantive notion of the political good.

Central to Rawls' work is the importance of freedom of conscience as an ultimate good (1971:92). Rawls asserts that when determining the principles that are to govern a state (for the individuals in his hypothetical "original position"), "It seems evident that the parties must choose principles that secure the

integrity of their religious and moral freedom" (1971:206). Thus even illiberal groups must be tolerated, and the freedom of individuals to pursue their own conception of the good respected, regardless of what this good is (as in, regardless of its conflicts with liberal thought).[65]

In such a political philosophy then, the *content* of the normative framework that undergirds authorities is irrelevant to the freedom of the individual. Of primary importance, rather, is the manner in which the individual in question comes to consider the framework to be legitimate. Where this consideration and assent is given freely (in other words given in conformity to the individual's true self, true thoughts and desires considered autonomously), the subject is considered free. Mahmood (2005:12) writes (referencing Christman (1991) in particular): "Freedom, in this formulation consists in the ability to autonomously 'choose' one's desires no matter how illiberal they may be." Thus if it is truly the case that Shari'a councils are an outworking of the individual's freedom of religion and of conscience, it would appear that a Rawslian liberalism obliges us, at a minimum, to leave these processes be (arguments that are echoed in various formulations by Dworkin 1977; Kukathas 1992; and Barry 2001).[66]

Such a conclusion is built then on a particular reading of the decision-making process of the individual Muslim women who choose to take their disputes to the Shari'a councils, as well as on particular theoretical understandings of the nature of the self, of freedom, of power and of authority. Retaining the theoretical framework may yet result in widely diverging conclusions where the concerns of those who feature in the second narrative (as elaborated above) are taken into account. Those who raise concerns about false consciousness

65 An important qualification in Rawls' work is proving to be increasingly pertinent to modern day political debates as politicians attempt to respond to a rapidly changing security landscape and to concerns regarding Islam and radicalisation. Rawls (1971:215) writes: "The limitation of liberty is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse". He goes on to contend that liberty may be legitimately limited when the security of the state, society at large, or individuals is threatened. It is interesting to note that Theresa May, speaking on "A Stronger Britain" in March 2015, hinted that the Shari'a councils fell within this qualification and that their work might be curtailed as Britain takes a tougher stance on extremism (https://www.gov.uk/government/speeches/a-stronger-britain-built-on-our-values [accessed 4 January 2016]).

66 Note that there are liberals who do not take on this procedural understanding of freedom in its entirety, but press for certain substantive grounds, a certain 'minimum core' of values in line with liberal thought to be maintained, in order for freedom to be actualised. See for example Kymlicka (1995), Poulter (1995).

and socialisation of norms argue that even if it appears to be the case that the women involved in the Shari'a councils consider these councils to be authoritative (or in any case give us the outward appearance of such a consideration), we must not assume too much from this recognition. De Grazia (1959) writes for example, that whilst the beliefs of the group determine the content of the authority, it is very difficult to get to an understanding of how those beliefs came to be shaped (thereby raising questions regarding the autonomy of the process). The power to define those beliefs in the first place may yet lie in the hands of those in perspective *A*:

> The world as he [perspective *B*] sees it and wants it is largely shaped by how the gatekeepers know it… The call of conscience, too, is a product of the continuous creative stream of authority with which man welds a community of himself and his fellows. The distinction between the commands of conscience and those of external authority is solely a point in time. All authority was once external. (1959:323, 326)

Sennett (1980:20) writes with similar caution in raising the issue of "how much the sentiments of authority lie in the eye of the beholder" and notes the argument of some that "the conditions of power largely determine what the subjects will see and feel." This of course is very much in line with Lukes' (2005:27) writings where he notes:

> To put the matter sharply, *A* may exercise power over *B* by getting him to do what he does not want to do but he also exercises power over him by *influencing, shaping or determining his very wants*. Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have – that is, to secure their compliance by controlling their thoughts and desires? One does not have to go to the lengths of talking about *Brave New World*, or the world of B. F Skinner, to see this: thought control takes many less total and more mundane forms, through the control of information, through the mass media and through the processes of socialization.

These considerations make it possible for a sort of 'false' authority to exist. An authority not built on autonomy-centred freedom, or on the individual's 'true' (authentic) reasoning regarding the legitimacy of the normative framework of the relationship, but rather built on power. In such a narrative, the assent to the legitimacy of a particular hierarchically structured relationship is itself

first conditioned by structures of power that direct that assent. If this reading was granted, the political pressure for non-interference would be greatly diminished (as the freedom of the individual would no longer be a buttressing factor protecting the Shari'a councils), and questions raised instead about the role of the state in safeguarding the vulnerable.

This study ultimately rejects the assertions of these two narratives with regards to the women's self-professed recognition of authority, and questions much of the theoretical foundation on which their conclusions are built. Drawing on the work of Foucault I consider the ways in which the framework of the foregoing discourses have been challenged and reconceptualised. A Foucauldian approach leads us to a divergent (and, I argue, more fulfilling and nuanced) understanding of the intricate web of freedom, agency, power and authority in which the self is implicated, and in which the women who form the focus of this study attempt to navigate their lives. Thus I present here some of the overarching components of his thought as it relates to the following discussions.

Foucault refers to power both in terms of the specific power relations that occur between two individuals (or groups of varying types), and also as the overarching "diagram" (Foucault 1977:205) of power formed by the "over-all effect" of all the power relations at play together with the mechanisms and structures of power that exist in any given society.[67] A dialectical relationship exists between the two: specific power relations "make possible" certain kinds of discourses, certain "mechanisms" of power (2003b:135), and ultimately particular "regimes of truth" (1980b:131) – all together the "diagram" of power (see Heller 1996:84, 85). These are, conversely and simultaneously, used to support and to sustain those very power relations (1980a:97), and are in fact the condition for their existence. Thus (to greatly simplify the multiple linkages and processes involved for a moment), the specific interactions of power between discrete individuals and groups, and the overarching "diagram" of power, together make up the matrix within which individuals are shaped and formed, and in which they navigate their decisions and actions.

Within this constantly self-referring interplay, Foucault positions his analysis of "power relations", which he defines as "strategic games between liberties – in which some try to control the conduct of others, who in turn try to avoid allowing their conduct to be controlled or try to control the conduct of the others" (2003a:40). Importantly, these power relations are not necessarily relations which simply prohibit and repress, but rather the strategies, the

67 See Foucault (2003b), also the analysis in Heller (1996).

structures, the constructs through which one person attempts to shape the "field of possibilities" for another in an attempt to draw the desired response.[68]

Furthermore, Foucault asserts that power is "always present" in human relationships (2003a:34), "a machine in which everyone is caught" (1980c:156) and from which there is no externality.[69] In short, "The dominated are as much a part of the network of power relations and the particular social matrix as the dominating" (Hoy 1986b:134). Contrary to liberal understandings of power and freedom as examined above, however, the all-pervasiveness of power does not mean that human beings are therefore 'not free'.[70] Rather, power and freedom coexist, and power is only power where the freedom of the subject is maintained. Thus:

> Power is exercised only over free subjects, and only insofar as they are "free". By this we mean individual or collective subjects who are faced with a field of possibilities in which several kinds of conduct, several ways of reacting and modes of behaviour are available… consequently, there is not a face-to-face confrontation of power and freedom as mutually exclusive facts (freedom disappearing everywhere power is exercised) but a much more complicated interplay.
>
> FOUCAULT 2003b:138,139

Foucault goes on to conclude:

> Rather than speaking of an essential antagonism, it would be better to speak of an "agonism" – a relationship that is at the same time mutual

68 Foucault writes that the exercise of power:

> "Operates on the field of possibilities in which the behaviour of active subjects is able to inscribe itself. It is a set of actions on possible actions; it incites, it induces, it seduces, it makes easier or more difficult; it releases or contrives, makes more probable or less; in the extreme, it constrains or forbids absolutely, but it is always a way of acting upon one or more acting subjects by virtue of their acting or being capable of action. A set of actions upon other actions." (2003b:138)

69 Hoy (1986b:134) writes of Foucault's conception: "Power is not something located in and symbolized by the sovereign, [he earlier writes that 'it is not simply what the dominant class has and the oppressed lack'] but permeates society in such a way that taking over the state apparatus (through a political revolution or coup) does not in itself change the power network."

70 Foucault (2003a:34) argues with some exasperation: "I refuse to reply to the question I am sometimes asked: 'But if power is everywhere, there is no freedom'".

> incitement and struggle; less of a face-to-face confrontation that paralyzes both sides than a permanent provocation. (2003b:139)[71]

This insistence on the compatibility of power and freedom is not, however, to argue that all are then radically free in the form of the liberal transcendental self. The claim is rather that the liberal ideal of absolute autonomy is illusory.[72] In *The Ethics of the Concern of the Self,* Foucault (2003a:33) writes:

> [The subject] constitutes itself in an active fashion through practices of the self, these practices are nevertheless not something invented by the individual himself. They are models that he finds in his culture and are proposed, suggested, imposed upon him by his culture, his society and his social group.
>
> See also HOY 1986:15

Heller (1996:91) elaborates: "All subjects are equally *unfree* insofar as their choice of tactics is inevitably mediated by an institutionally-determined linguistic tradition over which they have little, if any, control. Their intentionality, therefore, is never completely their own." In short: the subject is constituted by power and constitutes itself in reference to power.

This alternative framework within which to consider the Shariʿa councils, and the decision-making processes and contexts of the Muslim women who approach them with their disputes, raises divergent questions from those raised by the modern/liberal understandings of the key terms of this study. The latter framework predicates the freedom of the individual, and the understanding of authority, on the self-constituting self, engaging with its own autonomous beliefs and thoughts (in ascertaining the legitimacy of a hierarchical relationship). A Foucauldian approach, however, champions a move away from understandings of authority rooted in the autonomy of individual choices, and raises instead questions about the ways in which the self becomes implicated in certain regimes of truth and takes on certain knowledges

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71 Foucault (2003b:139) goes so far as to say that where the "determining factors are exhaustive", and the freedom of one party entirely compromised, this no longer constitutes an example of *power*, but simply "a physical relationship of constraint… a physical determination."

72 This claim is in keeping with poststructuralist as well as communitarian critiques of the liberal conception of the self. See for example Sandel (1982, 1992) and Taylor (1992, 1994) for the communitarian critique, whilst Butler (1997) and Foucault (1980, 2003) present the leading post-structuralist accounts.

as authoritative; about how these regimes of truth are transgressed, used and manipulated by those who have acquired a position of authority, and those subject to that authority; and about the limits and potentialities of resistance. In this pursuit Foucault focuses his attention on the "regimes of truth" which each society owns for itself:

> That is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true. (1980b:131)

He goes on to write that it is:

> Not a matter of emancipating truth from every system of power (which would be a chimera, for truth is already power) but of *detaching* [emancipating?] *the power of truth from the forms of hegemony, social, economic and cultural, within which it operates at the present time*. (1980b:133 emphasis added)

Note, in this last comment, that despite Foucault's reformulation of power, freedom and (as a result) authority, and despite his insistence that power is "not something bad" in itself, his project remains an emancipatory one. Both in theory and in practice he was a man concerned with the resistance and subversion of norms (see Miller 1993). This he insists is not a response to power, but a response to "states of domination". In the latter context Foucault argues that "the power relations, instead of being mobile, allowing the various participants to adopt strategies modifying them, remain blocked, frozen" in such a way as to "[prevent] any reversibility" (2003a:27).[73] Foucault admits that power relations can be "completely out of balance" (2003a:34) and that in states of domination "power relations are fixed in such a way that they are perpetually asymmetrical and allow an extremely limited margin of freedom"(2003a:35). He maintains however, that power itself is not the problem. As a result, rather than attempting to remove power altogether (according to Foucault an impossible pursuit) we must instead "acquire the rules of law, the management of techniques, and

73 Heller (1996:102–104) makes the distinction between "liberated power-relations" and "dominative power-relations" to express the understanding that it is not power itself but *certain types of power* that are at issue in Foucault's analysis.

also the morality, the *ethos*, the practice of the self, that will allow us to play these games of power with as little domination as possible" (2003a:40).

It is clear then that the underlying concern with freedom remains throughout Foucault's writings, despite his attempt to reconceptualise power itself away from traditionally negative understandings of the term that make it the object of emancipatory thrusts. This retained focus leads us to consider more deeply one final study before this introductory chapter is concluded. In asking the question "Why do Muslim women living in Britain take their disputes to the Shari'a councils?" this book echoes a central question put forward by Mahmood (2005). In her acclaimed work *Politics of Piety* she writes of the question vexing the feminist, and the liberal, secular left: "Why would… [Muslim] women… actively support a movement that seems inimical to their 'own interest and agendas'?" (2005:2). Mahmood (2005:2) goes on to critique the very premise of the question (the "assumption that there is something intrinsic to women that *should* predispose them to oppose the practices, values, and injunctions that the Islamist movement embodies"). In doing so she seeks to reconsider her own secular-liberal presumptions of freedom rooted in autonomy in an attempt to engage more deeply with the alternative understandings of, and differing values attached to, these concepts put forward by the women in her study.[74]

In attempting to build on "poststructuralist critiques of the transcendental subject, voluntarism, and repressive models of power", Mahmood draws heavily on a Foucauldian framework (particularly his conceptualisation of ethics, and the formation of the subject). She ultimately notes however, that even within poststructuralist accounts of the subject and power (which she favours over others), "The normative political subject… often remains a liberatory one, whose agency is conceptualized on the binary model of subordination and subversion" or in reference to the "resignification of social norms" (2005:14). Mahmood comments that "agency" within these narratives is thus located "within those operations that resist the dominating and subjectivating modes of power" (2005:14) and goes on to argue instead for the need to "detach the notion of agency from the goals of progressive politics."

> If we recognise that the desire for freedom from, or subversion of, norms is not an innate desire that motivates all beings at all times, but is also profoundly mediated by cultural and historical conditions, then the

74 Mahmood's (2005) respondents were women who appear to have embraced their subjugated position within the mosque movement in Cairo whole-heartedly, becoming active participants in the movement and giving it their full support.

> question arises: how do we analyze operations of power that construct different kinds of bodies, knowledges, and subjectivities whose trajectories do not follow the entelechy of liberatory politics. (2005:14)

The theoretical component of Mahmood's study has been cogently critiqued by Ismail (2008) and Selim (2010). These scholars note that, in the "commendable" attempt to "suspend judgement derived from her feminist ideals to rethink her mode of inquiry and interpretation of the practices of the women in the piety movement" (Ismail 2008:604), Mahmood fails to give due consideration to the ways in which power is manifested within the movement. Ismail (2008:604) writes "gender contestations are mapped into the terrain of the cultivation of piety beyond the terms delineated in Mahmood's discussion." Meanwhile Selim (2010) suggests that Mahmood does not engage adequately with the understanding of "*da'wa* as an explicit modality of politics and power that is not only directed inward to a physical embodiment of the spiritual self, but outwards, at a network of *other* bodies." As a result, she is able to "define the women's piety movement as a purely ethical and entirely positive project of personal cultivation" whilst "ignor[ing] its function as a politically prescriptive project in its own right." These are important insights as Mahmood's work otherwise takes too much for granted in the narratives and self-presentation of the women themselves, without a deeper questioning of the network of power in which these presentations are made.

In our current context, a key finding of this study is precisely the fact that the women who approached the Shari'a councils did *not* wholeheartedly embrace the subjugated position assigned to them in the frameworks of power of which the Shari'a councils are part. They did not (on the whole) voice their support for the processes of the councils or even, at times, for Islamic law in the abstract (we will return to the diversity of responses in the chapters that follow). Neither did they (on the whole) consider their freedom to be of the reconceptualised kind envisaged by Mahmood as she discusses the projects of self-formation and *trans*formation by the women as they sought to become better Muslims. In short, many of the women in this study seemed precisely concerned with this liberatory ideal. Illusory or not, the women in this study desired to be free: free from the constraints of others, free from abusive relationships and from the power plays of their husbands and (at times) their own communities, free from discourses of power which they felt were being imposed on them and did not sit right with their own consciences or their own desires and agendas. In fact, perhaps one of the most memorable quotes of fieldwork, one that was profound on a number of levels and ubiquitous across the majority of interviews conducted with the women, was one from a highly

accomplished Iranian woman as we sat having a coffee in central London. Over the course of our conversation I asked her: "Do you think, for you, is there any religious significance to the divorce, or is it at the moment just a practical thing – you want to be free [relaying a concern she had already voiced]." To which she responded with some longing: "I do want to be free… I didn't understand your first sentence." Despite the miscommunication between question and answer, her answer proved to be a telling insight summing up the cry of many of the women interviewed. The majority did not know the details of the various legal systems, religious and otherwise that they found themselves in. They had varying responses to the pressures of their marriages and communities (with some caring more than others what people thought of them). Many did not even understand the process of the council that they were being put through, and had varying levels of religious belief (or lack of). In effect, it did not matter what the first part of the sentence was – but they knew one thing: "I do want to be free." This desire was, in so many of the cases, what it all came down to.

This then, leads us back full circle to the opening question of this book. The majority of women in this study did not support the theology or the processes of the Shari'a councils. Many were deeply concerned and frustrated about the processes of the councils, and many were angry about what they felt was a patriarchal system (which they put down to culture). Furthermore there is no physical or legal compulsion for the women to take up their cases in such a forum. And yet it can be estimated that hundreds of Muslim women in Britain still choose to do exactly that. This book seeks to explore why this is the case and what else can be deciphered to be part of the dynamic of interactions between the Shari'a councils, the women, and their own communities.

Organisation of Book

Here in this introduction the key themes and concepts that undergird the following discussions have been introduced, together with the political context and the literatures in which they are situated. In the following Chapter I introduce the Shari'a councils and the women who formed the focus of this study and outline some methodological concerns.

Chapter 2 argues that the claim that the women who come to the Shari'a councils do so on the basis of a recognition of their authority (and in practice of their 'freedom of religion') is a contested claim that appears not to be born out in any straight forward fashion by the interview data. Although the authority of the Shari'a councils was an important factor in the women's reasoning as they approached the councils, this understanding of authority was

crucially detached from the women themselves. Rather the women believed the Shari'a councils to be recognised *by their communities* as authoritative, and many women drew sharp distinctions between that community recognition and their own. Nevertheless, this detached understanding of the authority of the Shari'a councils played an important part in the women's own reasoning as they attempted to use a language and process deemed appropriate by their communities towards their own (often counter-hegemonic) ends.

Chapter 3 argues that law, community norms, and the practices of the Shari'a councils work together to construct a set of boundaries around which Muslim women feel they need to navigate in the pursuit of their own objectives. The felt sense of constraint is not (for the most part) an indication of the women's adoption of these norms as their own, but rather a realism in attempting to negotiate certain outcomes with the least potential (emotional and other) costs. The cumulative effect of the power relations that make up the women's social field is to leave them with few (and often costly) options, either needing to negotiate their decisions within norms that invest unequal power in the hands of men and women, or to transgress those norms at the risk of being ostracised or disowned by their families. Nevertheless, this is not to mean that the women are passive victims in the process – but rather that they creatively negotiate the boundaries, making "patriarchal bargains". In these complicated contexts the imposition of English law and the alternative possibilities it affords can be used by the women as a tactic of resistance and as a mode of safeguarding particular interests of the women against the treatment they receive in some of the Shari'a councils and even at the hands of their own communities. Nevertheless, as will become evident, even the possibility of having recourse to the English system is at times navigated and circumscribed by prevailing discourses of power that emanate from the women's own communities, from understandings of Islamic law, and from the various positioning of the Shari'a councils.

Chapter 4 argues that Muslim women approach the Shari'a councils as a last resort, and that this resort is taken up as a tactic – an attempt to use the "language of the dominant class" against itself. Furthermore these tactics were ultimately rooted in the women's desire to obtain a specific objective – namely that of freedom, negatively conceived. Thus the women talked of freedom from the constraints of their marriages, from controlling husbands, from community norms, and from future constraints to a subsequent marriage. In a few cases the women also, or exclusively, talked of freedom from *internal* constraints – a desire for 'closure' and for feelings of guilt and of loss to be accounted for by the ruling of the judges. The women were, on the whole, successful in obtaining a divorce if they were willing to persevere with the process, and as

such therefore successful in obtaining their objectives at least on this front. Similarly, the obtaining of the divorce in such a manner seemed to satisfy the women that their communities would be assuaged and the divorce recognised. Nevertheless, the women were disappointed with their specific attempts to use the Shari'a councils to govern the behaviour and the responses of their husbands (for most of the women, a primary concern), as they were disappointed in the ability of the council to soothe the women's own conscience. A great deal of caution must therefore be exercised in asserting that these tactics of power were 'successful' (in terms of procuring the women's desired outcome).

Meanwhile, I have noted that a key method through which some Shari'a councils have attempted to legitimise, and indeed argue the *need* for their existence, has been through the claim that the Shari'a councils safeguard the rights of Muslim women. Correlated to this claim has been the narrative put forward by the Shari'a councils, asserting that the women come to the Shari'a councils in order to have their rights restored. The findings of this study suggest that the Shari'a councils in Britain cannot, on the whole, be said to be forums where the rights of Muslim women are upheld, although it is acknowledged that women, caught up in particular frameworks of power, found in some cases a measure of redress. It must be noted however, that this particular issue provided the biggest contrast between the four councils in this study, and it is thus preferable to talk specifically to each council, although it is also important to note that there were disparities of orientation within the councils as well as between them, with reference to particular judges.

The concluding chapter draws together the strands of the arguments presented in the following pages, and considers the political implications and ramifications of these discussions. It will be argued that the evident tension and constant interplay between freedom and power that is the reality of the experience of the women in this study must guard against abstract theoretical considerations that seem to privilege the women's agency in these contexts. It must be recognised that we are in the remit of patriarchal contexts, experienced as constraints.

CHAPTER 1

The Shari'a Councils, the Women and Some Methodological Concerns

Introducing the Shari'a Councils

Research Sample

There are no reliable statistics on the number of Shari'a councils currently operating in the United Kingdom. Bano (2007:23) writes that estimates range from 60 to 70 councils, whilst the Civitas report *Shari'a Law or "One Law For All"?* (MacEoin 2009) put the figure at "over 85", (it is not clear on what basis these estimates were made). More recently The Ministry of Justice Project (2013) located 30 councils but Bano (2012:63,64) notes that this number "should not be seen as definitive" as it became evident that some smaller councils had been omitted. Whatever the actual figure, it is clear that the great majority of these councils are small, unofficial groupings that operate within the context of (or having grown out from) a local mosque in order to facilitate the resolution of disputes within a local community (see Bano 2004:117–122).[1] Anecdotal information from conversations with various judges from the Shari'a councils in this study, as well as from some of the women interviewed, suggests that these smaller councils are often divided on the basis of ethnicity and language, and that they make their decisions and recommendations with reference to a particular school of law. There are, at the same time, a smaller handful of larger, more prominent councils (either regionally or nationally focused in their attentions), who operate in multiple languages, attempt to cater for people from different ethnicities, and draw on a number of schools of law for their decisions. The Islamic Shari'a Council (ISC), The Shari'a Council of the Birmingham Central Mosque (BSC), the Family Affairs Department at the Islamic Centre of England (ICE), and the Muslim Arbitration Tribunal (MAT) were the four councils chosen for this study from this latter grouping. These councils were chosen on the basis of their size and their prominence (within the press, their communities, or both), and with a view to considering, within

1 Note that we are witnessing the development of a certain spectrum of Shari'a councils away from their original mosque affiliations, and towards more 'professionalised' quasi-legal entities that operate independently (for example, in the setting up of the Muslim Arbitration Tribunal, and in the developing identity of the Islamic Shari'a Council). See Billaud (2014:162) for a discussion of the transition and growth of Shari'a councils in Britain.

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those categories, as diverse a group of councils as possible in order to better understand the picture at large. Thus two Sunni (ISC and BSC), one Shi'a (ICE) and one council of a Sufi affiliation (MAT) were chosen, two based in London (ISC and ICE), one in Birmingham (BSC), and the MAT which has a primarily internet based presence but is largely administered out of the Midlands.

Obtaining data from a broader range of councils (specifically, the smaller, locally based councils) would have enabled not only a better grasp of the diversity of the Shariʿa councils in Britain, but also a better understanding of the significance of this diversity. Nevertheless it was felt that, due to the paucity of current empirical data in this field, using the larger, more established councils was a preferred first step. This was so because these larger councils are (relatively speaking) easier to access and more prolific in their work, meaning that there was more to observe within the eleven months of fieldwork. The MAT was a borderline case as it was still relatively newly formed at the time of fieldwork and thus not an established council with a built up stream of cases. Its prominence in the media however, and the promotion of the MAT as an important and distinct addition to this field (due to its use of the Arbitration Act 1996)[2] meant that it would be a significant omission if not included in the study. Thus it has been included even though it presents, on some fronts, an anomalous case (as will be elaborated on below). The large numbers of smaller local Shariʿa councils remain a fruitful point of investigation for future researchers with relevant language skills.

Regardless of their size, Shariʿa councils offer similar services: the issuing of guidance and advice on a wide range of issues, and the offering of counselling and mediation services to deal, in particular, with marital disputes (which make up the vast majority of enquiries to the councils). These services are offered with varying degrees of formality. Only the MAT formally offers legal arbitration, although the ISC often uses the language of arbitration in referring to itself.[3] I briefly introduce each of the councils in turn below.

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2 The MAT website, for example, notes: "The establishment of MAT is an important and significant step towards providing the Muslim community with a real opportunity to self determine disputes in accordance with Islamic Sacred Law" (http://www.matribunal.com/) [accessed 26 November 2008].

3 The Islamic Shariʿa Council website for example notes: "From the outset, the mandate of the ISC was to provide a forum for mediation and counselling for the unhappy parties and also to pronounce judicial divorce… The advantage of arbitration by Muslim scholars is that it provides a culturally and religiously sensitive environment in which the couple can air their grievances." (http://www.islamic-sharia.org/news/article-published-in-per-incuriam-of-cambridge-university-law-society-easter.html) [accessed 21 June 2012].

The Islamic Shari'a Council (ISC)

The ISC is perhaps the best known, and one of the oldest Sunni Shari'a councils. It was founded in 1982, when representatives from ten Muslim organisations were drawn together to deal with marital disputes that were considered to be overwhelming local *imams*. The council is officially based in London, in its premises in Leyton, but has representatives in various other cities around the United Kingdom.[4] The representatives meet with any individuals in the locality who want the ISC to adjudicate their cases, and produce case-notes on these meetings which are then sent, together with any recommendations of their own on the case, to the London offices. Meanwhile meetings are similarly held in the ISC offices in Leyton, where five further representatives hold meetings with clients between the hours of 10am and 6pm, Monday to Friday.[5] Case notes from meetings (both locally and from the representatives) are then systematised and processed ready for the monthly meeting of the judges.

All the representatives are considered by the council to be Islamic scholars, and are involved to some extent in deliberating on cases, but not all are included as the final 'judges' who meet on the last Wednesday of every month and decide on the cases (largely in the absence of the individuals to whom the cases relate). The council is led by Abu Sayeed (the President of the council) and Dr Suhaib Hasan (the Secretary of the ISC), but the judges all have equal weight in the process and decisions are made on a majority basis, and by drawing on all four Sunni legal schools.

The ISC is conservative in its outlook, and no women worked in the organisation during the original weeks of fieldwork in the autumn of 2009. However, on a brief return visit in May of 2011, a female receptionist and administrative assistant had replaced the previous male administrator, and it was indicated that this had been done to present a softer front. A further change over the course of this research was the introduction of a "lady counsellor" (as announced on the website), available for a few hours every week.[6]

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4 One such representative tells me that the ISC had many representatives in the past, but that the number has greatly decreased over the years as many more Shari'a councils have been set up (meaning that there is local provision for people, and fewer numbers decide to approach the ISC). Thus, as individual representatives have moved on or passed away, they have not been replaced.

5 These are the opening hours of the ISC as were held in May 2011. Note that none of the men work full time, but that at least one, and often two or three are present at any given time.

6 A recent statement on the ISC website now notes that there is "a female receptionist, a female scholar and a female law intern." See point 5 of the letter of complaint lodged by the ISC with The Independent's complaints department on 8 December 2015. (http://www.islamic-sharia.org/the-independent-sharia-courts-the-inside-story/) [accessed 5 January 2016].

The ISC claims to deal with around 600 cases annually (see Talwar 2012) (a number that has greatly increased during the years)[7] but it is difficult to ascertain the accuracy of this figure. Fieldwork suggested that whilst there were many cases in process at any given moment at the ISC, many of them were on-going as it is not unusual for the council to take several years to consider a case. Thus, for example, estimates based on the number of cases deliberated upon in the monthly judges' meetings, or the number of client meetings do not provide an accurate estimate of yearly cases overall, as cases are considered over multiple meetings.

The ISC operates in multiple languages (English, Urdu, Bengali, Somali, Arabic), and has the most diverse clientele of all the councils studied (in large part a reflection of the diverse ethnicities of the judges involved). The majority of clients remain from a Pakistani background however, which is in keeping with the demographics of the Muslim population in Britain.

I consider some of the intricacies of the rulings of the councils in Chapters 3 and 4, but note for the moment that the rulings of the ISC are largely independent of the workings of the English civil system on divorce. There are, however, some overlaps in theory (in practice, things are "rarely so simple" (see the qualifications by Atif Matin in Bowen 2013b:142)). If it is the husband who instigates and pursues an English divorce (and the wife can prove this with the relevant paperwork), the ISC consider this to be equivalent to an Islamic *talaq*, even if the man does not actually pronounce an Islamic divorce or approach the council for one. Thus they issue a certificate for the woman accordingly, having informed the husband of their intention. The wife's instigation of and obtaining of a civil divorce is not considered relevant to the running of the ISC unless it can be shown that the husband consented to such a divorce (in writing),[8] which the council then reads as consent to a *khulʿ* divorce. The obtaining of a civil divorce by the wife without such written consent by her husband has no bearing on the pronouncing of an Islamic divorce by the ISC.

7 The increasing demand for the services of the Shariʿa councils has been documented by others, see Bano (2004:136), Billaud (2014:161).

8 This requirement is considered to be fulfilled if the husband has signed the Acknowledgement of Service (D10) form in recognition that he does not intend to contest the divorce. The D10 form constitutes part of the formal civil procedure for divorce within the English legal system. Once an individual has initiated a request for divorce through the civil courts, their spouse is sent the petition for divorce alongside a D10 form whereby they can express their agreement to the divorce, or defend against it. See the Directgov website for details: (http://www.direct.gov.uk/en/Governmentcitizensandrights/Divorceseparationandrelationshipbreakdown/Endingamarriageorcivilpartnership/Gettingadivorce/DG_193735) [accessed 11 June 2012].

The Birmingham Shari'a Council (BSC)

The BSC was first founded in the mid 1990s, operating out of the Birmingham Central Mosque, in response to what was felt to be a growing need of the local communities.[9] At the time of fieldwork, the council was made up of four judges, and also had two further (female) part time volunteers: Dr Saeeda a retired medical doctor who conducted the counselling work, and Saba Butt, who administered the council.[10]

Saba is usually the first point of contact for all who get in touch with the BSC, and, together with Dr Saeeda, meets all the clients for an initial session on a Saturday morning at the mosque to hear the details of their case. Following the meeting a case file is prepared for the judges on the BSC panel, and the case is sent to the panel for discussion. The BSC meets on average once a month although, due to demand, the frequency of meetings is increasing. A key contrast with the ISC is that deliberations are done with the clients present (they are usually asked to leave the room for a few minutes, but then return to hear the decision of the panel). Decisions are made by majority consensus, and by drawing on all four Sunni legal schools. Around 150 cases a year are decided. It is rare for the BSC to deliberate on a case over multiple meetings, and client meetings are also similarly kept to a minimum, thus the time frame for any particular case is far shorter than that of the ISC, usually lasting no more than six to nine months.

With regards to orientation, the BSC strives to be welcoming to women, and appeared to be successful in this endeavour. As well as the two female volunteers who take on the majority of the case work up until the council deliberates on a case, the BSC boasts a female member of the panel. (The website states that the council is "the only Islamic institution in which a woman has been elected as a high official of a Shariah court second to a judge".)[11] Furthermore, the BSC considers the obtaining of an English divorce (however this is done – whether with or without the consent of the husband) to necessitate the granting of an Islamic divorce. This is predicated on the broader Islamic principle

9 Originally only counselling and mediation was offered, and clients were directed to the ISC if they wished to obtain a divorce. Over time, due to complaints received from women regarding the manner in which they felt they had been treated by certain judges at the ISC, and due to the growing sense in the Birmingham Central Mosque that they were well placed to offer such a service, a separate Shari'a council was set up.

10 Sadly, before the completion of this book the kind Mr Bawahab and Dr Mohammed (previously the Chairman of the mosque) both passed away, thus the council is currently in flux.

11 http://www.centralmosque.org.uk/1/services/personal-divorce---khula-etc [accessed 5 March 2016].

of public welfare (*maslaha*), and the understanding that it would be a harm to the Muslim community and to the individuals involved if they were married under one law and divorced under another.

The council mainly operates in either English or Urdu, and its clientele is almost exclusively drawn from the Pakistani and Bangladeshi communities in the Midlands (although there are some that come from further afield).

The Family and Social Affairs Department of the Islamic Centre of England (ICE)[12]

The Islamic Centre of England was founded in December 1995 with the aim of providing "spiritual guidance" for the Muslim community, and to "disseminate authentic knowledge about Islam" to those who live in the West (ICE 2000:6). Mr Razavi was amongst the founding members of the Islamic Centre of England and oversees its work relating to family issues. The ICE differs from the other councils under study in this research in that it not only deals with marital disputes and divorces, but is also involved in performing marriages, (although marital disputes and divorces make up the majority of the council's workload). The website notes: "The main areas of work of this department are in: solemnization of marriages, family consultation, miscellaneous social affairs, Islamic divorce procedures and responding to many other queries related to the above issues as well as conversion to Islam."[13]

Individuals who wish to use the services of the ICE apply using the forms available online, and send their application, together with an appropriate fee, to the ICE. An appointment is then made for them to come to the centre in person, and all the necessary further paperwork is prepared during the course of that meeting. Mr Razavi administers and oversees the process, but divorce certificates are formally issued by a broader panel made up of members from the Islamic Centre of England.

Although the Islamic Centre of England is a Shi'a institution, cases are dealt with according to the legal needs of the individual clients. Thus Sunni clients (a rare occurrence) are given the opportunity to have their case decided according to Sunni legal schools, whilst Shi'a cases are deliberated according to Shi'a principles. As many of the cases at the ICE originate from within the Iranian community, the ICE also operates according to Iranian law, and clients are advised on any necessary procedures for them to be able to obtain a divorce acceptable in Iran. (This is a particular concern for the women as travelling

12 ICE will be used to refer to the Family and Social Affairs Department of the Islamic Centre of England, whilst references to the Centre itself will be written out in full.

13 http://www.ic-el.com/en/family.asp [accessed 10 June 2011].

in Iran without such a divorce can leave them vulnerable to abuse from their husbands, and to potential difficulties with the police and the courts in Iran).[14]

No clear estimate exists of the numbers of cases that the ICE considers in any given year, but some twenty cases were witnessed over the period of four weeks at the ICE, and this appeared to be 'business as usual'. The time frame appeared to vary greatly, but cases that took several years to complete did not appear to be prolonged as a result of any action by the judges involved, but as a result of complicated negotiations between husband and wife that were largely determined by their awareness of the specificities of the Iranian legal system.

Clients are given the opportunity to have their case at the ICE conducted in English, Farsi or Arabic, but the majority of clients are from the Iranian community in the United Kingdom (the ICE has a national presence) and from Shi'a Muslims from other non-Islamic countries.

Where the other Shari'a councils work alone, the work of the ICE dovetails with a collaborative project by three of the most prominent Shi'a organisations in Britain (the El-Khoei Foundation (ELKF), the Imam Ali Foundation (IAF), and the Islamic Centre of England itself – all based in London) in the form of the Family Affairs Committee (FAC). Alongside the three representative scholars from these institutions who deal with issues of marriage and divorce in the context of their own organisations, there are twelve others: Islamic scholars, psychologists, doctors, lawyers, social workers and a (non-trained) counsellor, who work together on family related issues. There are three women on the committee – a social worker, a lawyer from Iraq who specialised in family law, and the counsellor. The committee is an attempt to pool resources in deliberating on the more complex cases, developing best practice, and potentially creating an influential network for the future. The ICE remains the focus of this study with regards to the Shi'a councils, but reference will be made to interviews with other members of the FAC where relevant.

The obtaining of a civil divorce does not have a bearing on the granting of an Islamic divorce at the ICE, as the civil divorce is considered not to include the necessary religious procedures (this understanding is presented as a difference

14 One fear in particular was voiced by a number of women in this regard. As many of the women wanted to travel to and visit Iran at their own leisure, they were concerned about legal provisions in Iranian law that require married women to have the written permission of their husbands in order to exit Iran. As English civil divorces are not considered valid in Iranian law to terminate an Islamic marriage, the women thus felt themselves vulnerable to the potential power plays of men who were still considered their husbands according to Iranian law, regardless of the status of the marriage according to English civil law.

between Sunni and Shi'a interpretations of divorce law). The obtaining of a civil divorce in Britain therefore has no impact on the workings of the ICE. Furthermore, the unique nature of the work of the ICE, in assisting clients to obtain a divorce that is recognised by Iranian law, reinforces this understanding of civil proceedings, as Iranian law does not recognise English divorces on marriages that were conducted according to Islamic principles.

The Muslim Arbitration Tribunal (*MAT*)

The MAT is by far the most recently formed of the organisations in this study, having been established in 2007. It is one of many projects undertaken by Faiz Siddiqi, the "head of the Naqshbandi Hijazi Spiritual Sufi order",[15] and the "Chairman of the Governing Council of MAT" (MAT n.d. p4). I focus on it here in greater length than the previous organisations as it presents an unusual case and some explanation as to its inclusion is helpful. The MAT operates out of Hijaz Manor, situated within the grounds of the Hijaz College Islamic University in Warwickshire, where Shaykh Siddiqi is based. Reports that refer to the various bases and branches of MAT around the country (including London, Birmingham, Bradford and Manchester, as well as Nuneaton) can be misleading.[16] In London, for example, volunteers explained that the branch consisted, at the time of fieldwork, of a few individuals who facilitated events such as a public lecture, or a "surgery"[17] from time to time. Fieldwork suggested that the MAT heading is used by members of the council and by volunteers with reference to a broader range of initiatives than that directly associated

15 See the introduction given on the website of the Hijaz College (of which Shaykh Siddiqi is the Principal), (http://www.hijaz.co.uk/the-principle.php [accessed 11 June 2012]).

16 See Civitas (MacEoin 2009:2) as well as numerous press reports. Note that whilst Bano (2012:241) also cites that there are "five tribunals" operating around Britain as part of the Muslim Arbitration Tribunal, it appears that this information is not taken from first hand observation. Bowen (2013b:132) offers a corrective here, noting that "… on the basis of his [Shaykh Siddiqi's] movements, the British tabloid press and several ill-informed think tanks claim that there are already dozens of MATs in England".

17 Shaykh Siddiqi and a small number of others associated with the "Hijaz community" (the term that individuals associated with Shaykh Siddiqi use to refer to those who have given *bayʿa* to him or to his associates) conduct meetings by appointment in various locations around the country. These meetings are referred to by the community as "surgery" (the meetings were explained as being the "spiritual equivalent" of a GP's surgery), and these occasions are a chance for individuals to ask Shaykh Siddiqi (or one of the other individuals) whatever question they might have. Thus it is a forum for general guidance and advice, although some of the MAT's cases emerge from these meetings. The meetings also appear to provide the context in which much of the family and marital mediation and dispute resolution occurs.

with dispute resolution (for example, in contexts where Shaykh Siddiqi or others loosely affiliated with the MAT hold a surgery, give a talk, or promote a campaign).

The Hijaz College premises form the hub of Shaykh Siddiqi's prolific work. A number of volunteers[18] are housed on site and enjoy communal meals at the college, which also provides the staging ground for many of the events associated with the "Hijaz community".[19] The backdrop within which the MAT operates is a distinctly Sufi order, with Shaykh Siddiqi as a charismatic leader and with volunteers who work in different capacities, and with varying levels of commitment. There is, as a result, much fluidity between the various initiatives (these are referred to as a whole under the heading of the "Hijaz group"), and many of the volunteers themselves appeared to have a limited understanding of the boundaries between the various projects, seeing themselves as simply working for Shaykh Siddiqi in whatever capacity was needed.

A common misconception with regards to the work of the MAT (both in the press and within academic circles)[20] is the belief that its work falls primarily within the formal remit of arbitration and mediation agreements. It has been argued that this misperception is not mitigated against by the MAT in its literature and website which appear to make a concerted effort to formality.[21] Recent scholarship has brought a needed redress to this perceived formality of rulings, with a clearer delineation of English law as it presently stands (see in particular Butler-Sloss and Hill 2013 and Edge 2013). It must be noted that under current English law, issues pertaining to the status of a relationship (the

18 Shaykh Siddiqi is aided by young Muslims primarily in their twenties and thirties who have pledged allegiance to him in the *bay'a* and who volunteer on his various initiatives. This young demographic appears to be representative of Shaykh Siddiqi's followers in general, although not exclusively.

19 See footnote 17 for an explanation of this term.

20 See for example Witte and Nichols (2010:123) whom Shah (2013:63) refers to as providing an "exaggerated reading of the accommodation of unofficial tribunals under English law".

21 See Grillo (2015a:29), MacEoin (2009:3), and Shah (2014:21) for some of the discussion on what Grillo (2015a:151) calls MAT's "controversial" website. Grillo (2015a:151) reports that at a meeting at the House of Lords convened in December 2011, National Secular Society Executive Director Keith Porteous Wood "noted that [the website] had 'hoodwinked a senior justice official [at the European Commission], who had been convinced (wrongly) that it was "official"', as was presumably the intention. 'If such an official could be misled', he added, 'how could we not expect others not to be, especially those with scant knowledge of our justice system and, probably also of English?'" Note that the original website of the MAT which drew this criticism (accessed between the years 2009 and 2012) has been updated.

granting of a civil divorce or recognition of a marriage), issues pertaining to child custody and contact, and issues regarding criminal law (including domestic violence cases) cannot be subject to arbitration and therefore fall outside the remit of any legally recognised dispute resolution of this order.[22]

Three distinct parts of the MAT's work can be deciphered. The most prominent, and the focus of its press conferences, has been a campaign on forced marriage. This campaign is a political initiative of the MAT, seeking to obtain legislative changes to existing laws on forced marriage, and suggesting a powerful role be given to the MAT in the settling of connected issues (see MAT n.d.).[23] The second sphere is the informal settling of family and marital disputes, and Islamic divorces, which appears to occur largely within the broader "surgery" setting. The third sphere of the MAT involves arbitration. During the time of fieldwork this appeared to be the smallest part of the work of the MAT and the examples given mainly involved a limited number of mosque disputes.

Thus, despite potential ambiguities in how the MAT is presented and perceived, and although it is an evolving organization still in the early years of its existence, it has been included in this study in part precisely because it did not, at the time of fieldwork, present a distinct case with regards to the operation of much of its case load. Furthermore the process followed by the MAT in the conduct of cases regarding marital disputes was largely synonymous with the basic procedures followed by the other Shariʿa councils observed (I comment on these procedures shortly, and more fully in Chapter 3).

Cases that are started with the MAT are usually overseen by the particular solicitor or Islamic scholar involved and submitted to a small panel (referred to as the "Governing Council") for a final decision.[24] It is estimated that the current number of cases that the MAT has dealt with remains relatively small, and thus does not form the basis of the profile the organisation has had in the press and in the political sphere. Cases are dealt with primarily in English, and the clientele appears to be drawn from second- and third- generation British Muslims, primarily from the Pakistani community. Many of the clients of MAT

22 See for example the remarks of Bridget Prentice, then the Parliamentary Under-Secretary in the Ministry of Justice, in response to a question regarding rulings by religious 'authorities' in matrimonial disputes (*Hansard* HC 23 Oct 2008, Vol. 481, Col 562W).

23 See Bano (2012) and Griffith-Jones (2013:200) for concerns with regards to the proposed positioning of the MAT on this front. Grillo (2015a) also discusses the campaign and goes on to note, in the context of concerns regarding the privileging of certain self-appointed community spokespeople: "The MAT did… attempt to intervene with constructive proposals… but they had no impact, and perhaps deservedly so" (2015:255).

24 At the time of fieldwork the bulk of the work was overseen by two solicitors that volunteered in this capacity alongside their legal careers.

appear to be connected with the Hijaz community in some way, and word of mouth plays a big part in connecting new clients.

As regards the interaction of the MAT's granting of Islamic divorces, and the obtaining of a civil divorce: the MAT consider the obtaining of a civil divorce to constitute the grounds for an Islamic divorce, regardless of whether the process is initiated by the husband or the wife. The form and type of divorce and its timing however vary according to these details, and it was acknowledged that there was a diversity of interpretations on this matter from Islamic jurists.

Using the Terms 'Shari'a Council', 'Judges' and 'Islamic divorce'

Despite the diversity of the institutions considered in this study, and the varying terminology they use to describe themselves, the term 'Shari'a council' will be used to designate all four institutions. (This is in line with the nomenclature in the literature in this field to date, with the exception of designations of the MAT, which has commonly been given a privileged place as a 'tribunal'). As has been noted, although there has been much focus on the formal legality of the MAT's decisions in arbitration cases, it is felt that the reality of the work of the MAT currently falls in line with the understanding of Shari'a councils more generally (see also Shah 2013:64) – as providing guidance, advice, and a forum for the resolution of marital disputes in reference to Islamic law, with no legal standing within English law. The MAT does have the potential to act as an arbiter in certain civil cases, but this aspect of its work remained limited at the time of fieldwork, and does not constitute part of this study. Furthermore whilst some of the judges, and indeed much of the press, use the terminology of Shari'a 'courts' rather than 'councils', it is felt that this is a misleading designation. Moreover, using the terminology of 'courts' inadvertently adds to the perceived power of the councils within their local communities, implying a legal jurisdiction that none of the councils enjoy (either here in the United Kingdom, or indeed with reference to any Muslim majority state). The term 'council' better reflects their informal legal status.[25]

Studies to date have referred to the individuals who make judgements within the Shari'a council setting using a variety of terms, including "Islamic scholar", "*imam*", "*qadi*", "*maulana*", and "councilor" amongst others, in an attempt to capture the ambiguity and multi-faceted nature of their role. Rather than use multiple references, this study will use the word 'judge' in referring to these individuals as this best conveys the primary activity for which they are sought out – the giving of a judgement with regards to the women's eligibility

25 See Grillo (2015a:21) for his discussion of how the terms "courts" and "councils" (in reference to the Shari'a councils in Britain) are used by proponents and opponents of the councils towards different (political and other) ends.

for a divorce. It must be underscored that this designation refers to an activity (the passing of judgements on a variety of cases), and not an official role as 'Judge' either within the Islamic framework, or, of course, within the English legal sphere.[26]

I offer one final point of important clarification with regards to the nomenclature used throughout this book. This study will use the designation 'Islamic divorce' or 'religious divorce' to indicate what was considered in the women's own mind, or in what they perceived to be the opinion of their community, the 'true' Islamic divorce, (as distinct from a civil divorce). It must be noted that this decision was taken in an effort to keep the text from being cluttered with multiple qualifications at each point of reference, but I acknowledge the weaknesses of such a decision in reinforcing a problematic dichotomy. As has been cogently pointed out by Warraich and Balchin (2006:73) such a nomenclature, and the boundaries of this study as well as previous studies in the field in interviewing only women who choose to use the Shariʿa councils for the function of obtaining what they view to be a religious divorce (as opposed to Muslim women who use the civil courts alone), appear to privilege a particular interpretation of the requirements of Islamic law. They write:

> Studies available to date have not counter balanced interviews with women using the Shariah councils with those of women who marry or divorce purely through the British civil system. Are the latter group somehow not regarded as legitimately and sufficiently "Muslim"? This could easily be the implication behind a comment from one researcher who acknowledges that her sample is limited to "those Muslim women who make their demands from within the framework of the shariah; a priori, the sample cannot include those women who *choose to ignore the precepts of the Shariah* and for whom a civil divorce suffices." (Shah-Kazemi, 2001: 64, emphasis added). It is unclear which "precepts of Shariah" are being

26 Note that, in an effort to defend the council against repeated claims by opponents that the ISC allows misunderstandings as to its official jurisdiction in Britain, the council have posted an emotive letter of complaint on their website against The Independent, in which they take issue (amongst other things) with the designation of the word "judge" or "qadi" which is used of members of the ISC in the article published 5 December 2015: "The scholars at the ISC are referred to as Sheikh or Ustadha, never as judges as qadis." (http://www.islamic-sharia.org/the-independent-sharia-courts-the-inside-story/ [accessed 5 January 2016]). Nevertheless, the ISC website itself, in setting out the history of the council, states: "The objective of the Council was not just to guide the Muslims in matters of their religion and to issue fatwas when needed, but also to create a bench of ulama' who would function as *Qadis* in matters such as matrimonial disputes that were referred to them" (http://test.islamic-sharia.org/?page_id=261 [accessed 5 January 2016], emphasis mine).

> ignored by such women since a British civil divorce is recognized for example by the Pakistan courts. (2006:73)

Thus although 'Islamic' or 'religious' divorce is used throughout the text by way of shorthand, it must be born in mind that the distinction which it implies as regards the civil divorce is open to contestation, and that the dichotomy exists only in so far as individual Muslims take on and privilege particular discourses within a spectrum of interpretations of Islamic law. In short, no *intrinsic* dichotomy need exist.

The Procedure of Obtaining a 'Religious' Divorce

The procedure for obtaining a religious divorce from any of the four Shari'a councils in this study is relatively standardised, and I present its basic form here. Once a woman files a petition for a divorce, a letter is sent to her husband, explaining the wife's grievances and her petition for divorce. The letter informs the husband that the council would like to hear from him, but should he fail to reply, his marriage will be terminated on his behalf. If no reply is received within the ensuing month, a second letter is sent, and then, a month later, a third and final letter is sent informing the husband that a divorce will be issued. Finally a divorce certificate is issued and sent.

If the husband *does* reply to any of the letters, then a reconciliation process is embarked upon, where husband and wife are invited (in some cases instructed) to attend joint meetings. If the council become convinced that the marriage has irretrievably broken down, a divorce is issued, its particular form being dependant on the particulars of the case. As will be noted in Chapters 3 and 4, these processes appear straightforward in their theoretical form, but are in reality often far more complex and time consuming. In particular, the single-minded focus on reconciling couples by some of the judges, even against the explicitly stated wishes of the women bringing the case, and even in the face of court injunctions against husbands and so forth, can have a significant impact. This is so both with regards to the time frame taken for the divorce to be issued (if it is issued at all), and with regards the experience of the process itself for the women involved.

Introducing the Women

Research Sample

The vast majority of cases brought to the Shari'a councils in this research project are related to marital disputes, and these cases are almost exclusively

initiated by women.[27] Two different sampling processes were used to identify women for interview. At the BSC, ICE and ISC, I was able to observe cases as they occurred,[28] and to approach the women involved afterwards to ask if they would be willing to be interviewed by me at a later date and in private.[29] Around three-quarters of the women approached in this way said that they would be happy to be interviewed and provided their contact details so that I could arrange a suitable time to meet them. A further one third of women, having agreed to be interviewed on the day of their meeting at the Shariʿa council, then changed their minds.[30]

Sampling methods based on all past case files[31] could have ensured a more random sample or ensured a broader range and type of cases and women (depending on the sampling technique used), but would not have allowed a direct linking of interviews and participant observation. Interviewing women whose interactions with the Shariʿa councils I had witnessed for myself was chosen as a preferred option because it afforded the opportunity to be privy to both the public performance and the hidden transcript (Scott 1990) that surrounds the Shariʿa councils. Thus it gave far greater scope for a consideration of the whole picture with regards to each woman involved, and for a critical analysis of their own self-perception, as well as enabling a more considered evaluation of how power dynamics are taken on, negotiated, and interpreted by the women themselves as they play their part in the process.

The desire to combine participant observation and interviews in this way proved to be difficult at the MAT however, where access to the interactions

27 The remaining handful of cases, dealing with financial, inheritance, business or mosque disputes appear, on the other hand, to be exclusively initiated by men and did not form part of this study.

28 I observed all cases that occurred in a specific period of time, provided the women themselves gave consent for me to be present during their meeting. Consent was withheld in two cases, and over 100 cases were observed.

29 This was done wherever possible outside of the meeting room (as in, away from the judges' observation), so as to attempt to alleviate against any pressure that the women might feel to give a particular answer, depending on their perception of the judges' desires.

30 There are a variety of reasons why this could have been the case. Despite my efforts to mitigate against any felt pressure in the context of the Shariʿa council, it is of course possible that women felt it was easier just to say "Yes" to an interview in that context, and to avoid any form of confrontation that they may have feared, and then simply ignore any contact afterwards.

31 Assuming, of course, that access to these files could have been obtained. This is not at all a certainty as access has been a key area of difficultly in this field (Bano 2004:20, Shah-Kazemi 2001:13, Zee 2016:131).

between clients and judges was problematic.[32] I was invited instead to be present in the 'waiting room' of the surgeries, and to approach women there (without observing their interaction with Shaykh Siddiqi which was felt to be a more private experience). I was also given the contact details of a few women to interview[33] and three more interviews were conducted on the basis of the snowballing technique where respondents told me of other women who might be willing to talk to me about their experiences. Several other interviews were taken with women in the course of my observations of interactions at Hijaz community events in general, but these interviews formed only a backdrop to understanding the organisation and were not included in the formal sample of women interviewed. This omission was because many women come to see Shaykh Siddiqi simply to talk about their lives and to gain advice on everyday issues rather than in the course of dispute resolution within a marriage.

Profile of the Women

A brief overview of the demographics of the women interviewed quickly demonstrates that there was no 'single type' of woman who used these councils and we must guard against stereotypes and generalities. Forty-three women were interviewed, with a broad range of ages, ethnicities, educational and employment backgrounds and immigration histories. Of the forty-three interviewed, six were first generation immigrants, whilst the majority (thirty-three) were second- or third-generation British Muslims and considered the United Kingdom to be 'home'. A further two had moved from their (Muslim majority) country of birth to another Western country in their childhood before moving to Britain later in life, and two were 'indigenous' British women who had converted to Islam. Eighteen of the women were unemployed, two were students, and twenty-three were employed in a broad range of sectors, from the highly paid, highly professional contexts of management and banking, to unskilled work such as being a dinner lady at the local school. A further point of particular interest was the diversity expressed with regards to the women's religious belief and commitment (or lack thereof). Some women indicated that Islam played a significant role in their life and formed a key identity marker, whilst

32 See Bano (2004, 2012) for a discussion of the problems associated with research requiring the permission of gatekeepers for access. Zee (2016:131 footnote 125) also documents a similar difficulty as the present study with regards to gaining access for observations at the MAT.

33 It is interesting to note that Bowen (2013b) who references only one interview with a female user of the MAT, presents the story of one of the few women to whom I was also referred. Such an overlap may suggest that there are a limited number of cases currently available for reference to the MAT, and (or) that there are a limited number of 'trusted' interlocutors whom the MAT is happy to present.

others considered themselves to be secular individuals, with the description of being 'Muslim' only used (if at all) as a cultural designation.

The figures below show the educational and ethnic background of the women interviewed, as well as giving an indication of their ages.

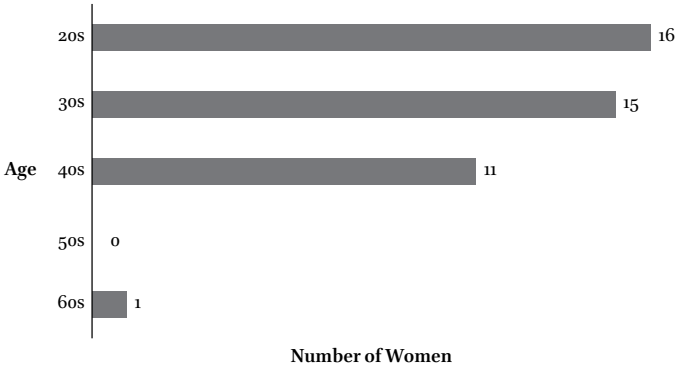

FIGURE 1 *Age of respondents*

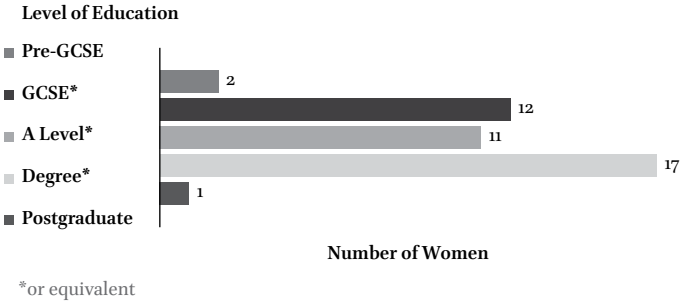

FIGURE 2 *Educational background of respondents*

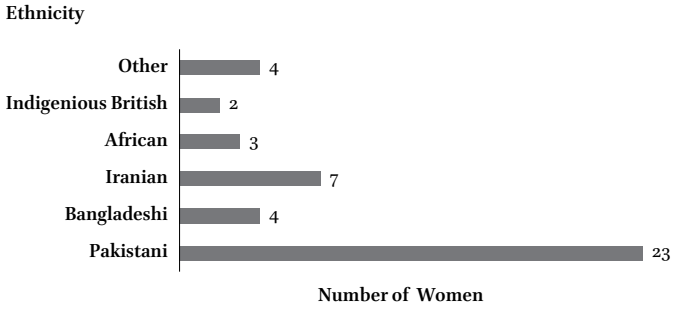

FIGURE 3 *Ethnicity of respondents*

The diversity demonstrated in this sample should therefore caution us against hasty conclusions about the type of woman who would take her disputes to a Shari'a council. This study will argue that these women are caught up in games of power over which they have limited control, and will present the use of the Shari'a councils as part of a tactic to gain greater control in a context where there are limited choices. Nevertheless, it must be made clear at the outset that this is not to imply that the women who formed part of this study were 'weak' or 'powerless' in any overarching sense. Rather I note that even strong, capable, 'independent' (relatively speaking) women were caught up in these dynamics. This is not to make a distinction between 'powerful' and 'powerless' individuals, as though power is something possessed by the women themselves, but rather to highlight the web of power in which the women navigate their lives.

Methodological Concerns

Research Methods

An ethnographic approach was chosen for this study in order to facilitate the gaining of rich, textured data in the actual workings of the Shari'a councils and the interactions that surround them. The desire was to attempt to see the councils 'as they are' as well as through the eyes of judges and clients alike, and to gain an insight into both the public and somewhat formal interaction between judges and clients, and their personal reflections on these interactions in private. This was not to privilege one input over another, as Scott (1990) notes that both public and private encounters have their own 'truth' – their own discourses of power through which terms are navigated. Rather, the desire was to better understand the forms and processes of power, and the ways in which they are negotiated, through an observation of the public and through discussions in the private. Two research methods in particular were chosen with this end in mind and formed the backbone of this study: participant observation, and in-depth, semi-structured interviews.

Fieldwork was undertaken during the months from September 2009 to July 2010 and the specific manner in which participant observation was used was largely dictated by the set up and structure of each Shari'a council. The ISC and ICE have a daily routine and premises/rooms that are set apart for the exclusive use of the council. As a result, a process of sustained observation of meetings and interactions over a period of three or four weeks (at the ISC and ICE respectively) was a productive way of gaining an understanding of the council (alongside a few further meetings and observations on particular

days). The BSC on the other hand operates largely on the basis of its monthly meeting of the panel where clients come and judges deliberate on cases, and on the Saturday clinics with Dr Saeeda and Saba, thus observation centered on these events across a period of four months. Limited participant observation at the MAT was similarly centered on particular events, including the MAT's annual general meeting in October 2009,[34] a surgery day in Nuneaton, and an evening meeting in London hosted by Shaykh Siddiqi. Two further visits were conducted outside of surgery days and involved a more informal observation of the interaction of volunteers working for the MAT as well as the conducting of interviews. Many of the events associated with the MAT are organised to work around Shaykh Siddiqi's diary, and occur on an ad hoc basis. In all cases other than the MAT, fieldwork included observations of the inner workings of the Shariʿa councils, the interactions of the judges between themselves and with staff, and the interactions of the judges with their clients.

With regards to interviews: a variety of interview styles, ranging from semi-structured interviews, to more informal conversational interviews were conducted with nineteen judges and staff of the four Shariʿa councils in this study. As time was pressing for many of the judges involved, these conversations lasted on the whole no more than twenty minutes at a time, and on some occasions for only five or so minutes in between cases or other appointments (many judges were interviewed on multiple occasions throughout fieldwork). The interviews with the women were in-depth, semi-structured interviews, ranging in length between half an hour to one and a half hours and were conducted at a time most convenient for the women involved, during the months of fieldwork. All interviews were conducted at a location of the interviewee's choice. For the women this was largely either in their homes or in a coffee shop of their choosing, for the judges, in the context of their work either at the Shariʿa council or in any other employment they might hold.

In conducting the interviews with the women, several themes directed the questions and formed the loose structure of the discussions: considerations of authority in reference to the Shariʿa councils; considerations of community dynamics; questions of identity; and discussions regarding faith and culture. The women were encouraged to narrate their own stories and take the role of

34 The day event was held on 4 October 2009 in London, and the MAT website noted that "As well as reflecting on the progress made by MAT since it began in 2007, the main themes of the event will be on domestic violence and forced marriages within the English Muslim community" (http://www.matribunal.com/annual_conference.html) [accessed 19 July 2009]. The annual meeting, if held in subsequent years, was not advertised on the website.

storyteller, but specific questions were also asked to encourage the women to analyse and to consider the events in their lives, their own decisions and decision-making processes, and their motivations, desires and beliefs. Although I had assumed that a greater proportion of time would be spent discussing authority and religion, the initial interviews quickly cemented the importance of questions considering the role of communities, and the discussions often related to particular power dynamics in the women's lives. Thus the women's responses shaped the form and content of the interviews, directing us towards certain themes and away from others.

Considering the Researcher in the Field

Although I made no formal attempt to ask either the councils or the women why they had chosen to welcome me or to allow me to interview them, I became aware that both my ethnicity and my gender worked to open the field. My ethnicity (from Armenian descent) was sufficiently obscure to mean that most of the women I met had no preconceived ideas of what box I might fit into. My status was therefore highly ambiguous and open to be interpreted however the women themselves felt most comfortable. This, combined with my own immigrant status made it difficult for me to be placed in a neat dichotomy of 'them' versus 'us', and I found that I seemed to occupy some fluid 'foreign' category that appeared to be helpful in opening the field. I was interested by many comments that indicated that my being of a different ethnicity to that of the women themselves was a great advantage in allowing the women to talk freely, particularly in South Asian communities. This was explained on the basis of individuals' concerns about gossip and interconnections between communities (which were alleviated by me being an outsider). Of course had I been of the same ethnicity, this may have opened other doors, and made possible specific conversations from which I, as an 'outsider' was excluded.[35]

My gender also proved to be a great asset in gaining access to the councils and, in particular, to the women. The fact that the majority of those who come to the councils are women, and that, in many cases, personal details about the women are discussed, would have made access as a man very much more problematic. Moreover, I assume, in the context of cultures where male–female relations are very closely demarcated and guarded, being a man would have made interviewing the women themselves all but impossible.

35 See for example Bano (2004:79, 80) and Shah-Kazemi (2001:52, 23) who note the advantages of their Pakistani, Muslim identity (although Bano (2004:80) also notes that there were interesting exceptions to this felt sense of advantage).

Finally, I had been concerned that the fact that I am not a Muslim would have served to foreclose certain conversations and make it difficult to interact deeply with the women with regards to their religious identities and their considerations of their own faith. As it was the women took pains to explain the religious aspects of their own thoughts and interactions, and effectively 'educate' me as to their experience and their beliefs. Thus the conversations proved to be much deeper and richer than I had anticipated due to the patience and graciousness of the women involved. In only a few instances it proved to be difficult to get the women to open up about the religious aspects of their inner lives as it seemed to be assumed that I would not be able to understand the concepts or the emotions involved (despite my own Christian identity).

The shaping effect of my presence in the field was of greatest concern when client meetings were taking place in the Shariʿa councils. As the desire was to have a fair evaluation of the treatment of women in the context of Shariʿa councils, a particular consideration was whether my very presence would significantly alter the behaviour of the judges. It seemed possible that my presence would either put the judges on their 'best behaviour', treating the women better than they would otherwise have treated them should I have been absent, or, alternatively, that some judges would take a harder line, wanting to establish their credentials as uncompromisingly 'Islamic' in contexts where increasing conservatism seems to be a matter of status.[36] Similarly, it was difficult to ascertain whether my presence would embolden the women, making them more assertive, or whether it would cause them to feel a need to present a particular image of a 'good' Muslim woman, perhaps in being more submissive than they would otherwise have been, thus prejudicing their behaviour. Ultimately these concerns were overcome with regards to the judges as far as possible by my persistent presence in the field and the growing acclimatisation to my presence in the various councils (apart from the MAT). Meanwhile, the interviews gave an opportunity to reflect on the actions of the women in the course of the interview with them, and to have a better gauge of the impact my presence may have had.

Ethical Considerations

Much of the discussions that occur within the context of the Shariʿa councils relate to marital disputes and to divorce, and are considered to be 'sensitive' as they concern matters that are largely relegated to the private sphere. In

36 See for example the work of Mandaville (2007a) and Turner (2007) in particular for the increasingly conservative stance taken by some organisations in the face of the felt fragmentation and proliferation of authority.

cultures where the female members of a community carry the shame or honour of a family or community, these discussions are invested with even greater importance. Previous research in the field (particularly Bano 2004:76,77) found that women were "reluctant to discuss such personal issues in a 'public forum' as epitomised by a research project". Bano goes on to discuss the difficulties of gaining the consent of respondents to be part of such research, and the negotiations that were involved in the process. She notes in particular concerns regarding anonymity and the "implications of divulging private details for themselves and their immediate families", as well as concerns regarding how the material would be used and whether the interviews "may contribute to the stereotype of Muslim women as victims of a patriarchal cultural/religious system" (Bano 2004:76, see also the developed discussion in Bano 2012:58–62).

Similar difficulties of access were experienced in the conducting of this current research with regards to the concerns of the women in taking part in such a project and just over half of the women approached for interview declined to be part of the process, with some explicitly noting that these were private affairs. For those that *did* participate however, it was interesting to note that these concerns appeared not to play a significant part, and very few questions were asked about the process of the research, about the manner in which data would be used, or even about anonymity. Nevertheless, all the women were assured that they would not be identifiable in the final study[37] and care was taken to ensure that none of the Shari'a councils knew which women specifically had been interviewed throughout the process. Also, of those that participated in the research, very few voiced concerns regarding the stereotyping of Muslim women as victims, and the majority seemed rather to be grateful for the opportunity to discuss the treatment they had received (with several women telling me: "It's important that people know what is happening behind closed doors"). Thus ethical considerations on this front appeared, in the final analysis, to be of greater import to myself than to the respondents involved who were, in most cases, very happy to discuss their experiences regardless.

A more complicated ethical dilemma was encountered in the course of observing client interviews with judges, and this again had been anticipated due to Bano's comments regarding her experiences in the field (Bano 2004:71). In some cases, judges dealing with women who were vulnerable to abuse, or were in fact in abusive relationships, made no attempt to inform the women of their options or to safeguard them against further abuse. Some of the judges from the ISC, on the contrary, stressed joint client meetings (of husband and wife

37 All the interviews with the women have been anonymised and I do not use their real names in this study.

together) even in these contexts, and insisted on attempts by the wife towards reconciliation. I did not interfere with the process of these meetings as they were occurring, but in a few instances spoke with the women myself, after their time at the ISC, referring them to the BSC should they wish to continue with the process. This option was chosen as a limited middle ground, as the BSC operates within similar frameworks of power, but (through the observations of fieldwork) proved to be the most hospitable to the concerns and struggles of the women involved (these concerns are discussed in greater detail in Chapters 3 and 4). Thus I did not attempt to talk the women out of the broad framework of their choices, or suggest alternatives outside of the framework of the Shariʿa councils, but offered an alternative choice of council where I was asked for such information, or where it felt particularly pertinent (such as when domestic violence was involved).

Limitations of Study

There were of course, and remain, important limitations to this study, and it falls short of its own ideals. Firstly, the limitations of the samples chosen. The decision to focus on the larger and more prominent Shariʿa councils that are regionally or nationally based, means that the larger grouping of Shariʿa councils which are in fact small and locally based, were omitted from this study. As no concrete ethnographic research has yet been carried out within these smaller councils, it is difficult to anticipate the significance of the omission. However, limited, largely anecdotal information suggests that a greater proportion of older, non-English speaking Muslim women use local councils, where second- and third-generation, English speaking Muslim women in Britain feel more able to consider options on a regional or national basis. If it was indeed the case that local, smaller Shariʿa councils catered for this particular demographic of women, they would be of great interest in giving an insight into the views of quite a different group of women: women whose questions and struggles regarding their identity within the British state and whose interaction with the state and with society, as well as with their own communities, would have been very different to those of the women in this study (largely women of the second- and third-generation).[38] It must be noted therefore, that whilst the decision to focus on the larger councils was both a considered and

38 Furthermore, as a significant part of the discussions around Shariʿa councils centres on the issue of women's rights and includes fears regarding the abuse of women in these contexts, fieldwork amongst women whose access to public services or the English legal system is severely limited due to their lack of knowledge of the English language, would provide a very valuable insight.

a pragmatic choice, it limited the scope of the study in being able to speak to Shari'a councils in Britain in a more comprehensive manner, and may have biased the sample of interviews towards a particular demographic of women. As a result, although the current study is the most broadly based of its kind to date (in the British context), we are still a long way off a thorough understanding of the Shari'a councils in the United Kingdom and there is a continued need for ethnographic research in this field, particularly amongst the smaller councils.

More significant weaknesses existed in the sampling method used to locate interview respondents for the MAT. Being dependent on the MAT itself for contact details and access to a few chosen women meant that the interview sample could not be relied upon to be representative or objective (as all of the interviewees were followers of Shaykh Siddiqi and staunch supporters of his work). The snowballing technique perpetuated similarly skewed results as the women involved nominated others who had also given *bay'a* to Shaykh Siddiqi. Thus all the respondents were already in a particular relationship with Shaykh Siddiqi which, to varying degrees, presupposed an understanding of him as forming some kind of authoritative role in their lives. As a result these interviews were acknowledged at the outset to be likely to corroborate the narrative of the Shari'a councils with regards to the positioning of authority in their answer to the central research questions of this study. As will be elaborated on in the ensuing chapters, however, although there were limitations with this sampling technique, the interviews themselves proved to be more illuminating than might have been thought, providing an interesting insight into a different type of authority and allowing a further consideration of the interface between theory and practice. (In any case, any analysis or quotes which are drawn from fieldwork in the MAT context have been clearly identified as a result of the methodological bias in their insights).

A second limitation concerned issues of access, although it must be noted that this did not feature as prominently as had been anticipated. The difficulties of access to these councils, and, even more so, to the lives of the women who use them, (as permission is often needed from the 'gatekeepers' of the community who in this context are the judges), has been noted by others. Bano (2004), whose own work provides the most extensive empirical data on the Shari'a councils prior to this present study, makes several references to the difficulties of access and notes that it greatly shaped her research methodology. She writes: "Over a period of time, it became obvious that there was little point in trying to uncover 'a more complete' picture if access was in effect being denied. This research stance is consistent with existing research in this area, which yields very little empirical data" (2004:64). The experience of this study was that certain types of access were easier to negotiate than others. Access to

the Shariʿa councils themselves (as in, to the judges and personnel) required time and persistence, but was largely unproblematic.[39] Access to witness the cases as they were happening proved to be a greater obstacle, and varied from institution to institution. The ICE and the BSC, for example, were relatively quick to welcome me to observe their work, whilst the ISC appeared to view the research with great caution and it took a more concerted effort to eventually be 'in the room' when client meetings were occurring. Access to witness cases as they were happening at the MAT proved problematic and was eventually abandoned as a research method. This limitation of access may have been in part out of consideration for the private nature of the interaction between Shaykh Siddiqi and his followers and the desire to protect that 'safe place' for the women involved. A further consideration may have been a degree of discomfort at having a researcher present with direct access to scrutinise the interactions of judges with their 'clients'. The level of activity at the MAT at the time of fieldwork may have been a further relevant factor. Fieldwork observations suggested that the MAT dealt with a limited number of cases and much of the interaction appeared to happen over the telephone or over the Internet. As a result, there was less scope for direct observation of their interactions with clients. Thus this lack of access reflected not only the potential problems associated with research reliant in some respects on community gatekeepers, but also the problems of ethnographic fieldwork in the less established councils with a smaller case load. As was discussed above, the various ways in which this shortcoming was addressed all had their obvious weaknesses.

Despite the limited access enjoyed in the context of the MAT, a greater limiting factor in this research proved not to be access but time – much more remains to be seen, both in terms of the many councils in which no fieldwork has been conducted, and in terms of the broader community contexts in which these councils are situated. The discussions of community dynamics in Chapters 3 and 4 in particular would have been enriched if there had been opportunity to spend extended periods of time developing friendships with the families and communities of the women who choose to use the councils. Not only would this aid our understanding of the community dynamics at play, but it would also enable a better evaluation of the accuracy of the perceptions of the women with regards to their belief that 'the community' considered the

39 Note of course that the fieldwork for this study was conducted some years after Bano's, and the (relatively) greater ease of access may have been indicative of the greater emergence of the Shariʿa councils into the general public sphere. Zee's (2016:131) more recent comments, however, suggest that this small opening may have been a short lived one and that the field may be closing again to critical research.

Shari'a councils to be authoritative (a peculiar perception, given that, as I will go on to argue, very few of the women themselves considered the councils in such a light). There is much potential here for fruitful future research.

Finally, this study is in agreement with Bano's (2004:17,18) concerns regarding the homogenising tendencies of much of the written material and discussion that makes reference to the Shari'a councils, the women who use them, and the Muslim communities of which they are part, not to mention totalising references to Islamic law, and cultural mores. Bano (2004:17) notes that previous studies "pay insufficient attention to internal contestation and change". This study, following hers, attempts to highlight the diversity and contestation that exists within these often artificially constructed groupings, although I acknowledge at the outset (as I will shortly elaborate) that this book has fallen short of its own ideals. It must be noted that this tendency to homogenise is not just a weakness of the 'Western' academic literature, but a hallmark of the thoughts and opinions of some of the judges from the Shari'a councils also, who sought to present their own brand of Islam as orthodox and "correct", whilst considering the variations of others to be "innovations". These are not simply theological articulations, but presentations of Islam and 'the' Muslim community in Britain that are imbued with political significance.

Calls for a greater recognition of Shari'a law, often conceived of in the language of group rights, are served both by an essentialist presentation of 'Islamic law' and by the presentation of Muslims in the United Kingdom as one homogeneous group, with a common desire to see such an accommodation occur. These presentations greatly obscure the reality on the ground (see the discussions in the introductory chapter to this book). Moreover, whilst headlines like the Sunday Telegraph declaration that "40pc of Muslims want Shari'a law in the UK" (Hennessey and Kite 2006)[40] appear to suggest a large consensus, they obscure the forty-one per cent, revealed in the same poll, that were opposed to such a move. The voices of this slightly larger group are in danger of getting lost in the clamour. Thus whilst there is much that is fruitful in the important debate regarding group rights versus individual rights in this context, we must be careful not to suppose, in discussing 'group rights', that the Muslim community forms a homogenous 'group' whose ideas of its own rights are consistent throughout. As the preceding discussions have shown, there are many who self-identify as Muslims and therefore belong to such a 'group' who would consider the imposition of Shari'a law to be a violation rather than a granting of their rights.

40 The headline, in February 2006, referred to an ICM survey conducted for the Sunday Telegraph which polled 500 British Muslims on a variety of issues.

Issues surrounding the tendency to homogenise and essentialise what are in reality fluid processes and diverse peoples are therefore particularly pertinent to this study, and thus a struggle throughout. Nevertheless, despite the importance of articulating and properly accounting for diversity, complexity and contestation – within the Muslim community, in understandings of Islamic law, and with regards to the Shariʿa councils themselves – it must be noted that even the best placed efforts of this study on this front have fallen short. There were ultimately compromises that were made against presenting the specificities of individual cases, contexts, people and councils (which would no doubt have enriched the nuance and depth of the study) in order to present broad themes and trends. This is particularly so in the attempt to consider four very different councils within the same study. It must be noted at the outset that the four councils considered in the following pages presented at times very different orientations. This was particularly the case with regards to their interactions with the women who approach them for help, but also to some extent with regards to their interpretation of various aspects of Islamic family law, their understanding of the appropriate positioning of Muslims living as minorities in a non Muslim majority context, and their responses to the British state. In short, a compelling argument exists that each council must be considered on its own merits. Nevertheless, and regardless of these at times stark differences, there was a significant and surprising degree of commonality with regards to the *reasonings, motivations, and experiences of Muslim women* as they made their decisions to approach the Shariʿa councils, and in their perceptions of the overarching themes of their interactions with the councils. This was so regardless of the specific council the individual woman in question had approached. As a result of this greater coherence at the level of the perceptions and considerations of Muslim women, the focus of this work, it was felt that the retaining of all four councils in this study was a worthwhile endeavour, although it is acknowledged at the outset that the complexity of the real has ultimately been sacrificed to some extent for the sake of a consideration of the broader dynamics at play.

CHAPTER 2

The Question of Authority

Thus far the broad themes and backdrop to this book have been put forward and an introduction made to the Shari'a councils and the women who formed the focus of the research. In this chapter I present the first strand of the answer of this book to the central question: "Why do Muslim women living in Britain choose to take up their disputes in the forum of a Shari'a council?" Here I am asking specifically: "Do they go to the Shari'a councils because they consider them to be authoritative, and pursue the process as part of the exercise of their religious beliefs?" The women in this study, it will be argued, did not consider the Shari'a councils to be authoritative *for themselves*. An interesting finding of fieldwork however was that the women made calculations with regards to their use of the Shari'a councils on the assumption that their communities *did* view the Shari'a councils in such a light. This somewhat subtle shift in positioning held great significance and provides the basis of a major argument of this book. A reconfigured understanding of authority, crucially detached from the women themselves, provides the beginnings of an alternative framework through which to understand the interactions at the Shari'a councils.

The Complexity of Responses

The discussions on the nature of authority in the introductory chapter brought us to a definition of authority that included the following components: the recognition of *B* as to the legitimacy of the authority in question, and the surrender of private judgement on *B*'s behalf in "content independent" obedience to the commands emanating from the said authority. In brief, *both* a sense of the legitimacy of the order *and* actual obedience (of a particular type) to the commands are requisite components of an authority relationship. Note that these component parts remain relevant regardless of the broader framework (modern or postmodern) in which they are articulated, as these frameworks impact on the manner in which such an authority is formed and its relationship to power and to freedom, rather than necessarily to its constituent parts. They will thus be retained in the following analysis, although this study will not ultimately take on the modern/liberal framework in which they were originally articulated.[1]

1 It must be noted, of course, that relationships are much more complex than this neat distinction between 'those in authority' and 'those subject to authority' suggests. I will return to

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As a result of this dual focus on legitimacy and obedience, a twin approach was taken with the interviews conducted during fieldwork to decipher whether there was indeed an authoritative relationship at play, and to better understand the basis for this authority. This approach involved questions that were geared to understanding what the women thought of the Shari'a council with which they were interacting, whether they conceived of the council as 'an authority', and if so on what basis. A second set of questions was used, regardless of whether or not the individuals interviewed spoke of the council as an authority, to gauge the extent to which there was a response of obedience to the imperatives given by the councils, and what *kind* of obedience (if any) was at work. Observation data was also geared towards these two separate issues.

This process highlighted some interesting trends. The vast majority of questions regarding the authority of the councils were given ambiguous and ambivalent answers by the women, making neat boundaries into different groupings inappropriate. With this qualification in mind, some trends emerged. A significant minority of the women in this study, when asked if they considered the Shari'a council to which they had gone to be "an authority" responded in the affirmative. In a few cases (and with a few qualifications) some of the women even agreed with the understanding of the councils as having a "right to command", which was often attributed to their superior knowledge. However, the women in this study responded to questions regarding obedience to the councils overwhelmingly in the negative (there were only a few exceptions to this rule outside of the followers of Shaykh Siddiqi). When the women were asked what they would do if the council's decision was to deny their petition for a divorce, a few answers were articulated multiple times across the interviews. A number of women said that they would be "angry" or "furious" with such a decision, and almost all said that they would fight it through various means. Many talked of asking questions of the councils, of doing some independent research on the rules of Islamic law and going back better armed to "fight their corner", and of asking for (in some cases demanding) justification for the decisions made – although these courses of action appeared to largely depend on the confidence of the woman in question. Most commonly women talked of getting a "second opinion" and many specifically articulated that should the response be unfavourable, they would take their case to another council (a tactic that has been termed "fatwa shopping" in the literature). One woman commented on her thought process as she waited for a few minutes outside the room in which the BSC meet:

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these complexities in the coming chapters, but retain the more simplistic dichotomy for the moment.

> When they called me in I was praying so immensely in my head because I thought "If they don't grant me this divorce I'm then basically" – excuse my French but – "I'm screwed." And all I thought was that "I will go to another panel – I'll go somewhere else." [...] I thought "Backup plan, backup plan, in your head, backup plan quickly. If you go in and they say 'No' what are you going to do?" And I thought "Ok, if they say 'No' [...] I'll go to my friend in London and I'll find somebody else to go to." That's what I thought.

A few women noted that should their attempts at the Shariʿa councils fail they would "just stick to the English divorce" and tell the Shariʿa council to "just leave it" (an interesting indication that the civil divorce *could* be sufficient). Meanwhile two women, who had obtained a civil divorce but were still fighting for their Islamic one at the ISC, asserted that should the ISC tarry much longer in the process they would simply abandon the process and "start saying 'I'm divorced' anyway." As one woman bluntly put it, to "lie" about the outcome (in fact, one woman said that she had already done this). One woman summed up the desperation with which many of the women discussed the various tactics through which they would try and manipulate their desired response (rather than complying with the response of the Shariʿa councils). In response to a question about what she would do if the council turned down her petition for divorce by claiming that Islam did not allow it, she answered: "Actually I wouldn't know *what* I'd do then – because they sort of are my last hope... I think then I'd resort to... pleading with his family and him." Others talked of empty threats: "I would probably go down there myself and say, you know, 'I want my divorce – otherwise I won't leave from here'", or "I would have kicked up a stink" and demanded the decision be overturned. Only a few women out of the forty-three interviewed talked of obedience to the Shariʿa councils as a recognition of their authority in line with the women's own religious beliefs.

Interestingly a number of the women responded to questioning on this front with questions of their own – asking me exactly what I meant by the Shariʿa council turning down their petition for divorce, or saying "No" to their requests. It became evident that the women were willing to obey the councils and be submissive on a broad range of issues, as long as they felt that their actions on this front would eventually lead to a divorce. Thus many women, for example, said they would be willing to obey the processes and the procedures which the council demanded (even against the women's own preferences), that they would be willing to wait for the divorce, and that they would be willing to

attend counselling meetings and joint meetings (although none expressed any intention of actually attempting reconciliation – rather simply obeying the council's instruction to attend). These smaller concessions, however, were not articulated in reference to an understanding of the councils as being authoritative, or out of respect to the councils, but rather as tactics aimed at the obtaining of the divorce. Thus it was primarily only at the point where the divorce was denied that they no longer played the part of the submissive female in these interactions.

On the whole, regardless of whether or not the women had answered initial questions about the authority of the councils in the affirmative or not, there was a marked lack of willingness to obey the decisions of the council where there were clashes with the women's ultimate objectives. Conversations on this front rather suggested that the women were willing to play a part, to submit to the processes and the direction of the council *as long as* their ultimate wishes (the wish for a divorce, for example), were granted. Failing that, the relationships and the subservience crumbled very quickly as women took on multiple other tactics to obtain their desired outcomes, regardless of the original decree of the council in question.

Whilst some women talked of the councils in broad terms as being "authorities", but failed to respond in obedience to their decrees, many others denied any such authority in the first place. One woman emphatically asserted for example "Their authority isn't anything." Another said "They are not an authority, not at all." One woman told me she did not care whether they were an authority or not as "religion is not important to me" (a key insight as she was not alone in these sentiments, raising questions about claims that position the women's use of the councils as an expression of their freedom of religion). Others still said that the route through the councils was simply "The way it's done" and not an indication of their authority, or talked of them as being an administrative or bureaucratic necessity. Thus it was common to hear women say "They don't give you a command – they're there simply to just help you with your situation", or to assert that the councils exist "just for a specific means, which is about the divorce, nothing else", elaborating that they had no broader or personal significance to the women.

Of course neither the denial of the authority of the Shari'a councils, nor the lack of an articulated commitment to obedience on behalf of the women need necessarily be understood as the complete absence of considerations of authority in the relation in question. The very presence of the women at the Shari'a council, their tenacity in fighting for an 'Islamic

divorce',[2] and, in some cases, their willingness to suffer discriminatory practices or mistreatment in the process for that given end, raised questions as to the binding nature of the relationships that kept the women there. Furthermore, a lack of obedience may simply designate that the Shari'a councils were not considered to be an *absolute* authority for the women, or that there were other priorities and concerns – deep desires – that kept them from responding in obedience. Nevertheless, these dynamics raise questions about the claims of certain Shari'a councils regarding their own authority (and the assumptions of some of the liberal debate) and suggest that there might be other, more fitting explanations to account for the thoughts and behaviours of the women.

Meanwhile, a distinctive feature of some of the interviews with followers of Shaykh Siddiqi was that the women exhibited great caution at the use of the word 'authority', but the rhetoric otherwise evoked a defined sense of the legitimacy of the hierarchy of the relationship, and demonstrated a deep commitment to obedience. Thus one woman for example was careful to explain that there was nothing dominating or demanding about her relationship, or the relationship of the other women I had observed at a particular surgery, with Shaykh Siddiqi. Nevertheless, she went on to affirm complete obedience to his commands:

> It's not that they think of him as this being high up there – no, they give him respect cos he gives them so much respect, do you understand? And with Shaykh Faiz [Shaykh Siddiqi's first name], because he loves the people around him… – do you understand what I'm saying? So they have to accept his authority. They'll – if he says "jump" and then they'll say "how high?" They won't even ask "Why are you asking that question?" Do you understand? Because they know the man and they trust him completely, 110 per cent.

This ambiguity demonstrates the complex nature of authority relationships and individual responses to their own understandings of authority, and highlights that we are not dealing with an 'all-or-nothing' concept. Rather there were often complicated interplays of various priorities and agendas, and

2 Note again that I use this term as distinct from the 'civil divorce' not as an indication of any necessary distinction between the two, but to denote the distinct categories within which these two divorces were held in the women's mind (see the discussion on nomenclature in Chapter 1 of this book).

multiple variables against which women articulated their responses to me, and navigated their behaviour and answers to the judges in their meetings with them. These intricacies form part of the following discussion and will be highlighted were relevant. Suffice to say for the moment that although this book argues that considerations of power, rather than authority in the form claimed by some of the councils, ultimately informed the choices and the actions of the women, the question "Did the women consider the Shariʿa councils to be authoritative?" cannot be answered with a simple "Yes" or "No". The complexity of responses must be continually borne in mind. Methodologically speaking, the attempt to capture this complexity meant that considerations of whether or not, and to what extent, women conceived of the Shariʿa councils as authoritative were not based on 'yes-or-no' answers to the question "Would you consider X [the council in question] to be an authority?" Rather an attempt was made to deliberate on these issues within a more holistic understanding of the women's thoughts, attitudes and behaviours, and their multiple agendas and desires.

The Public and the Hidden Transcript

A second issue which became quickly apparent, and had been anticipated in part through the work of Scott (1990) and Mir-Hosseini (2000), was the stark contrast between the behaviour and rhetoric of some of the women within the context of the Shariʿa councils (as they had their meetings with the various judges), and their behaviour and rhetoric in our private discussions.[3] Perhaps the most striking difference on this front was the dress of the women in these two separate contexts, but behaviour and language were also significantly altered in some cases. For example, whilst all but one woman veiled in the context of the Shariʿa councils, and a number wore either the traditional Pakistani or Bangladeshi dress or the black hijab and *jilbab* combination, only one woman retained the black overall ensemble and very few retained the traditional dress in the interview context. The transformations in some cases were so extreme

3 As with Scott's (1990) discussion, this is not to privilege the private over the public as a measure of truth, as both transcripts tell their own story and reveal important aspects of the workings of power. Nevertheless it is important to recognise that in understanding the thoughts and opinions of the subordinate towards the dominant, "the public transcript, where it is not positively misleading, is unlikely to tell the whole story about power relations" (1990:2).

that on a number of occasions I did not recognise the women in question on seeing them the second time outside of the Shari'a council setting. In one case (not the only case of its kind) as I attempted to find a young woman in a busy central London location where we had agreed to meet, she said to me on the telephone as I was trying to find her: "I don't think you will recognise me – I've had a hair cut." When we finally managed to connect I realised that she had meant a lot more than that. In the Shari'a council in which I had met her, she had been dressed in traditional Bangladeshi dress, veiled. For our interview she wore extremely high heels, super-skinny jeans and a tight fitting, low cut top, with her long, jet-black hair loose over her shoulders. In a few instances I asked the women about their choice of dress in the councils. Some told me that they had dressed in a conservative manner out of respect to the environment (this was so when the Shari'a council was held within or attached to a mosque), with one woman stressing that this must *not* be interpreted to mean respect to the council itself. Others told me that they had assumed that they had to wear the veil, and donned it much like a uniform – with one woman commenting that when she had seen me without one, she had thought to herself: "Shame, I shouldn't have worn one." Although none of the women discussed this explicitly, clearly in some (not all) cases the choice of dress had a great deal to do with the public performance of being a 'pious' Muslim woman. Thus despite the sentiment expressed by one woman (who had herself shown a dramatic transformation in her appearance in the two settings) conveying that she did not approve of those who wore the veil "hypocritically […] to pretend to be something that they are not", this idea of wearing a particular costume to exhibit a certain persona was evident in the considerations of the women.[4]

4 See Shehada (2005:90–91, 93) for a discussion of similar themes in the context of the Gaza City Shari'a Court from the perspective of the judges in question, and her observation of their responses to the women in the court. She notes: "The *qudah* have their own worldviews and prejudices, especially in issues related to gender. Women wearing make-up, even if dressed in *jilbab* and headscarf, do not get as much respect and attention as do other conservative women". Shehada goes on to comment that the "gender conduct" of the women determines how they are perceived by the *qudah* (2005:93). Note that Shehada's observation in the Gaza Shari'a court raises an interesting point of difference in the present context. Whilst the women observed in this study appeared to pursue tactics that involved the performance and presentation of piety, it was not clear to what extent this presentation (particularly with regards to dress) had an impact on the judges. In some contexts, the judges appeared to want to deal fairly with the case regardless of the appearance of the woman, in others, it was apparent that the judges viewed any such presentation with skepticism in any case. Thus these presentations had an ambiguous outcome, although I highlight some of the responses of the judges shortly.

Less obvious but similar transformations occurred in behaviour and language in some cases. The overriding display at the Shari'a councils was one of deference and submission (for example: speaking to the judges softly and with respect, often with downcast eyes; not challenging the judges; appearing modest in dress and in action; and attempting to co-operate with any questions). A few women attributed this to nerves or to being "intimidated" by the judges in the room. Others however talked more consciously of their submissive behaviour as the presentation of piety – the attempt to appear to be a 'good' Muslim woman – in the hope that this would help their case. One woman in the course of our interview told me somewhat sheepishly that she realised that she had behaved much more submissively in the context of the ICE than her language, thoughts and attitudes conveyed in the interview. She talked about how she had just consented to everything that was being suggested in that context:

> Yes, even when he said to me "Go to counselling, give him [her husband] another chance" I couldn't say to him "No I don't want to, I don't want to at all." I just said "OK, give it [the business card of a counsellor] to me"[5] [she laughs at herself at this point]. I didn't want to argue with him, and I didn't want him to think that I am a bad person or something.

Again the complexity of responses was evident as the woman went on to muse on the incongruence of her own responses (she had earlier said how she did not think well of or trust religious people, and that religion was not important to her, and yet she had still desired to be well thought of, which had contributed in part to her attempt to behave submissively).

In other cases the overtly submissive posture was laid aside but women constructed their discourses in the Shari'a councils in line with what were perceived to be acceptable themes and practice (themes that did not form a key part of their considerations outside of the setting of the Shari'a councils). Salma, for example, a Pakistani woman in her early thirties, commenting on her thought processes as she had tried to free herself from her marriage (her husband refused to grant her a divorce), noted:

> The only way around it I thought was: "Well, according to Islamic law, if I'm still his wife, then he should be paying me maintenance as well – as his wife. And I know that according to Islamic law if he doesn't do that

5 Clients at the ICE are often offered the business card of a recommended counsellor to help them with their personal and marital difficulties.

> those are grounds on which I can get my divorce." So that's why I went to the Shari'a council and I said "Look, I've sorted out the children's maintenance, I've sorted out the problems with the house [both of these through the English courts]. It's just me now – where I stand. So can you help and get him to either pay me maintenance or to set me free?" [Knowing that her husband would refuse maintenance payments].

Note that in the context of the interview after her meeting with the ISC, the issue of maintenance was largely absent from Salma's articulations of why she had wanted a divorce. Attentions were rather placed on the breakdown of relationship and the aggressive behaviour of her husband – evidently issues which she felt would be less acceptable to the judges at the council.[6] This tactic was very much in line with the findings of Mir-Hosseini (2000), who writes in her study of the Iranian case of women using "court-favoured reasons" in presenting their cases to the judges. She writes: "Women attempt to tailor their grievances to those acceptable to the court, an exercise known in Persian as producing a 'court-favoured reason'"[7] (2000:65), and argues that it would be "misleading to make any deductions about the cause and nature of marital conflicts" on the basis of these reasons (2000:44) (in short, on the basis of the "public transcript" (Scott 1990)). She goes on to note: "Those who use the courts… might not adhere to the Shari'a model of family relations, but they certainly fight their marital battles armed with its discourse" (Mir-Hosseini 2000:200).[8]

A further, related tactic of the women was more akin to Scott's (1990) discussions regarding the ways in which the dominant discourse can be

6 See Shehada (2005:169–184) for a broadly parallel trend in the Gaza City Shari'a Court, where women used complaints regarding maintenance as a means through which to achieve a variety of distinct objectives. She writes: "Women claim *nafaqa* when they intend to divorce, when they want to live in a separate house, when they claim their sexual rights or when they want to take revenge on an unfaithful husband. Even after divorce, they may use *nafaqa* as a strategy to return to the marital house" (2005:195).

7 This use and manipulation of officially sanctioned reasoning is hindered in the British context due to a lack of clarity regarding the exact rules that the Shari'a councils are implementing. As a result, women who attempted to use these sorts of tactics did so only with the broadest of references to Islamic law (such as the question of maintenance or desertion), and were thus not able to negotiate their desired outcomes as deftly as some of the women in Mir-Hosseini's (2000) study.

8 See also the work of Hirsch (1998) regarding "discourses of disputing" in Islamic courts in Kenya. Hirsch considers the discursive field in which marital disputes take place and writes of "each discourse as a frame of reference that structures the expression of conflict" (1998:83).

manipulated by subservient classes, through calling on the dominant to play their prescribed roles. He writes:

> Any ruling group, in the course of justifying the principles of social inequality on which it bases its claim to power, makes itself vulnerable to a particular line of criticism. Inasmuch as these principles of inequality unavoidably claim that the ruling stratum performs some valuable social function, its members open themselves to attack for the failure to perform these functions honourably or adequately. (1990:103)

The judges of the Shari'a councils construct their authority in part on their knowledge of, and 'just' administration of, Islamic law. Furthermore, a key part of the public rhetoric of the Shari'a councils has been focused on the idea of safeguarding the rights of Muslim women. As a result many of the women in this study used the space of their meetings with the Shari'a councils to entreat the judges to live up to these very claims. Requests for the granting of the divorce were thus regularly put in terms that drew on the judges' self-professed roles as dispensers of Islamic justice and protectors of Muslim women's rights. Many of the women for example, urged the judges to grant a divorce "according to Islam". Several others couched their narratives in ways that presented the women as pious and wanting to live according to the dictates of Islam, whilst simultaneously presenting their husbands as having largely abandoned the practice of the faith. This was so even where, in the course of our interviews, the women admitted that they were not 'practicing' Muslims – (their own designation) – for example even where they did not pray or fast. Similarly some of the women managed to negotiate certain responses from the judges by the use of questions which were asked with an air of trusting dependence on the judges to live up to their stated role. Thus women often asked their questions with prefaces such as "But doesn't Islamic law say?"... or "According to Islamic law shouldn't I have the option of...?" and so on. (This was mostly the case in the ISC, where the women seemed to feel a greater need to use particular tactics to have their rights upheld.)

That these tactics were not without effect is demonstrated by the fact that a number of judges at the ISC would seem to suggest in these meetings that the matter was out of their hands. One judge in particular, for example, on a number of occasions told individual women that he would do his best to present their case to the panel of the ISC, but that the panel had the power in terms of making a decision. As I imagined would be the case and later corroborated in the interviews with the women involved, this individual's presentation of himself in these contexts left a number of women with the impression that he

himself was not a member of the panel, but only a kindly mediator, who would work on their behalf.

Despite this obvious discomfort on behalf of a few of the judges, it must be noted that these sorts of encounters were rarely wholly successful as far as the women's objectives were concerned, with the judges giving minimal ground to save face, but ultimately not giving the woman her full due. In one such context, Fazia, a Pakistani woman in her late twenties, received a questionable ruling from the judges of the ISC in favour of her husband. Her husband had performed a *talaq* at the ISC but was later granted a *ruju'* even though he had missed the three-month window where he could legally pronounce it. This technicality meant that Fazia was told that if she wanted to pursue the divorce the financial obligations would be hers, and she would have to forgo her *mahr* (in fact she was under great pressure from her husband to do exactly that). Fazia persisted in her attempts to hold the judges to account on the basic time frames put forward by 'Islamic law', and finally succeeded in convincing them that the judgement was in error. The victory was a shallow one however, because when the judgement was overturned, and an admission given that the attempted *ruju'* was not valid because it had not been conducted in time, Fazia was told that the council could not ask her husband to pay her *mahr*. Thus the financial outcome was maintained regardless.[9]

Of course these discussions on the public performance of the women should not be taken to mean that all of the women behaved entirely within prescribed boundaries and that they did so all of the time. The circumstances of one case witnessed at the ICE resulted in an angry and emotional outburst by a woman whom I shall call Shereen. This was directed both towards her husband who was present, and, less directly, at the judge dealing with the case, who she appeared to view as acting against her welfare. This (very rare) "rupture" of the public performance (see Scott 1990:202) was a reminder of the deep emotions and difficult life circumstances that draw the women to the councils in the first place. As such, it helps to return the urgency of some of the concerns regarding the rights of vulnerable women in the context of the Shari'a councils. Its

9 Note that whilst I was able to observe part of the interaction between Fazia and one of the judges of the ISC, and able to witness the deliberation of the original judgement to allow the *ruju',* the final outcome and reasoning of the case is based on my interview with Fazia. See Bowen (2013b:142–144) for a discussion of the complexity and pragmatism that surrounds decisions with regards to the *mahr* in the ISC setting. Removing the need for husbands to fulfill their financial obligations can be used as a strategy to grant the divorce to the wife whilst attempting to forestall complaints and protests from the husband. I comment further on these dynamics in Chapter 4.

existence however, demonstrates that although rare, there *were* occurrences of more or less open and direct defiance against the norms and processes of the Shari'a councils amidst the otherwise more usual conformity to expected normative behaviours. These occurrences appeared to be a matter of emotional outburst, rather than any calculated tactic.[10]

Furthermore, even where the public performance is broadly within the boundaries of 'submissive' behaviour, Scott (1990:205,206) is particularly insightful in noting that the symbolic relevance of words and actions are not always entirely clear and, outside of extreme cases, can be open to a large measure of "interpretative freedom". Thus whilst muted responses and downcast eyes could be read as submissive behaviour, these actions also at times simultaneously exhibited a veiled opposition to the processes of the Shari'a councils – with the women being less co-operative than they might otherwise have been. In one case, for example, Nasreen, a Pakistani woman in her thirties expressed that she had been very angry at what she perceived to be the misogynistic views of the judges at the ISC. As a result she did not even "bother" to defend herself in her meeting there as she felt her efforts would be wasted. She noted:

> The thing is at the end of the day our English divorce is done, and they're [the ISC] just trying to prolong it [the Islamic marriage] and do whatever – just try and interrogate more the woman than anything else, which is really... a shambles. I mean the question... you know what I probably didn't even tell him [the judge in question] half the stuff, because I was probably that pissed off that day, you know, I didn't want to tell him. I think he said "Did you try and make amends?" I did. I did try and make amends but I didn't bother to tell him because you know, what am I supposed to say? [...] Because they're not like solicitors – they're not like as if they can understand you – they just talk in monosyllabic way from a man's point of view.[11]

10 Shereen's case is dealt with in greater detail in Chapter 4.

11 Note that some of the literature in the field assumes that Muslim women seek out Shari'a councils in part because they find the English civil court system "alien" (Griffith-Jones 2013:195). Shah (2013:63) writes for example that "lawyers and official courts... may... not necessarily be regarded by the clients as capable of understanding or responding to their problems". While these statements may be true in specific cases, caution needs to be applied in adopting these presumed motivations wholesale, as the quote from Nasreen demonstrates. Fournier (2014) provides a more nuanced view in considering how both the civil courts and the so-called 'religious' framework of the Shari'a councils are

Thus her muted responses had an ambiguous symbolic value and could have been interpreted by the judges either as submission or as a subtly communicated displeasure. I do not seek to present a conclusive analysis of the symbolic value of the actions of the women in the Shari'a councils. Rather, it is noted that the public performances of submission (which might be read by some to be indicative of respect towards authorities) can have a range of meanings attached to them, and must not be taken at face value. The discussions of the women in the more private context of interviews (the "hidden transcript") intimates that these interactions need rather be seen as the complicated interplay of power relations at work, and the particular tactics adopted by women towards specific ends.

Religion and the Reasoned Consideration of Legitimacy

A third point of interest in considering questions of authority is in noting that the particular claims of the Shari'a councils invoke the reasoned and freely given consent of the women to the processes of the councils. This consent is said to be given on the basis that the women understand the processes of the Shari'a councils to be part of a legitimate normative framework in line with their religious beliefs.

I have already noted that a surprising sentiment articulated by a few of the women in this study was that religion was not an important part of their lives (some, particularly those from an Iranian background, expressing strong negative associations and impressions of religion in general).[12] Whilst all of the women in this study identified themselves as Muslims, a few of the women went on to distance themselves from Islam and to assert that it was not an important factor in their lives. Thus one woman simply asserted "Religion is not important for me", whilst another told me that she believed in God, but did not believe in Islam and told me that she hated Islamic religious authorities. When

navigated by Muslim women in pragmatic fashion, and how both systems present disputants with costs and benefits.

12 The specificities of the ethnic and cultural background of the women and its effect on their interactions with the Shari'a councils remains a fruitful point for further research in the future, and is beyond the scope of this study. The attempt of this study to draw on the points of common ground that pervaded the interviews however, should not be seen as an indication that the specificities of the women's ethnic and socio-economic background had no impact on their interactions with the Shari'a councils.

I asked her why she would still choose to call herself a Muslim she replied: "Uhhh… for example, my name is Rana, I don't like my name. I like my name to be Tanya. But I have – when you ask me 'What is your name?' – I have to say 'My name is Rana.'" She went on to elaborate that she had been born into a Muslim family and that there was no option of changing that fact (thus equating her religious identity simply with a fact of birth, rather than any choice on her part). Another woman in her forties made a similar comment when she told me that she would call herself a Muslim but that she was not "really sure" what that meant other than she was born into a Muslim family. She too noted that she vaguely believed in God, but that she did not follow Islam. One Muslim convert did not attempt to distance herself definitively from Islam as a religion but told me that it had ceased to have a meaningful role in her life as she had become "very weak", going on to elaborate that she was now in a sexual relationship with a man who was not her husband, and that whilst once she had been very devout, she no longer included Islamic rules in her considerations.

Others, when asked about their religious identity and the importance of Islam in their lives, gave ambivalent responses, much as with the answers given to questions regarding the authority of the Shari'a councils. Whilst the majority of women in this study said that religion was an important part of their lives, the majority of this grouping went on to note (by their own admission) that they were not "practicing" Muslims. These conversations included a spectrum of examples: the lack of prayer, fasting, reading the Qur'an and keeping ceremonial rules and so forth, the lack of veiling, and the breaking of Islamic sexual rules and boundaries. This study does not purport to make judgements regarding the validity or otherwise of the women's self-designation as Muslims, or to make distinctions between 'good' and 'bad' Muslims (as some of the interviewees themselves did – mainly in putting themselves in the latter camp). However, the lack of adherence to basic Islamic teaching (as seen by the women themselves) in many of the women's lives raises important questions regarding the decision to adhere to the 'rules' regarding divorce.[13] Thus this book is in agreement with Mir-Hosseini's (2000) conclusions when she writes (in her study of the Moroccan and Iranian case) that "Muslims in their adherence to Islamic legal precepts are motivated by the exigencies of *social reality rather than religious ideals*" (italics mine). She elaborates:

13 This is not to privilege the interpretations of Muslims who claim that an Islamic divorce has to be obtained through the Shari'a councils, but rather simply to note that the women consider these interpretations to comprise the 'rules' of Islam.

> The selectivity that both men and women exercise in conforming to the Shari'a suggest that the main motivation stems not from a desire to conform to religious precepts but rather from a need to circumvent the law in order to achieve a different purpose. To individuals, certainly to those who use the court, the sacred in the Shari'a is irrelevant; and, if it matters, it is subordinated to the conflicting interests that marriage creates. This places the Shari'a on the same level as other systems of law and challenges prevalent assumptions regarding popular belief in its sanctity. (2000:198,199)

Only a small handful of women in this study intimated that Islam was a key part of their lives, and that they were practicing Muslims (and the majority of this grouping were Shaykh Siddiqi's followers). Thus the findings of this study suggest a radically different narrative for the explanation of women's use of the Shari'a councils than those which present the women as devout Muslims who seek to exercise their freedom of religion in this specific way.[14] Rather the women in this study appeared to encompass a very broad spectrum of orientations with regards to religious belief and fervour, and occupied for the most part a hazy middle ground of individuals who consider themselves to be either not 'practicing', or only loosely 'practicing' Muslims.

A second striking feature of the interviews – with the claim to authority, and the political theory tradition of its linkage with reasoned consent to a normative framework in mind – was that they exposed that the majority of women interviewed had a very limited knowledge of the council or individual with which they were interacting. Furthermore, much of the 'knowledge' that the women did have was incorrect – whether regarding information about the

14 See Mahmood and Sprenger (2011) and Talwar (2012) for examples of interviews given by judges from the ISC that suggest that the use of the ISC by the Muslim community is based on their religious convictions, and is a matter of free choice. Amongst the scholarly literature, Menski (2008), Shah (2008) and others suggest a similar narrative in considering the broader issues of legal pluralism in Britain. Menski for example, writes that "Nothing appears to have been done so far to include the cultural and religious concerns of Muslim wives within the ambit of English law" (2008:59), and appears, in his analysis, to take for granted the motivations of this grouping (and those of Muslims and South Asians more generally) as being based on culture, religion, and personal and communal values, as opposed to struggles that are informed by a particular framework of power. (See also Shah and Menski eds (2006) – in particular the chapters by Ballard, Keshavjee, Menski, Shah and Menski, and Rohe – for a similar framing of the issues). Of course we need not argue for one motivation or another as an absolute frame of reference, but considerations of power are pronouncedly underdeveloped in the discussions in the current literature.

particular council to which they had gone with their issue, or the interaction of Islamic laws on marriage and divorce with the civil laws on these issues, or assumptions regarding the lack of alternatives with regard to other Shari'a councils to which they might have gone. This of course does not mean that the councils were not considered authoritative, but hints that whatever the women's thoughts on the Shari'a councils, they are not built on reasoned considerations of legitimacy. One Iranian woman for example told me that she had thought the ICE was "*The* authority on Islam in England" and went on to say: "That's what I assumed, being '*The* Islamic Centre'." When I further questioned her as to whether or not she had assumed that "just by their name" (to make certain I had understood her), she nodded: "Yeah. It's interesting cos I didn't know there were any other bodies so I always presumed they were *the* authority on [Islam] – does that make sense? But again, you know, I've just assumed that by their name." Another woman noted that she had assumed that the BSC were knowledgeable on issues related to Islamic law on the basis of their titles – using *Dr* Saeeda as a particular example (an ironic one, because Dr Saeeda is a medical doctor, and not a PhD in Islamic studies as assumed by the woman interviewed).

Most women interviewed had done little or no research on the organisations that they had chosen to go to with their problem, and the interview process highlighted the very haphazard way in which many of them came to their conclusions regarding the authority of the councils (or lack thereof). It transpired that the overriding factor in the women's thinking was the perceived fame or recognition of the Shari'a council or individuals in question. Many women referred to the reputation of a particular council, the fact that it was "well known", "respected" or "recognised" by the Muslim community (in the case of the ISC and the BSC) or by the Iranian government (as in the case of the ICE), as a key factor of its authority. (This is a pivotal point and I return to it in greater detail shortly.) Furthermore, much was built on this recognition by way of assumptions regarding particular skill, expertise, or knowledge, which became a second key consideration in the women's thinking regarding authority, although as has been noted, very few of the women had done any research to verify the knowledge of the council or to understand its scope or limits. One woman for example, said of the members of the ISC: "I just think they're in Regents Park so I figure they must be qualified. They're on the Islam Channel [satellite television programme] as well… that must mean that they have some qualifications?… What do you think?"[15]

15 Shaykh Siddiqi's followers were an exception to these broad trends. Although many of them had very limited knowledge about the processes of their divorce and the rules by

As a result of this lack of information and misinformation, conversations about the authority of various councils (or lack thereof) were often stilted and faltering as many of the women found it difficult to form an opinion on the issue. This was a potential sign that the concept of 'authority' was not a key component of decisions to use the councils. There was little evidence of a reasoned consideration, on behalf of the women, of the rightness and the legitimacy of the order (as was expanded on in the introductory chapter), giving the councils a right to command, and the woman in question a duty to obey.

Only one woman, a Pakistani woman in her late twenties called Aalia, proved to be an exception to this view as she spoke in terms of a reasoned consideration of the rightness and legitimacy of the normative framework in which the Shari'a councils exist, and of her reasoned consent to their authority. (She included in this both the surrender of her own private judgement, and her commitment to obey the council's decision.)[16] Having acknowledged that if she did not like the judgement of the council, she could have gone elsewhere for a second opinion, she noted:

> I could have easily gone to another scholar, and got something – a completely different decision. I could have kept on going to scholars until I got what I wanted to hear, which completely defeats the purpose. Because if I really want to do this, and I want to hear what I want to hear, there's no point in me seeking the knowledge. I might as well just go and do it anyway.

As a result of her decision to be bound by the judgement of the council, she is the only woman to talk at any length about the decision-making process involved in choosing the particular judge to which to take her problem, and about the complex negotiations that formed part of her "reasoned elaboration" of the legitimacy of the order. She talks primarily of the importance of knowledge, but it is highly instructive to hear the nuances of her considerations as she settled on one judge from the ISC:

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which it would be adjudicated, many of them had a lot of information about Shaykh Siddiqi himself and based their trust in the system on their trust in him.

16 Shaykh Siddiqi's followers also presented an exceptional view here in articulating a complete obedience to his commands, although they were very reticent to classify their actions in terms of unequivocal obedience. Their responses on this front are discussed in more detail shortly.

> And I think this particular shaykh is known for his – I actually don't think he's known for his lenient views – I think he's quite strict. So at least I can turn around and say to somebody "Oh actually Shaykh […] said this was alright." – They can't say to me "Oh yeah, but he's known for his lenient views. He's known for his" – you know – "he doesn't quite understand the culture." He's from the same culture, he's from the same community, he's from the same generation. So for me it was such an agonising decision – it was so agonising for myself because people were telling me "Go and speak to this shaykh – he's a bit more lenient, understanding, right?" You know? You think about this, you think about who you're going to speak to – you've only got one chance. If you're going to take the opinion that you're only going to take an opinion from *one* person, then think about it wisely.

Even in Aalia's case however, the authority in question must not be overstated, as she herself noted that if the decision did not "feel right" (based on her gut instinct), or if she felt that the shaykh was making a judgement based on cultural prejudices, or that he had applied a generalisation to her case without looking at the specifics of her situation, she would seek a second opinion. Absolute authorities would appear not to exist in practice, even amongst those who hold on to them in theory.

The Centrality of Knowledge

In the cases where the councils *were* talked of as an authority (however limited this was, and regardless of whether there was any intent of obedience attached), the women interviewed based this authority on assumptions regarding the knowledge of the organisation or individual in question. These assumptions were based primarily on the fame of the council and its recognition within the women's communities. Nuances emerged however between councils as to what this knowledge consisted of.

Those who spoke regarding the ISC and the BSC spoke primarily of knowledge of Islam, of the Qur'an and of the *sunna*. It was this knowledge that was felt to give the judges their privileged position, although this did not extend to an ideal type authority as elaborated in the introductory chapter. Rather, many of the women felt that it was the Qur'an and the *sunna* (representative of Allah and Muhammad), that had the "right to command" with the correlative duty on their part to obey, and saw the judges as playing a guiding role to enable the women to better engage with the text. Thus there was no "content

independent" notion attached to the understanding of the decrees of the judges, which were in fact considered to be held in check by the text and to have no authority of their own. A few women mentioned explicitly that they were not looking for the judges "opinions" but for the actual judgement of the text, and the women were not comfortable with the concept of the judges themselves having a right to command and did not view themselves as having a duty to obey.

Matters were complicated however, by the women's confidence regarding their own knowledge (or lack thereof), and there was, as a result, a fair amount of flexibility with regards to the surrender of private judgement. One woman told me that she considered the BSC to be an authority because it was personally important for her to live by her religion, and to "abide by the rules" (she saw the BSC as a panel of scholars who helped towards that end). However, she said that she felt very confident in her understanding of her rights with regards to her case and the Islamic rulings that should be applied. Thus if the council made an alternative judgement she would not be persuaded by it, but would follow through on her own judgement. When I asked her what it looked like for the council to be 'an authority' in that case, she answered:

> If for example they turned me away, I would respect their wishes but come back and presented my case again and have them look at it properly, because I would have thought maybe they did not see the case properly or they need more information for them to make their decisions. So even though I would have been upset and angry, I would have come back and presented my case slightly differently with more information if they needed. But if they hadn't awarded me the certificate I wouldn't have gone back and said: "I'm not gonna go and bother then. I know I've read a bit and I'm divorced." I wouldn't just sit back and say: "Oh forget it. I don't believe in them anymore."

At the other end of the spectrum many women expressed that they did not feel they had the requisite knowledge to challenge the judgements of the council, and it was only where those judgements conflicted with deep desires (rather than any form of reasoned judgement) in the women that they spoke out. I asked one woman if she would obey the judgement from the ISC or whether, at the end of the day, she would think the issue through for herself if she did not like what they had said. She replied:

> Because I don't have a lot of knowledge about my religion, that's why I wouldn't actually do that [think it through for herself]. I would have to

> ask them [the ISC] – but obviously it depends on what they say. If it's something very strong which I think is, is *wrong*, then I'd probably get more – like a second or third opinion or something, or go to my family about it – get them involved.

Those who talked of the knowledge of the ICE did so in very different terms. It was not primarily knowledge of Islam or religion, or of the Qur'an or *sunna* that was discussed, but knowledge of the Iranian legal system (although a number of women showed confusion at times as to the boundaries between what was 'Iranian law' and what was 'Islamic law'). The women seemed to view the ICE as a semi-legal authority, rather than primarily a religious one, and associated it with the administrative bureaucracy of the Iranian state.[17] This very different conception of knowledge led to a very different understanding of the type of relationship at hand. The women appeared to feel that there was no right to command or duty to obey at any level, whether theoretically or in practice, but rather a procedural reality – a de facto power – that they needed to negotiate in order to obtain their desired outcome. The women I encountered were not engaging with the process for the sake of getting an Islamic divorce on the basis of their conscience. Rather they were, in the majority of cases, dealing with the fact that the Iranian government would not acknowledge their civil divorces, and Iranian law left them vulnerable to potential power-plays from their husbands should they wish to travel in Iran without a recognised divorce.[18]

Followers of Shaykh Siddiqi presented a third variation in their unpacking of the concept of 'knowledge'. Firstly there was a focus on knowledge of the Qur'an and *sunna* that was distinct to the understanding of the women whose interaction was with the ISC or BSC. In the latter case, the women considered the authority of the councils to be limited by the Qur'an and *sunna* and had a

17 Note that this perception was not necessarily an inaccurate one. One of the women interviewed, for example, had first approached the Iranian Embassy to enquire about her divorce, and had been directed to the ICE to administer the divorce and obtain the appropriate paperwork. Thus although divorces issued by the ICE are not recognised by Iranian law, at least in this instance the Iranian Embassy seemed to issue its legal divorce on the basis of the paperwork supplied by the ICE.

18 As previously noted, Iranian law requires married women to have the written permission of their husbands in order to exit Iran. Note that the specific issues which surrounded the women who approached the ICE: their concerns about legal jurisdictions outside of the British state as well as their unique experiences and opinions on religion, highlight the importance of ethnicity and national histories in shaping the thoughts and actions of those involved.

greater awareness of the interpretative role played by members of the councils. Followers of Shaykh Siddiqi however, appeared to see no distinction between his interpretation and the core itself, and his knowledge of Islam was considered to be, for all intents and purposes, absolute. One woman for example told me that she reflected on Shaykh Siddiqi's advice and thought to herself "I have two choices here, I either follow the devil's path or God's path, so let me turn and follow God's. So black and white, yeah. Two options" – thus demonstrating the absolute correlation perceived in Shaykh Siddiqi's advice, and "God's path".

Further to this, a large component of Shaykh Siddiqi's authority was wrapped up in what the women perceived to be a supernatural or mystical knowledge – a "special knowledge" as many of them phrased it. Thus one young woman from a Pakistani background said to me:

> I believe that [Shaykh Siddiqi] possesses certain qualities that normal people don't have. Like he can see the future, he can perceive what's right and what's wrong, what's – I personally believe that he knows what your problems are but out of humbleness and humility he himself asks you "Well, what's wrong?" Well he doesn't ask you "What's wrong?" – He waits for you to open up – brief the subject. He doesn't want to – he doesn't invade your privacy although he knows everything that's going on. It's just out of humility that he asks you.

This perception of his 'special' knowledge was further taken to mean that Shaykh Siddiqi knew what was best for the women in any circumstance and lent weight to any course of action he suggested. One Muslim convert noted:

> I do trust him that much, I do, do believe that he makes that much sense and sometimes, even if it doesn't make sense, I probably wouldn't question it because I think to myself: "Yeah, he knows something that I don't, it's best to just do it." And then it becomes clearer later on and you're like: "Ah! That's the reason why! That's the reason why."

Meanwhile another woman noted: "Obviously because like, spiritually he's connected and he's like a spiritual leader for us, so I thought: 'He knows best what's best for me as well.'"

Shaykh Siddiqi's role in the lives of some of his followers presents the idealised type of authority relationship envisaged by the theoretical literature discussed in the introductory chapter. A number of women expressed the sentiment that they would follow Shaykh Siddiqi's guidance (their preferred term) to the best of their ability, even if it was costly emotionally or otherwise, and

even if they did not understand the reasoning behind the directive. The reason given for this was his superior and supernatural knowledge, which was correlated to feeling that Shaykh Siddiqi knew best what was best for the individual involved. Despite this commitment to obedience however, there appeared to be a discomfort with the language of command and obey, and the women were wary of the negative connotations of the word 'authority' (despite neutrally worded questions in the interviews).

Despite this hesitance over terminology, and whether or not the women felt that Shaykh Siddiqi had a *right* to command them, and they a duty to obey, the reality of the relationship appeared to be one of content independent obedience that often involved the surrender of private judgement. Thus none of the women interviewed could think of a time when they had not obeyed his directives (they were asked if such an occasion had ever arisen), despite taking great pains to tell me that they were free to do so should they wish. One woman was representative of such discussions when she said: "Just last week – I can't remember now what it was about… no, just can't remember what the issue was, but I remember saying: 'Well, I don't actually agree with you on such and such an issue.'" This was a recurring trend and none of the women were able to remember what such disagreements were about, although all were keen to say that they had them, and were free to have them. Thus these discussions felt very much for my benefit – to stress the point that questions are allowed and to ward off any criticism of 'brainwashing' within the community.[19] It must be noted that this concern with the negative connotations of authority was unique to those who had engaged with the MAT through Shaykh Siddiqi. It is beyond the scope of this study to consider the particular relationship of Shaykh Siddiqi and his followers. I rather note that those who engaged with the MAT process specifically through their relationship with Shaykh Siddiqi were an extremely anomalous case, and that the interactions were dictated by their particular relationship to him, rather than their interactions with the MAT specifically. Due to the limitations of access, it is unclear at this point the extent to which the appeal of the MAT is focussed on those with whom Shaykh Siddiqi has some particular connection,[20] or whether it is used by the Muslim community more broadly. The observation and understanding of the MAT

19 One young woman who worked as a volunteer on Shaykh Siddiqi's various projects, told me that her family were concerned about her and believed her to have been "brainwashed" (an accusation she was very angry about).

20 Note that Wynne-Jones (2011) reports Shaykh Siddiqi's claim that fifteen per cent of the caseload of the MAT in 2011 was made up of non-Muslims, but no attempt has been made to verify this.

outside of its link to Shaykh Siddiqi's personal charismatic authority remain an area for further study.

It is evident then, that although "knowledge" was cited by the majority of women in their discussion of the basis of the authority of whatever organisation they were in contact with, the envisaged content of this knowledge varied greatly depending on the organisation in question, and significantly altered the type of authority with which they felt they were dealing. Thus we see in the ISC/BSC a limited authority of sorts for a few of the women interviewed, in the ICE an administrative body with individual members conceived of being in a *position* of authority (rather than being *an authority*), and in Shaykh Siddiqi's case, an ideal type in terms of the theoretical construction of authority.

Authority Reconsidered

As has been noted, the narrative of some Shari'a councils in Britain is not only that they are authorities, but that those who come to them do so on the basis of a recognition of this authority. These claims are of course highly subjective ones. The theoretical literature contends that authority becomes a reality not in the claims that are made by those who claim to be authorities, but in the recognition of those who submit (in varying ways and to varying degrees) to this authority, (although the claims of the councils themselves can tell us a great deal and often form the discourses of power that construct the very authority in question). If we agree with this insight it follows that the presentation of the councils as authorities can neither be proved or disproved as a generality, but only in relation to each potential subject, as we decipher whether each individual does in fact consider the Shari'a councils to be authoritative.

It is a key finding of this research that the majority of the women interviewed in the course of fieldwork did not consider the Shari'a councils to be authoritative for themselves as individuals, or did so only in the most limited terms. Some considered the role of the councils as a forum to provide guidance and advice, which they were then free to take up or turn down. Some viewed the councils as an administrative necessity to be endured in the process of obtaining their desired outcome (primarily a divorce). Very few were comfortable with notions of legitimacy or of obedience, very few exhibited any sense of surrendering their personal judgement in favour of the judgement of the council, and there were no cases of content independent obedience. Rather, all of the women questioned (even amongst followers of Shaykh Siddiqi) held, at least in theory, that the dictates of the Qur'an and *sunna* provided the limits of what could be commanded, and many held other plumb-lines (such as

their own gut instinct) to provide further boundaries. Furthermore the majority of the women interviewed appeared somewhat dismissive of the authority question at large, and seemed to view the councils much more pragmatically as an administrative means to their desired end. Many appeared to consider the Shariʿa councils with some apprehension, as part of what they saw to be a male-dominated system to which they had to submit in order to realise their own objectives (these responses are considered in Chapters 3 and 4).

Within this backdrop, two particular trends are significant. Firstly, it is instructive to note that despite the potential for much detail and nuance regarding constructions of Islamic authority throughout history and in the present day, the women in this study rather think of authority in generalised and simplistic terms (whether or not they attribute them to the Shariʿa councils). Thus elaborate discussions of particular verses in the Qur'an that give scholars their privileged status; or constructs of authority predicated on the *hadith* or *sunna*; or jurisprudence that deals with Muslim minorities in 'non-Muslim' contexts; or the traditional hierarchies of Shi'a leadership and the importance of the *ijaza*; or indeed any of the themes, ideas and literatures commonly associated with constructions of Islamic authority, were entirely absent from the women's considerations. These were instead replaced with a broad understanding of *knowledge*, which marked an important shift in the understanding of the form and limits of the authority in question, and brought about a dramatic limiting of the role envisaged by the women for the Shariʿa councils. The councils were, in short, reduced to be little more than the dispensers of advice, and the givers of guidance. This knowledge (if granted) might have been a key factor in presenting the Shariʿa councils as authoritative for the women should they have been deeply religious, potentially linking the woman to a religious core if she felt that the knowledge of the Shariʿa councils was robust enough. However, the findings of this study were that a significant minority of women interviewed intimated that religion was "not important" to them, whilst a larger number noted that although Islam was an important part of their lives they did not follow it strictly, and it provided something of a constant backdrop rather than an overriding reality. Very few indicated that they 'practiced' their faith in any sustained fashion. As a result, the knowledge of Islam attributed to the Shariʿa councils did not have the effect it might otherwise have done in signifying an absolute authority for the women. The focus was thus diverted from being centred on the rightness and legitimacy of the order, and the inherent authority or 'worthiness' of the council in question, to the needs of the particular woman in making particular decisions or obtaining certain desired ends.

A second trend provided a further, and perhaps the most important, insight into understanding the dynamics that govern the interactions of the women

interviewed with the Shari'a councils: the understanding of the recognition of others. The overriding factor in the considerations of the authority of the councils for the women in this study was the understanding of their being "recognised" by the Muslim community as being authoritative. This understanding of authority was however a complicated one. Crucially it was detached from the women themselves. The majority of women who spoke of the recognition of the Shari'a councils and their resultant authority went on to draw a distinction between *others* recognising the council, and they themselves, as an individual, recognising the council. One woman for example, when asked about whether she considered the Shari'a council to which she had gone to be an authority responded:

> A: Yeah, yeah. I mean… in terms of… I don't know… it's an authority in terms of being recognised. *I* don't recognise it but *they* recognise it […]
> TW: Who's "they"?
> A: The wider community.

Many stories thus revolved around decisions that were made in light of the perceived recognition of others as to the authority of the council, as opposed to an individual sense of the authority of the council with which the women were dealing. Thus the recognition of others was not primarily linked to an understanding of the councils as an authority *for the women*. Rather it presented the women with an opportunity for action – using something that they felt would be recognised by their communities against those very communities themselves, in the furtherance of the women's own desires in the context of conflict (once again in a manner reminiscent of Scott's (1990) "language of the dominant class"). Thus for example, many of the women, in elaborating their thoughts on the authority of the Shari'a councils, mentioned the power of the councils to act on their behalf in securing what they could not secure for themselves (most often a divorce, but also other decisions on marriage and marital disputes). This basis of authority provided a distinct elaboration of authority – one not built on the sense of a legitimate order, but rather on what Eickelman and Piscatori (1996:58,59) call the "performance of functions" from which authorities can "derive their prestige and influence". Many of the women interviewed appeared to condition their understanding of the authority of the councils on the outcome of their case, noting their own powerlessness to bring about a particular result, and imbuing the council with authority *if it was felt* that the council was powerful on their behalf. One Muslim convert was the most explicit on this front in saying: "My valuation lies in their judgement". Meaning, by this statement, that the deciding factor in whether or not

she considered the council an authority would be in whether or not she obtained the desired outcome to her case. It was perhaps to be expected that the only forum in which women talked about wanting the councils to have greater authority was in this context – in the performance of functions that worked to limit and constrain those against whom the women were battling, which the women felt they were powerless to enact for themselves.

This move from authority based on legitimacy, to one based on the performance of functions, is a dramatic shift and forms the basis of a major argument of this book. Namely that, for the most part, the women interviewed did not consider the councils authoritative in the terms discussed in the introductory chapter, and intimated by the councils (or, indeed, assumed by much of the academic debate). In short, an authority rooted in the practice of the freedom of religion, having a right to command with a correlative duty on behalf of the women to obey, and being based on the rightness and legitimacy of the order. Rather the women viewed the councils as a *means to an end* – a power that could act on their behalf and secure certain goods that they felt could not be secured otherwise. In other words, the women viewed the use of the Shari'a councils as part of pragmatic calculations of power. The musings of one woman, Nasreen, highlights these trends and is indicative of the responses of many of the women who commented on the authority of the councils in any form. Her discussions showed the lack of knowledge involved, the discrepancy between theoretical understandings of authority and the actual actions of the women, and ultimately the very pragmatic motivations that propel the women to seek answers in the Shari'a councils.

Nasreen is a Pakistani woman in her early twenties. When I met her in autumn 2009 she was seeking a divorce from the ISC. In the course of our conversation she had already told me much that indicated that she was not a 'practicing Muslim' (for example, in her sexual ethics, and in her personal acts of worship such as prayer) although she still affirmed that Islam was an important part of her life. At one point in our discussion she began to tell me about the importance of the various schools of law and how they contributed to the authority of the Shari'a councils:

> I'm sure you know about the school of thought. There's obviously lots of different schools of thought and whatever thought you've been brought up with you kind of stick to that… and… whoever you go and speak to, kind of make sure that they're from your school of thought. And because you're obviously both from the same school, you accept what the other person is saying, because that's kind of what your understanding of it as well.

She continued to elaborate on their importance and authority, and the authority of the Shari'a councils who had the same school of thought as the individual approaching them, eventually noting that she herself came from a family that followed the Hanafi tradition. So I asked her whether the ISC (the council she had approached) is, to her knowledge, Hanafi. There was a short pause:

> …I didn't even check to be honest – I mean I didn't… … when it came to sort out the divorce, I kind of had it in my head that, that's such an important subject, they all have to kind of come in to it together [i.e. all schools of law are the same]. And… you know it would be unfair if like a woman from another school of thought is gonna get a different kind of treatment?… I'll be honest when I actually went to speak to them… I just wanted it *done*. And… I couldn't hold out so much – a lot… longer than… maybe I didn't… I'm saying one thing but I didn't check as much as I probably should have done. So yeah, I can talk a lot but I… I just wanted it to be done darling – I just wanted it *over and done with*.

Thus, regardless of the talk of knowledge and of authority, pragmatic calculations ultimately won the day, and the councils' authority became linked to the "performance of functions". For as long as the councils performed these functions well (by this meaning that the councils were willing firstly to offer guidance to inform the woman of her options, which she was free to take up or to turn down, and secondly to work on the woman's behalf against those with whom she was struggling, commanding them and demanding obedience from them) the women were happy to assent to their authority. If this 'authority' (actually, power) was turned onto the woman herself – commanding her and expecting obedience from her in a manner which was against her perceived interests – then they were no longer considered authoritative. Moreover, there was often great anger and frustration in such circumstances from the women towards the council involved.

Here I begin to draw out some of the answers to the questions outlined thus far. The narrative of the Shari'a councils regarding their own authority, and regarding the religious motivation of the women in approaching them as authoritative, appears not to be corroborated by the fieldwork of this research. The question "Do these women use the Shari'a councils because they consider them to be authoritative and as part of the expression of their religious belief?" can be answered with a tentative "No". The women's considerations were not primarily based on the rightness and the legitimacy of the order, nor ultimately on a desire to live in accordance with religiously prescribed norms. Rather their considerations were based on pragmatic calculations in attempts

to obtain certain outcomes, and to manipulate certain responses, from individuals over whom the women felt they otherwise had no power. This understanding in turn was built on the women's perception of the Shari'a councils as being considered authoritative by the Muslim community at large. These considerations present the beginnings of a more nuanced understanding of the motivations and opinions of the women in this study as they approached the Shari'a councils. The following two chapters turn our attention to the ways in which the women attempted to use and to navigate the power of the councils to perform certain functions in line with the women's desired outcomes, in struggles against their husbands, and with regards to struggles that involved their communities. It will be argued that Foucauldian conceptions of power best help to explain the dynamics at play, and that certain considerations of authority *do* inform the field, but not in the manner suggested by the Shari'a councils.

CHAPTER 3

The Women in Context: The Web of Power

The preceding chapter reconsidered the notion of authority in the decision-making framework of the women who use the Shari'a councils. This chapter is the first of two chapters that together put forward *power* as an alternative hypothesis to the central question of this book. It will be argued that considerations of power (rather than authority) best explain both the interactions that lead to decisions to use the Shari'a councils and, in some cases, the interactions that follow them.

In presenting this hypothesis the following discussions draw on both the overarching frameworks of power, and the specific power relations, (the interactions of husband and wife, and of women within their own communities), which together make up the lived experience of the women as they navigate their desire for a divorce. Particular interpretations of Islamic law together with community norms borne out of theology, culture and social arrangements, act to form particular frameworks of power that shape the "field of possibilities" within which the husband/wife relationship occurs. (This is so not just with regards to interactions within that relationship, but the interactions of each and of both together with the broader Muslim community at large). These frameworks result in unequal power dynamics between husband and wife, which are further abused by husbands, in their privileged position within the given framework, to greatly constrain the possible field of action for the women, leaving them with few alternatives. Although various avenues of action remain for the women involved, the power relations at work are not of the neutral, fluid, liberatory kind put forward in some of Foucault's theorisations. Rather they exist on the sliding scale towards increasingly dominative structures in which few alternatives exist, there is little mobility or likelihood of the reversal of roles, and significant costs (which act as prohibitive factors) are associated with opting out of prescribed norms of action. We are dealing, thus, in greater measure with what Foucault terms "relations of domination", or Heller puts forward as "dominative power-relations", than we are with the neutral conceptions of power that Foucault is at pains to expound.

In the relative lack of freedom, and in the specific coercive relations experienced in these contexts, the women look to the Shari'a councils as a last resort – an attempt to use the perceived power of the councils against their aggressors in the hope of redressing the balance, although, as we will see, many

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were disappointed in this hope. Thus decisions to use the Shari'a councils are decisions borne out of constraint, and motivated by a desire for freedom.

A number of themes provide the focus of the following pages. I begin with a discussion of how the women understood their own 'community', and how community norms, traditions, and discourses shaped women's understandings of the options and alternatives open to them at the point of seeking a divorce. The provisions of Islamic law on issues of divorce (broadly speaking) are presented as a key factor in the overarching diagrammes of power that inform the women's lives. A number of potential variations of law are considered, as are various reform measures that have been attempted. The section also discusses the specifications of the four Shari'a councils in this study. Third, I consider how these dual sources of power ('community' and 'law'), which construct (in part) the boundaries of acceptable action in the women's lives (whether entirely taken on or resisted to varying degrees by the women), work to impact the husband/wife relationship. It will be argued that the women are left, within the given framework, with few (and costly) options. A fourth focus considers how the English legal system interacts with these 'Islamic' frameworks, and whether, and in what contexts, it affords alternative options.[1]

Finally, I note at the outset that whilst Foucauldian understandings of power are drawn upon throughout the analysis, and despite Foucault's insistence that power is not something "possessed" by any individual or group but rather "exercised", I will continue to refer to the 'power' of particular individuals or groups in the women's lives. This is in line with the women's own articulation of their concerns (where they frequently refer to particular individuals or groups as "having power"), but should not be taken to be indicative of a theoretical repositioning. Rather, this phraseology is used as a short-hand way of expressing the understanding that certain individuals within a given framework of power, by virtue of the discourses that prevail and their positioning within that framework, are able to exercise power with greater efficacy, as they have greater means (of multiple kinds) at their disposal.

1 Note that a growing literature traces the intricacies and the haphazard nature of the interface between Muslim family law and the civil law process to the extent that that interface exists in English courts (see for example Fournier 2010, Giunichi (ed) 2014, and Menski 2011). The focus of the discussion here is more specifically the perceptions of the women of the civil law process and the ways in which the very basic structures afforded by the recognition (or lack thereof) of an Islamic marriage within the civil realm, or, conversely, a civil divorce in the religious realm, served to construct the frameworks within which the women made their decisions.

The Women and Their Social Field: Community and Power

A recurring theme across the interviews was the women's engagement with concerns borne from perceptions of community norms and anticipation of community sanctions which created pressure for action in certain prescribed avenues. Here 'community' is used in somewhat basic terms to refer to any collective group of (Muslim) people who were associated together in the women's minds as forming their social field (non-Muslim individuals were entirely absent from the women's discussions regarding their decision-making processes). This 'social field' was considered by the women in relation to geographical location, kinship ties (wherever the individuals themselves were based),[2] or in more abstract conceptualisations regarding the women's perceptions of 'the Muslim community' at large, signifying the *umma*, however imagined. It must be noted that whilst many of the women talked of "the Muslim community" in overarching fashion, the detail of their examples and discussions focused on Muslims who formed the social network of their families – whether this was in the locality, or (not uncommonly) in reference to extended family members across transnational ties. Thus there was no such thing as 'the' community in any overarching sense, but multiple groups of people in reference to which the women navigated their lives to varying degrees. I begin with a few general insights into the formation and understanding of these communities from the perspective of the women, before going on to consider their impact in framing the decision-making context of the women in this study.

All the women in this study referred to community pressures of various kinds in shaping the options and opportunities afforded to them in the decision to obtain a divorce, the manner in which the divorce was obtained, and the procedures followed, (and in fact in determining the process of getting married in the first place). Many, however, made particular distinctions between various types of communities, ascribing to them differing levels of importance or potential for impact. These were often directly correlated to the extent to which the women cared about the feelings or the opinions of the group in question. Thus it was common to hear women make distinctions between their immediate family and close friends on the one hand, and the 'community at large' on the other, in relaying their narratives, although they were aware that both groupings had shaped and influenced their choices in varying degrees. Many

2 A number of women talked about how the problem was not located "directly in the community outside" (as in the immediate geographic community outside their home) because "they [the parents] didn't really care what they thought cos they weren't related to us anyway" but was located rather in extended family, wherever they might be.

women commented for example, words along the lines of: "I don't care about the community at all, but I care about my family and *they* care about the community." One woman noted:

> When it comes to a woman I think a lot of her decisions are based around what other people think. I mean I will walk around thinking "I don't care what you think" [referring to the broader Muslim community]. But then, I care what my *mum* thinks, and if somebody else is talking about me, then it affects my mum – even though I do kind of say to her: "Why does it bother you for – it doesn't bother me so why does it bother you?" But she's from that kind of era and it *does* bother her so I still do have to have some kind of respect for her to not give these people some kind of ammunition to talk about me. So as much as I can do properly, I will do. So yeah, I mean the community does make a massive difference.

Another women told me that she was concerned about the opinions of the broader community that surrounded her family. She commented that their understanding of the normative rules to which she should subscribe as she considered her life choices, made her "weak in decision-making", by this referring to her inability to pursue her own desires, and her propensity to succumb to the will and desires of others. She attributed this 'weakness' to the fact that she cared deeply about her family and did not want to see them shamed.

A variation on this theme was the acknowledgement by a number of women that the pressure that was exerted on them by their own families to do or not do a certain thing, in fact originated from the pressure that their family was put under by the community of which they are part. This was particularly revealing when women talked about the pressure that their fathers were under from the extended family as an explanation for the demands that their fathers had made of them, as one might otherwise mistakenly believe that the powers that operate in these contexts do so on the women alone. Shame, honour and the importance of reputation were paramount in these discussions. A number of women talked about their father's disapproval of their divorce, or the lack of support they received from their father in the process, and attributed it to the pressure that the father's family had put on him. This was a considerable issue, in particular in cases where the daughter had married a relative from her father's side of the family. One woman told me of her grandfather's (father's father) anger at her divorce and said: "My dad was under a lot of pressure from my granddad – a lot of pressure" (in accounting for why he was not as supportive of her as he might otherwise have been). She went on to note that her father was "basically stuck between two age groups [...] there's my granddad,

and then there's me." Another woman noted that her father did not accompany her to the divorce proceedings at the BSC because "he knows all the mosque people as well and it's like, if he comes, it's gonna bring shame to his name."[3]

Whatever the communities involved and however they were composed and defined, their thoughts and opinions, the kinds of action they felt to be 'acceptable' or 'unacceptable' (as perceived by the women, rightly or wrongly so),[4] played a significant part in the calculations of the women in this study. Of course the particular discourses and the prescribed norms which emanated from the women's communities were not simply the resultant effect of a particular individual or individuals 'in power', but rather the cumulative effect of traditions, laws, cultural norms and so forth – multiple power relations – that were formed by, and in turn sustained and supported, specific power relations over time. Thus whilst the communities of the women were experienced by them as presenting a governing influence (a power) over their lives, and whilst the focus of this study is the considerations of Muslim women in particular in these relations of power, it must be understood that these were not relations between the 'powerful' and the 'powerless'. Rather, all were, in varying ways, subject to the social structures and mechanisms of power that community norms dictated, whatever their personal status within these communities.

Three factors were particularly prominent in undergirding the controlling influence of communities over the women in this study. Firstly, as has been already briefly noted, a concern with reputation, such that although it was the norms that constructed the possible field of action, it was ultimately the

3 We must be careful not to overstate the effects of this pressure from the broader community. One of the touching elements of the interviews conducted was the ways in which family members (particularly fathers) supported the women involved even in the face of significant pressure from the broader community. One Pakistani woman in her late twenties told me that she had returned to a destructive marriage with a cousin from her father's side of the family, because her father, under pressure from his family, had strongly encouraged her to do so. However, once the relationship broke apart completely, her father, although he never talked of the divorce or allowed it to be talked of in his presence, stood with her against the broader family (despite the resultant loss of reputation and damage to relationships) and silently went about recovering her possessions, dower and so forth from her husband's home. There were a number of such examples.

4 It is difficult to verify what the multiple communities referred to by the forty-three women in this study actually thought or believed. The women's discussions of 'community norms', and the opinions and beliefs of those who occupied their social field, must rather be understood as the women's perceptions of these beliefs, which were often built (as we might expect) on layers of anecdotal information and experience, rather than any systematic analysis.

desire of the women to be thought well of that necessitated that they live within these norms. Secondly, the fear of recriminations of various kinds if community norms were transgressed, particularly the fear of being ostracised or disowned. Thirdly, the beliefs of the women themselves as formed by (and in turn helping to form) the discourses that emanate from their communities. This is not to say that the women were formed by their perceptions of the beliefs and norms of their communities so completely as to constitute the internalisation of a sense of the rightness and legitimacy of the normative framework. In fact such a form of internalisation was extremely rare. Rather, the discourses emanating from the social field of which the women were part formed instead, for the most part, their perceptions of the boundaries of "the field of possible action". Thus the norms implied were understood as being simply "just the way things are" (a recurring phrase throughout the interviews) – by this meaning either a sense of resignation to the rules assumed to originate with Allah, or a pragmatic understanding of community norms, which the women had to navigate if they did not want to be subject to heavy costs, emotionally speaking.

These 'norms' were multiple and diverse, in that there was no universal set of rules applied to all of the women by all of the communities of which they were part. Two particular perceptions of community norms however, were unanimously shared by the women and formed a key part of their considerations to use the Shari'a councils. Firstly, the understanding that the civil divorce was irrelevant to the Islamic (read 'real') marriage status of the woman, and secondly, that the Shari'a councils were the 'legitimate' means through which an Islamic divorce could be sought. (A corollary of this is the understanding that ordinary *imams* within a mosque context do not have the requisite authority to give a *khul'* divorce).

These community norms are remarkable, given that, as we have seen, one of the most prominent Shari'a councils in Britain, the BSC, considers there to be no need for a separate Islamic divorce, as distinct from a civil divorce, where the two coexist.[5] Furthermore, all but the Shi'a councils in this study considered the husband's instigation of a civil divorce to be, in effect, his instigation of a divorce by repudiation (*talaq*), whilst his formal acceptance of a civil divorce[6] was considered the acceptance of a *khul'* divorce (although

5 Nevertheless, the BSC continue to issue divorces in this eventuality to those who come to them, "for the peace of mind" of the plaintiffs who specifically want the certificate issued.

6 This was demonstrated by the husband's signature on the Acknowledgement of Service (D10) form indicating that he did not intend to contest the divorce. The D10 form constitutes part

see Bowen (2013b:142–144) for some complexity around these guidelines at the ISC). Moreover, conversations around these themes with Muslims and Muslim organisations throughout this research project demonstrated what Islamic history itself makes clear – that these are contested ideas. Multiple interpretations of the proper manner in which to obtain a divorce, and the relationship between a civil divorce and an 'Islamic' one exist, including interpretations which consider any such dichotomy a false one (see for example Sardar Ali 2013). Despite this diversity, it appeared that more conservative interpretations of the 'necessary' rules to be followed in obtaining a divorce had greater profile in the communities of which the women in this study were part.

This propensity towards increasingly conservative interpretations and the privileging of conservative discourses has been insightfully noted by others whose work pertains to the fragmentation of Islamic authority and the multiplication of authoritative discourses that now compete for the right to govern.[7] Some have welcomed this fragmentation, with hopeful considerations that the proliferation of discourses will lead to a democratisation of knowledge.[8] Mandaville (2007a), Turner (2007) and others however, are right to caution against predictions about the liberalising effects of proliferated discourses of authority. They note that the opening up of the public sphere, and the "democratisation of knowledge" does not necessarily entail a *liberalisation* of knowledge (see for example, Mandaville 2007a:102). In fact, Mandaville (2007a:106) goes on to note that in some contexts (notably the United Kingdom), the opposite trend can be observed:

> We can… identify situations in which the functional pluralisation of Islamic authority leads to something very different from the widening of hermeneutic horizons, tending instead towards a closing down of Islam's

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of the English civil procedure for divorce. See the Directgov website for details: (http://www.direct.gov.uk/en/Governmentcitizensandrights/Divorceseparationandrelationshipbreakdown/Endingamarriageorcivilpartnership/Gettingadivorce/DG_193735) [accessed 11 June 2012].

7 See Anderson (2003), Mandaville (2007a), and Turner (2007) for a discussion of the proliferation of authorising discourses within the Muslim world.

8 Mandaville (2007a:102) for example notes the "tacit normative undercurrent" within these discussions that assume such developments "represent a positive and progressive" change, "with Muslims increasingly reshaping religion with their own hands (rather than relying on 'crusty' clerics)". Meanwhile Eickelman (2004) and others consider the implications by way of an "Islamic reformation."

> discursive parameters. Within a narrow segment of the British Muslim community, for example, and particularly among second- and third-generation immigrant families, a conservative and politically extreme rendition of Islam sometimes comes to constitute the adhesive through which diverse components of identity are ordered into some form of cohesive existence.

Turner (2007:132) makes a similar caution, noting that in this diverse and expanding field of authority, "Teachers prove their credentials by proclaiming what is and what is not compatible with Shari'a; the more radical and definite the interpretation, the more prestige is associated with a particular teacher. Claims to authority tend, therefore, to be inflationary."

Thus the privileging of conservative discourses within discussions regarding 'Islamic divorces' is not a stand-alone phenomenon. One conversation with a member of the MAT proved particularly interesting in positioning the power of communities (rather than those who claim to be the authorities which these discourses construct) on this front. During the course of our interview I asked him why the existence of the Shari'a councils and their manner of operating as regards to the obtaining of a divorce was necessary. Referring back to a previous conversation in which a judge from the MLSC had noted that the concept of necessity made it possible to continue to live as a Muslim community in Britain without the Shari'a councils (thereby presenting an alternative discourse), I questioned why conservative discourses were being privileged against others. I wondered whether a solution for British Muslims that involved the recognition of the civil divorce could be worked out. He responded by telling me that this was something of a contested area at present (with different councils opting for differing rules as to their relationship with English law), and agreed that there were multiple possible solutions. Most fascinating in his statements on this front however, was the suggestion that even should various Muslim leaders pronounce that the Shari'a councils were not a necessary part of obtaining the divorce, the *community* would not believe it. Whilst these comments underestimate the power of leaders to construct the popular understanding of acceptable forms of behaviour, they nevertheless proved to be a telling insight into the pivotal role of community norms and beliefs in perpetuating, reiterating, and supporting, or otherwise destabilising and minimising, particular frameworks of power.

The Shari'a councils attempt to perpetuate a discourse regarding their own authority and power, although it must be noted that this is done in varying degrees (some of the judges from the ISC and the MAT appeared to

have greater aspirations on this front, whilst the ICE and the BSC seemed to operate under a more pragmatic sense of their own positioning). The narratives of the women interviewed in this study however, made clear that it was not primarily the discourses of the councils that directly impacted their decision-making in pursuit of a divorce, but the discourses of their communities, although, of course, no clear boundaries can be drawn between the two, as these discourses exist in circular fashion supporting and sustaining one another.[9] In deciding on the manner in which to obtain a divorce, some of the women had searched out answers regarding Islamic divorces on the Internet, and had taken on the rhetoric there that told them that they had to get their divorce from a Shari'a council (note the role of new technologies in perpetuating and proliferating certain discourses). Most however, had been told by friends and family that this was the way to do it. One woman, for example, said that she had thought that she could go to "an office somewhere" and get a divorce registered, just with an *imam* present. She went on to comment: "but then one of my friends said that you have to go through the Shari'a law [referring to the ISC] because they know the people who do the divorce Islamically, no one else can do it." She continued: "That's why I contacted them [the ISC]" (having obtained the number from her friend), "and they [the ISC] told me that this is the only procedure".[10] A number of women, having obtained their civil divorce were happily getting on with their lives, but were then 'informed' by well-meaning friends that they had to get an Islamic divorce as well.

A remarkable part of these processes was the extent to which the women were themselves implicated in them, internalising the discourses and contributing to their perpetuation. In a number of interviews, women who had previously thought that their civil divorce was satisfactory, but had then been 'informed' otherwise by their communities, went on to confidently tell me: "The civil divorce doesn't touch my *nikah* – it's the law [referring to Shari'a law] [...] you need to dissolve it in its own right." This new understanding was

9 Note that the views of the women interviewed through the MAT were, again, slightly at odds with this general finding, as Shaykh Siddiqi's authority seemed to play a greater role in their considerations than the views of their immediate communities. Furthermore, it appeared that the community of those who had also given *bay'a* to Shaykh Siddiqi took on a special importance for the women, over and above previous ties of kinship or geographic community.

10 Note that I was unable to observe this interaction between the woman in question and the ISC, and the reference to the positioning of the ISC must be understood as her interpretation of the encounter.

communicated as fact, and as though such a rule had always been the case (an opinion which would surely have been shared with friends who found themselves in a similar situation). Another woman told me (in response to me asking her if there were other forums in which she could have obtained a divorce): "I don't know – I basically had to come to the Shari'a... I don't think there is any other means – any other way." Many greeted my questions about why they needed to get a separate '*Islamic*' divorce (as distinct from a civil divorce), and why, in particular, the divorce had to be obtained in this particular manner, with blank stares. The language that was used when talking about divorce was telling. The word "obviously" was used a noticeable amount of times as women told me that "obviously" you need to get an 'Islamic' divorce, and (more controversially) "obviously" you go to the Shari'a councils to do that. Similarly, many used the words "have to" (as in *having* to have a separate Islamic divorce whether or not the women had a civil one, and *having* to go to the Shari'a council as the only way of getting a divorce as a woman). Thus there was a tendency to talk in imperatives, whilst others simply told me: "It's just the way it's done." (This despite the fact that, as was noted in Chapter 2, the vast majority of the women interviewed had very little knowledge of Islamic marriage laws or of the processes of the Shari'a councils themselves, and despite the variations of belief and practice of the Shari'a councils.)

These assertions should not, however, be understood to mean that the women considered these processes legitimate, taking the discourses on as *authoritative*. Whilst it was a rare exception to interview a woman who did not think that the only manner of obtaining a *khul'* divorce was through the Shari'a councils, it was, as it turned out, a regular occurrence to speak with women who *personally* felt that the whole process was a farce. Despite this, they considered themselves bound to go through the 'system' because they believed the Muslim population as a whole, and their communities specifically, believed there to be no other way. Cassia, for example, was a British convert who told me that according to Islam, the marriage was dissolved if husband and wife had agreed to a divorce over three consecutive months:

> But people can argue that "This isn't acceptable. You have to get like a – a ... *board* involved, and people have to decide." I mean it's *absolutely* – I just think it's totally pathetic – *totally* [...] Anyway, he's got to sign... they send him three letters – I mean even if you look in like the hadith – what the prophet used to say – this is like... ... you don't send a letter and he has to send a letter back! This is *nothing*! This doesn't exist. So they've created their own sort of... policy, or *protocol* to follow.

I asked another women, in response to her telling me that Islam was not important to her, why she had still wanted an 'Islamic' divorce (taking for granted for the moment that the Shari'a councils were the way in which to do this, in line with the woman's own beliefs). She said:

> Mmm.... It's not important for *me.* For *me*, you know... it's a bit complication here – a bit conflict isn't it? For me myself personally, it is not important. But if I want to be with anyone else [if she wanted to marry again in the future], it won't be acceptable in the eyes of my family because they would still think that I have a husband.

Women thus regularly made a distinction between their personal understanding of right and wrong, of legitimate processes and authoritative discourses on the one hand, and community and religious norms on the other. The perception of these norms meant that there were, pragmatically speaking, no other options for the women if they wanted to obtain a divorce that was recognised by their communities. Cassia herself acknowledged that she had heard that some shaykhs consider the civil divorce to be acceptable as an Islamic divorce, but went on to say: "but then others mightn't *approve* of that, so it's about... people, like – the *wider community, knowing* and *recognising* that: 'This person is divorced.'" Many thus considered themselves, pragmatically speaking, bound by these norms, regardless of their personal sense of their rightness or legitimacy.

In considering themselves thus bound, and in navigating the processes of the Shari'a councils towards their own objectives, the women demonstrated decision-making initiatives very much akin to Kandiyoti's (1988:274,275) "patriarchal bargains", which are made "within a set of concrete constraints". The women acted so to fulfil the expectations of their communities, but did so in pursuit of, and in order to safeguard, their own objectives and desires (often desires and objectives considered over the long term as well as immediate concerns). Thus whilst it was the women's ultimate goals and objectives that were sought, the channels used were those acceptable to the community – an attempt by the women to use the 'mechanisms of power' at their disposal but towards counter-hegemonic ends.[11] This attempt to fulfil both the wishes of their communities (with regards to accepted patterns of

11 See also de Certeau's (1984) discussion regarding the use of tactics to manipulate and divert certain rules and processes of power, without leaving the framework of power that governs them.

behaviour), and their own, was the case for as long as the women wanted to maintain relationship with the communities of which they were part. To the extent that this sentiment was lacking – as in to the extent that the women were willing to cut contact with their families or communities and to discard previous relationships – there was a proportional decrease in the prescriptive power of community norms in the women's lives. Even in these cases, however, the woman's perceptions of her husband's power over her made the Shari'a councils a useful tool in any case. (I return to these dynamics in Chapter 4.)

For the most part then, the women interviewed in this study made a distinction between their own understandings of Islamic norms (and whether these were even important to them in the first place), and their own beliefs on the one hand, and those of their communities on the other. With that said, they continued to operate within the boundaries put forward by community discourses not as an indication of the wholesale adoption of these norms, but rather as a pragmatic understanding of the need to navigate these norms in pursuit of the women's own objectives. In some cases this tactic was used in order to obtain those objectives without incurring costs that the women were unwilling to pay (for example without seriously damaging community relationships, leaving the woman as an outcast). In other cases, it was used in order to obtain those objectives at all (for example, the acceptance of a divorce status by the community or by their husbands). There were, however, a smaller handful of cases where the women's own understandings of the legitimacy of the choices before them were shaped by the discourses emanating from their communities, which put forward the Shari'a councils as the legitimate repositories of Islamic authority in granting a divorce. (For some of these women, various readings on the Internet had also contributed to their understanding of the Shari'a councils.) Thus, in these (rare) instances, the women discussed their decisions to use the Shari'a councils as the pursuit of their objectives within their own understanding of normative rules (this is discussed in greater detail in Chapter 4).

A complex web of interactions surrounds women then as they attempt to make decisions regarding the pursuit of a divorce. Thus far I have considered the ways in which the somewhat nebulous idea of community norms, and accepted and expected social practices, work to construct the specific environment in which the women in this study navigated their desires to obtain a divorce. In the following section I consider the articulations and considerations of law, and how these too work to further construct and constrain the possible choices before the women.

The Provisions of Islamic Law: Talaq, Khulʿ and Litigious Divorces

Two distinct methods of considering women's roles and rights emerge in the literature on Islamic law: those that focus on text based methodologies that look to doctrine and principles in their discussions, and those that present historically situated concerns more focussed on practices as they are lived out. Kandiyoti (1991:23) writes of the former camp:

> That feminists and traditionalists are equally concerned with appropriating the 'true' message of Islam indicates that all parties [within the Muslim tradition] believe it to be the only legitimate ideological terrain on which issues pertaining to women can be debated.

She goes on to note that this "has been one of the tendencies giving a longer lease of life to ahistorical approaches to the question of women in Muslim societies." Others are critical of the focus on text and doctrine, particularly in the context of critiques regarding women's rights. Stowasser (1996:5) for example questions "the essentialism of the widely applied methodology by which *text* is used as proof for the subjugation of women" arguing that "there are clear differences between the written word and actual practices during Islamic history."

It is true that there are at times pronounced differences between text and practice (as many historically situated studies have shown, and as this study will further corroborate). Nevertheless this study aligns itself with scholars who have argued that text – in this context Islamic law (however interpreted) as derived from the sacred texts of Islam and as understood to be the law of Allah – has a profound impact on practice (see Fournier 2014, Hirsch 1998, Kandiyoti 1988, Mir-Hosseini 2000, and Peletz 2002). The understanding of certain texts shape social dynamics not necessarily by the wholesale adoption of their ideals, but also by the pragmatic appropriation of the power dynamic that they bring to bear by virtue of the options and opportunities they afford to each gender. This in turn greatly shapes the types of tactics and considerations that men and women take into account, as they attempt to navigate their way through complex interactions at the interface of law. Thus Fournier (2014:39) writes that the "background rules act as forces that shape the individual's capacity to bargain and influence distributive outcomes". Text and practice cannot be separated as entirely distinct fields then. Rather, articulations and understanding of law in theory must be understood as discourses of power – shaping and being shaped in turn by the practices of communities,

determining possible courses of action and belief.[12] Where the texts and laws that are venerated do not explicitly uphold equal rights, disparities in power intrinsic to the letter of the law may in practice be overcome in a variety of ways, but women remain at the mercy of the conscience and good will of others and of societal norms. Thus Meriwether (1996:234), for example, discusses the ways in which the patriarchal nature of custody laws in Ottoman Aleppo in the 18th and 19th century were greatly abated in practice, but goes on to note that these practices remained "inherently insecure". Her discussion echoes Ahmed's (1992:27) assertion that: "Ideals, *even though undercut by economic and functional exigencies*, are nevertheless an important and influential component of the systems of meaning determining the psychosocial experiences of both women and men" (italics mine).

The following discussion attempts to keep both text and practice in focus as reference points of meaning and sources of norms that construct the field of possible action for both men and women. I begin by considering 'text' as articulated in what has been made to function as Islamic law in the broadest terms. It is beyond the scope of this book to present a detailed discussion of the nuances of Islamic family law in the classical *fiqh* or as practiced in Muslim communities in the present day,[13] nevertheless I present an overview of some of the pertinent issues as they relate to our current context. The focus will be on law as it pertains to the various rights and responsibilities afforded to each gender in the context of divorce. I then look more closely at the specific rules and laws that function as norms within the Shari'a councils that form the focus of this study; and finally look closer still to examine the ways in which, and extent to which, these norms are lived out in practice.

Much has been written about the "pronounced patriarchal character of Islamic law" (Mir-Hosseini 2000:2) and Mir-Hosseini (2000:2) contends that "the law is unequal and gives men certain privileges over women." In particular, the focus of the socio-political literature has been on the non-reciprocal rights and duties of the marriage contract, the rules governing divorce, and the issue of polygamy. Three broad options for divorce form the backdrop of the

12 Note that the power and use of discourses is at times complex and contradictory. See Hirsch (1998) in particular for a consideration of the ways in which gendered subject positions defined by law and culture are discursively transformed.

13 For an introduction to both classical and present day concerns see Nasir (2009). Tucker (2008) presents an introduction to the positions held by the four major Sunni legal schools, as well as in Shi'a law, whilst An-Na'im (2002) provides an overview of current "legal rules and practices" relating to Islamic family law across a large number of states with a significant Muslim presence.

possible interactions between husband and wife on the breakdown of a marriage. These options are the *talaq*, the *khulʿ*, and divorces that require the judicial dissolution of the marriage (in our current setting, primarily the *faskh*).[14] The *talaq* is the unilateral and, traditionally, extra-judicial right to divorce of the husband. Mir-Hosseini (2000:36,37) writes:

> Legally, it is the absolute and exclusive power of the man to terminate the marriage, a right granted to him by a Qur'anic injunction. He needs no grounds and his mere pronouncements of the talaq formula will result in the dissolution of the marital bonds; neither the consent nor the presence of the wife is required.

A single *talaq* results in a waiting period (usually three menstrual cycles – the *ʿidda*) during which the husband can revoke his divorce (again without the need for consent from the wife), and the marriage continued. Should husband and wife wish to reconcile after the *ʿidda* has passed, a new marriage contract must be completed and the wife given a new dower. The third *talaq* effects an immediate (non-revocable) termination of the marriage (although the waiting period must still be observed), after which husband and wife can only reconcile after an intervening *tahlil* marriage.[15] The *talaq* is accompanied by financial obligations on the part of the husband, which are intended to compensate the wife. These have traditionally included the payment of any deferred *mahr*, maintenance payments during the *ʿidda*, and, in the case of a divorce where the wife has been shown to have no fault, a further compensatory payment in the form of the *mutʿa*.

The *khulʿ*, on the other hand, is traditionally understood to be a divorce initiated by the wife, which requires the consent of the husband (so that he

14 Despite the use of "*talaq*" by some as a general term to designate any type of divorce, and despite the traditional format of the *khulʿ* which is made possible by the husband's consent to pronounce the *talaq*, this study has, in line with the work of An-Naʿim (2002), Bano (2004), Mir-Hosseini (2000), Welchman (2007) and others, used '*talaq*' primarily to designate the husband's unilateral right to divorce by repudiation. '*Khulʿ*' has been retained as the designation of a divorce initiated by the wife (regardless of the technicality that it is the husband that traditionally pronounces the divorce in response to the wife's request).

15 There are differences of opinion on the legality and form of a *tahlil* marriage within the legal schools (see Tucker 2008:88). Nevertheless Nasir (2009:113) notes that, with the exception of Tunisia, "This general rule [the provision of the *tahlil* marriage] is observed throughout the Islamic world".

performs the *talaq*, but in response to a request by the wife, and in exchange for her forgoing her financial rights to the *mahr* and to maintenance). The wife thus effectively buys her way out of the marriage, and where this financial exchange occurs, the marriage is immediately terminated (although the *ʿidda* still applies, the divorce cannot be revoked[16]). The interactions around a *khulʿ* divorce particularly highlight the distinctions between theory and practice, and remind us that there are multiple variations and reconfigurations of these broad understandings of law both in theory and in practice. A number of the judges in the Shariʿa councils in this study for example quoted, in the course of interviews, the Qur'anic injunction (*sura* 65:2) making it incumbent on men to retain their wives "in kindness" or to let them go in kindness. Fieldwork observations, however, demonstrated that this did not bear out in practice. Similar disparities are observed by other studies. Both Stiles (2009) and Zilfi (1997) for example, state that the wife, in the context of a *khulʿ* divorce, is (in theory) expected to pay back no more than her *mahr*.[17] Zilfi (1997:283) writes: "Repugnance is expressed in the prescription of the law with regard to a husband's taking from his spouse, in exchange for *hul* [variation of *khulʿ*], more than he had given (or promised) upon their marriage." As Zilfi goes on to say however, and as was also evidenced by Stiles' (2009:167) observations regarding the *mahr*:

> As with the divorce itself, the nature of the *hul* exchange is in practice much affected by the husband's behaviour, which remains in good part a matter of his own conscience. Gouging, pressuring ones' wife into surrendering her rightful property – or custody of her children – might be distasteful in the eyes of the law, but it was not in itself a punishable offense.
>
> ZILFI 1997:283

16 Note that, if the wife has not compensated her husband for such a divorce (through the return of the *mahr* or other financial consideration), the Shi'a (Ithna-Ashari) allow the husband the right to revoke an agreement to *khulʿ* (Nasir 2009:116–117). Thus the wife's compensation to the husband can play an important part in securing the divorce (see for example, Shereen's case in Chapter 4 below).

17 Note that Stiles (2009) and Zilfi (1997) are writing in very diverse contexts, with Zilfi discussing the practice and documentation of divorce in the 18th Century Ottoman Empire, whilst Stiles considers an Islamic court in Zanzibar with fieldwork conducted primarily in the years from 1999–2002. Nevertheless, whilst there are important distinctions between the two studies and their focus, it is interesting to note once again the similarities that do exist with regards to their presentation of the experiences of Muslim women (see the discussion in footnote 52 of the introductory chapter).

A similar disparity of theory and practice occurred at times with regards to the interactions surrounding the Shariʿa councils in this study, and I will return to these considerations in Chapter 4 below.

Finally litigious divorces primarily involve cases where the wife has been unable to secure the consent of her husband and thus seeks redress in a court, whereby Islamic judges can terminate or dissolve her marriage without her husband's consent, as long as she is able to demonstrate her case within specific Islamic grounds.[18] Given the unilateral right of men to divorce, they have little need for a judicial divorce of this nature, although some choose to pursue this avenue as a means of evading the financial responsibilities associated with the *talaq*.

Recent reforms have sought to redress these legal asymmetries in a number of ways, often by recourse to procedural rules rather than substantive changes to the understanding of the Shariʿa itself.[19] Thus registration laws and procedural regulations (see An-Naʿim 2002:233, Mir-Hosseini 2000, and Welchman 2000:258–261) for example, seek to limit the husband's right to divorce by limiting its extra-judicial (but not its unilateral) validity. These regulations require the husband to register his divorce, or, as in the Iranian case, to submit his intention for *talaq* to the courts, who will first instigate a mandatory reconciliation process through arbitration before allowing the *talaq* to be legally valid (if reconciliation fails). Peletz (2002:125,161) writes of the Malaysian case that regulations involve "the prohibition and penalisation of extrajudicial divorce, such that men are no longer legally entitled to pronounce the talaq outside of the kadi's offices." (Nevertheless, he acknowledges that in practice many of them still do so with impunity). Furthermore, both Welchman (2000:259,260) (with regards to the Palestinian case) and Peletz (2002) relay that whilst the extra-judicial divorce remains valid in so far as religious precepts are

18 Welchman (2000:281–318) for example, notes discord and strife, absence and injury, non-payment of maintenance, certain diseases and physical conditions of the husband such as impotence or insanity, the husband's imprisonment for a certain period, and the inability to pay the prompt dower as some examples of such grounds specified within the Jordanian Law of Personal Status 1976, and these are representative of current personal status laws. See also Mir-Hosseini (2000:57) for a list of the conditions in the Iranian case, and An-Naʿim (2002) for a brief consideration of these provisions across states in Africa, Asia and the Middle East.

19 Note that a number of studies have commented on the contradictory impact of such reforms as they do not always work in favour of Muslim women, varying in effect depending on the class and social status of the women involved (see for example: Keddie and Baron 1991, Moors 1999, and Sonbol (ed.) 1996).

concerned, the courts consider husbands to be liable for maintenance payments for as long as the divorce remains unregistered, thus incentivising the official registration of divorces. It must be noted that there have been debates as to the validity of these reforms, and Mir-Hosseini (2000) writes for example of the backlash in the Iranian case where reforms were considered to go against the intention of Shari'a.

Other reforms seek to temper the possibility of the triple *talaq*, and thereby to protect the wife from the sudden and irrevocable dissolution of her marriage. This has been done by issuing requirements that each *talaq* be given in a separate 'session', and introducing regulations regarding the husband's state of mind in assessing whether the pronouncement of any given *talaq* is valid. An-Na'im (2002:121) referring to the Jordanian case writes for example: "As elsewhere in the region, *talaq* uttered by a man who is drunk, asleep, in a faint, coerced, or 'overwhelmed' (*madhush*) has no effect." (See also Nasir (2009:107,108); note that this is also the position of the BSC.) Various scholars however note the ambiguous impact of these reform efforts on Muslim women (see for example Peletz 2002, Welchman 2000:254). Provisions intended to make the *talaq* more challenging for men make it possible for a woman to prolong her marriage and resist an unwanted divorce from her husband by questioning his state of mind at the time of the *talaq* (note that this tactic only slightly prolongs the process but does not have the power to indefinitely resist a divorce). They remove, on the other hand however, a valuable tactic for women who seek a divorce from a resistant husband. A divorce said in anger by a husband who has been repeatedly provoked and worn down by his wife (a tactic intended to secure her eventual freedom) can now be contested by the husband, once he has had a chance to calm down, on grounds that the pronouncement was made whilst he was in an unfit state of mind.[20]

Where these reforms focus on narrowing the scope and action of the *talaq* (and others such as the Tunisian law of 1956 restrict the man's right to polygamy), others are aimed at simultaneously broadening the provisions according to which a wife may be granted a judicial divorce. In some cases this is done through the option of including stipulations within the marriage contract that enable the woman to seek a divorce in a number of specified circumstances (see Mir-Hosseini 2000:44–48 for the Iranian case). Welchman (2010:424), however, writing of the Jordanian case, notes that these stipulations were

20 Fournier (2014:37) makes a related comment with regard to the effect of safeguarding against a *talaq* with the imposition of a high *mahr*.

often found by the women to have no legal force as judges took "a rather narrowly literal approach to the phrasing of these stipulations that denied legal effect to those not sufficiently expertly drafted." Moreover, it must be noted again, that the impact of these provisions greatly varies according to class/family support/background etcetera. Women from poorer backgrounds or those lacking adequate family support are not necessarily in a position to demand stipulations, if the husband is not willing to grant them, when the marriage takes place.

In other cases the broadening of provisions for a divorce instigated by the wife has been achieved through an elaboration of the concept of 'harm' or 'injury' (*darar*), so that women are effectively able to initiate a divorce based on any reason as long as they are able to show that staying in the marriage would cause 'harm' (including psychological harm, see Giunchi 2013, 2014). A more controversial attempt at reform has been conducted in Pakistan and Egypt with the introduction of the 'judicial *khulʿ*', where women no longer need the husband's approval in the case of a *khulʿ*, but may be granted one by the courts. This is argued on the basis that once she has decided to leave the marriage, it would be injurious to her to force her to continue (see An-Naʿim 2002:235; Welchman 2010:433–434).[21]

These reforms, and in particular the broadening of the provisions on the basis of which women can obtain a divorce, have led some to argue that the rights of the man and woman are equal with regards a divorce. Mahmood (1986:11,12), for example, writes:

> As regards divorce… please do understand that in Islamic law men and women have absolutely the *same* right in respect of dissolution of marriage… The wife's right to *khulʿ* is legally analogous to man's right of *talaq*… There is no inequality or inequity in this beautifully balanced law.[22]

Both Carroll (1986, 1997) and Vatuk (2008) however, are clear in their rebuffing of this viewpoint. Similarly, Giunchi (2014:4) writes that such provisions have "softened but not eliminated the *fiqh* construction of the marital bond

21 See Welchman (2000:273:footnote 79) for details. In particular she notes that such a divorce involves a woman returning her *mahr* and "what she has received from the husband during the marriage" as well as forgoing any "Shariʿa financial rights", and that the divorce is issued in the Egyptian case only after the courts have attempted to bring about a reconciliation over a period of up to three months by appointing arbiters.

22 Mahmood is quoted in Vatuk's (2008:228,229) summary of such views.

as an asymmetrical relationship." This study would concur with their rebuttal in the current context, as would, it seemed, many of the interviewees during fieldwork who noted the disparity between the options available to men and to women.

The unilateral and extra-judicial nature of the man's right to *talaq* in the Sunni tradition finds no parallel in the *khulʿ*, which can only be validated with the husband's agreement. Reforms requiring the registration of the *talaq* do not invalidate the Islamic legality of the extra-judicial divorce, but simply provide (primarily) financial incentives[23] for the man to register.[24] Meanwhile judicial divorces granted on the basis of reforms allowing *khulʿ* without consent are not simply a process of registration, but require the court to grant the divorce. This ensures that the process is a far more complicated and arduous one for women, requiring them to secure the compliance either of their husbands or of the courts. Similarly Shi'a requirements for the *talaq* to be administered through Shariʿa courts retain the husband's unilateral right to divorce, but prolong the process by which he can avail himself of his right, whilst requiring women to negotiate their release from the marriage by providing Islamically valid reasons for any request of divorce. Tucker (2008:131) summarises these concerns:

> Outside of Tunisia… there is still little doubt about who has the upper hand when it comes to terminating a marriage: it is easier for a man to get the divorce he wants and it is harder for a woman to fight against the divorce she would like to avoid. Divorce law is still highly gendered.

These disparities in legal positioning, as elaborated by the literature considering Islamic family law issues elsewhere in the world, remain in our current context. The extra-judicial nature of the *talaq* is upheld whilst even the broadest of reforms embraced by the Shariʿa councils in Britain (allowing women to obtain divorces on any grounds) do not afford a corresponding extra-judicial right of divorce to the woman, requiring her instead to obtain the consent of

23 Note that the husband's non-compliance with the registration requirements are in some cases "punishable by imprisonment and/or a fine" (An-Naʿim (2002:234), referring to the case of Pakistan), thus the incentives are not limited to the monetary. (Welchman (2000:260) makes a similar observation regarding the Jordanian penal code (Article 281).)

24 The Tunisian case, and the Druzes in Lebanon and Syria are an exception to this. In these cases, a divorce from either spouse can only be affected by court order (Nasir 2009:119).

either her husband or a Shari'a council.[25] Moreover, the process of granting a judicial divorce is not an instantaneous one, matching the right of the husband (in the Sunni context), but one that at its shortest (in theory) takes upwards of three or four months. (Note that in practice, the shortest time frames were around the six-month mark, and these were often in the BSC, which appeared to be most aware of the needs and the difficulties experienced by the women throughout the process. In the ISC it appeared that it was not unusual for cases to take several years.) One young Pakistani woman commented on these dynamics in the British context by noting: "It's quite easy for a man to get a divorce, they just have to say three times and you know, it's done. Whereas a woman has to go through *such* a long process and she gets questioned and everything – it's really difficult."

The Shari'a councils in Britain sit across a spectrum of interpretations of Islamic law, ranging from understandings of Shari'a that privilege and augment the options afforded to men in the context of marriage and divorce, to those that incorporate many of the aforementioned reforms. Whatever the provisions of law espoused in theory, it must be noted again (as will become clear in the following discussions) that there was at times a significant disparity between theory and practice. Moreover, whilst studies elsewhere have noted how the sting of patriarchal laws are abated in practice (note for example Giunchi 2014:9), the disparity in the British context was not always in the direction of practices more favourable to women's rights set against laws that in theory denied them. Rather, there were at times even more patriarchal practices, in light of already discriminative laws.

Perhaps unsurprisingly, given the issue of enforceability in a context where the Shari'a councils have no official recognition and no official remit for sanctions against non-compliance, none of the councils in this study considered there to be a need for registration of the *talaq*.[26] The issue of what is and is

25 Note that in cases where the marriage is registered in English civil law, the BSC accept an English divorce as Islamically valid, regardless of whether it was instigated by the husband or the wife. Thus, in these contexts, the wife would require the sanction of a civil court, but not necessarily the consent of the husband or of a Shari'a council. The MAT also recognise the civil divorce as a valid basis on which to obtain an Islamic divorce, but greater interaction with a Shari'a councils is envisaged to decipher the form and type of the divorce and the regulations for the necessary waiting period.

26 Note that the Shi'a councils require the registration of a *talaq* and the fulfillment of certain paperwork as part of the process of ensuring that the divorce is to be recognized in particular Muslim majority states such as Iran. This practicality however does not appear to impact the validity of a *talaq* given before witnesses within the British context.

not enforceable when official enforcement mechanisms are lacking tells us a great deal about the relative power of Muslim men and women in these communities. The particular understandings of Islamic law on which the Shari'a councils are built leave women in a much weaker bargaining position as they are considered to be in need of the councils' help to obtain a divorce if the husband does not consent to one.[27] Thus the various councils can exert a large degree of power over the women should they be so inclined (of course not all used this power, but the potential for its abuse is ever present). The men on the other hand are not beholden to the councils and no bargaining power therefore exists, meaning that the councils have limited ground on which to draw out desired responses from the men through some form of coercion or manipulation. Thus the ISC, BSC and MAT encouraged *talaq* divorces to be conducted before witnesses so that there was "proof" of it in some form, whether written or otherwise, but did not negate the validity of *talaq* divorces without witnesses. Shi'a *talaq* divorces are not considered valid by the ICE unless they are conducted in front of witnesses[28] (this can be in front of family members or friends and need not be in a formal Islamic institution), and unless an attempt at reconciliation has occurred (again, this can be through family efforts as opposed to any more formal measure). As a result of the understanding of *talaq* divorces as being effectively outside of the remit of the councils, no attempt appeared to be made by the councils to ensure that husbands upheld their financial obligations in the event of a *talaq*.[29]

A broader spectrum of opinions emerged on divorces instigated by women. All four councils attempted to bring about a mutual agreement between husband and wife in their processes. Some did this with a greater emphasis on reconciliation than others, but, in the event of a failure on this front, all attempted to elicit the consent of the husband to the wife's request for a divorce (this being the least controversial of the remaining options). These divorces

27 Note again, that where marriages are also registered in civil law, the various understandings of the councils with regards to the interaction of the civil divorce and the Islamic divorce can make available further options for the women at this point – options that do not necessarily rely on help from the Shari'a councils.

28 This distinction between the Sunni and Shi'a councils regarding the requirements on the need for witnesses is in keeping with traditional understandings of these sects (see Nasir 2009:109).

29 See for example Bowen (2013b:142–144) regarding the strategy by the ISC to alleviate the need for financial payment by the husband if at all possible in the attempt to minimize dissent. Such a strategy also speaks to the relative power of men and women in the context of the Shari'a councils as no such maneuvering is needed in dealing with the women.

were characterised by all as *khul'* divorces, but they held different implications depending on the council. One judge from the ISC, for example, noted that divorce certificates for the women were withheld until and unless the wife paid back her *mahr* and agreed to forgo her right to maintenance (unless the husband forgave her the *mahr* and offered such support).[30] The ICE, in contrast, appeared to operate primarily by seeking to obtain a signed declaration from the wife forgoing her right to any deferred *mahr* (often the majority of the *mahr* was deferred), and to any maintenance, but did not, in any of the cases observed, force the wife to return any *mahr* already received. The BSC and the MAT encouraged husband and wife to act fairly towards one another. The BSC did not get involved in any financial elements of the divorce (referring the parties to the civil courts to take up any financial, property or custody issues there). The MAT, however, appeared to be happy to deal with any of the exigencies of the divorce as long as the parties were willing. Note therefore, that the same theoretical underpinning on this front led to four starkly different outcomes in practice.

With regards to requests for divorce from the women for which no consent from the husband could be obtained, the ISC (who along with the BSC termed such divorces as "*faskh*" divorces) stated that such divorces could be obtained on a number of grounds. The following grounds were mentioned in the course of the interviews: (1) Lack of maintenance from the husband. (2) Aggressive treatment from the husband (the examples given included both physical and emotional abuse). One judge noted that the wife must present evidence that demonstrated that this kind of treatment was not an occasional practice, but rather a constant feature of the relationship. It was not specified what form this evidence must take, and my own observations suggested that hospital records and police records were not considered to be conclusive on the matter. Furthermore, many observations confirmed that sporadic abuse and violence from the husband were considered by some of the judges to be minor offences not warranting a divorce.[31] (3) If it is clear that the husband's intention is to cause 'harm' to his wife in continuing the marriage, or, in other words, if he is deemed to be contesting the divorce not because he still wants

30 Note again the difference with which the financial obligations of men are treated (Bowen 2013b:142–144) as an insight into the imbalance of power between the genders as they relate to one another and to the Shari'a councils.

31 See also Mahmood and Sprenger (2011), where Dr Hasan from the ISC, upon hearing that the woman in question was only beaten on one occasion by her husband, notes that the situation is therefore "not a very serious matter".

to be with his wife, but because he is seeking to frustrate and trap her in the marriage.

Observations of council deliberations showed that they also considered the traditional grounds of the husband's impotence, insanity, disappearance, and imprisonment, as further grounds for a *faskh* divorce. I will elaborate on the practice of these provisions in Chapter 4, but note for the moment that there was a stark contrast between the stated provisions as they stand, and the practice of some of the judges on the council in granting divorces, even when women clearly fulfilled several of these conditions at a time.

The BSC had a more permissive policy towards women, in keeping with the tenure of the reforms of Islamic family law of the past decades. Although they too discussed the various traditional grounds for divorce within their deliberations, they held as an overarching principle that the women were allowed to obtain a divorce for any reason (even without the husband's consent). This was premised on the basis that there is no compulsion in Islam, and on an elaboration of the concept of harm. It was argued that the woman cannot be forced to live with her husband against her wishes, as doing so would be harmful for her, and therefore not in line with Islamic principle (the BSC thus adopted the reforms of the past decades which greatly broaden the provisions on which a woman may obtain a divorce).

The grounds on which a divorce may be obtained by a woman without her husband's consent at the ICE were found within the stipulations of the marriage contract which it uses (even in the event that the woman in question did not have such stipulations in her contract, and in the event that the stipulations were present but not signed). These stipulations included: the issue of maintenance; the husband's "misconduct or ill-natured behaviour"; insanity, impotence or sterility, imprisonment (for a period of more than five years); illness (that would put the wife at risk); the husband's taking on of another wife without the first wife's consent; his desertion of the family "inexcusably" and "for six continuous months"; and behaviour that "may detract from the social status of the woman". In practice it was the issue of maintenance that was most often the lynchpin on which divorces could be obtained.

Meanwhile, written correspondence from one member of the MAT noted that a divorce could be sought by a woman within the Islamically valid reasons for divorce, as it was considered prudent to make every possible effort to save a marriage. These grounds for divorce were elaborated, according to "Islamic jurisprudence", to include impotence, the inability of the husband to maintain the wife, desertion, and the ill treatment of one spouse by the other. The MAT were also explicit in noting that stipulations can be inserted in the marriage contract to give the wife a right of divorce should the marriage breakdown.

Despite the variations and nuances, and the differing ways in which the councils draw on tradition and text to weave their own unique brand of 'Islamic truth', some broad themes emerge in summary. The husband has a unilateral, and, in the British context, extra-judicial right to divorce. He need present no reasons for this divorce, but incurs financial obligations in the undertaking of his right (although these are not monitored or enforced). The wife, on the other hand, must obtain the consent of her husband or of the councils in obtaining a divorce, with the councils holding varying understandings of the grounds on which this is permissible. (Note that, where the councils consider the civil divorce to instigate an Islamic divorce regardless of the manner in which it was obtained, the dynamics are significantly altered.)

The Impact of Law on Power in Relationships

These imbalances in the legal provisions for husbands and wives – upheld as they were not only by the Shari'a councils, but by community norms (or perceptions thereof)[32] – were keenly felt in imbalances of power within the marriage relationship as it broke down. A striking feature of this dynamic was the extent to which the specificities of the provisions of the various councils were largely irrelevant to the understanding and interaction of men and women in the marital relationship. Rather, a number of broad themes converged to structure the field of possibilities for either gender. These included very broad understandings of Islamic law (as being weighted in favour of the man), and perceptions of the councils as a whole (largely built on hear-say and again considered to be weighted in favour of men). Perceptions of the role of men and women in the broader community at large, with regards to understandings of the various roles and options of each gender in the marital relationship, and in the process of obtaining a divorce, were also relevant. Unless they had interacted with more than one council, all assumed that the councils within the same legal school were practically identical in law and in practice. A greater knowledge of the distinctions between the various interpretations of law and, more importantly, of the *practice* of various councils, may well have significantly aided some of the women who were caught up

32 As we have seen, the women's perceptions of their communities was that these communities considered the processes of the Shari'a councils to be the only legitimate avenue in the British context through which to obtain a divorce. As a result, the various provisions espoused by the Shari'a councils were indirectly upheld by these community norms.

in the power plays of their husbands, as would the understanding of the diversity which characterises Muslim thought on these issues in the United Kingdom.[33]

It appeared that many of the men lived secure in the knowledge that their wives would have to go through an extremely difficult process in order to secure a divorce without their consent.[34] This was an assumption that was shared by their wives, as they too acknowledged that the route through the Shari'a councils to obtain a divorce without consent was a very difficult one, and that community norms offered few alternatives, if any. Meanwhile, the law gave the men the power to simply pronounce the *talaq* (either extra-judicially in the Sunni tradition, or by registering the *talaq* in the Shi'a case), or to agree to their wives' request for a divorce, and free their wives from the marriage should they so wish. There was, as a result, a significant disparity in the amount of room each had to manoeuvre, with the women having limited options and little bargaining power. Thus many of the women seeking divorces from the Shari'a councils noted that they had attempted various other means of securing the divorce. In many cases the women had pleaded with their husbands and with their husbands' families, as well as attempted the usual channels of extended family deliberations – and had only approached the councils once they had exhausted all other options. In most cases the women talked of the power struggle at the heart of these negotiations, accusing their husbands of "playing games" in order to make the women suffer. Many spoke of their husbands' actions as being intended to "control" them (the women) and to demonstrate their powerlessness to act against their husbands' wishes. In short, the findings of this study were very much in line with Bano's (2010:198) comment that the women operate within a "gendered environment" within their marriage relationship "and so occupy less powerful positions in the disputation process."

The men, for their part, used their far greater bargaining power (within the given field of possible action) to make stringent demands on their wives. One woman's husband had said to her: "If you sign the house over to me, I'll give you a divorce." Another's had said that if she confessed publicly to having

33 Note Shehada's (2005:106) reference to surprising instances of women's knowledge about their legal rights and "the mechanisms and means of conflict resolution" in the Shari'a court in Gaza, although she notes in footnote 28 (2006:112) that "this observation does not contradict the general perception that people have little knowledge of law."

34 Note that this study did not interview the husbands of the women involved, and thus this insight, as with the others in the remainder of this section regarding the attitude of the husbands, must be understood as the women's perception of their marital conflicts.

had an affair he would grant her the divorce. She denied having an affair, but said that it was a strategy of her husband's to shift the blame of their broken relationship onto her, as he had received much criticism when she had left. She said:

> To be honest at one point I thought: "If that's what gets me my divorce I'm going to do it." But then I thought: "But no, I didn't actually do anything and I'd be admitting something which is a *pretty strong* thing to admit to." And that's when I decided that I'm going to go to the council because nothing else was working.

This relative inability to pursue and to affect their own desires was keenly felt by the women in the context of bargaining power in the ending of a marital relationship. Furthermore, a number of women noted the disparity in the relative ability of husband and wife to control their own actions, and the actions of the other, throughout the relationship. Bano (2010:196) notes the "intra-family inequality" that was prevalent in the lives of her interviewees, and the various abuses the women suffered at the hands of their husbands. A number of the women in the present study said that their husbands (and/or their husbands' families) had put great pressure on them to comply with various demands, safe in the knowledge that the women had limited options in escaping the marriage, and needed therefore to "make it work".[35] Where women had eventually refused to comply and had spoken out about the injustices of the relationship a not uncommon challenge was: "Go and get a divorce then, if you can" (implying that she had no remedy). It must be noted that this was not simply a legal challenge but a cultural one as well, as the woman, rather than the man, was considered by the broader community of which the couple were part, to bear the social stigma of divorce (see Vatuk 2008:224).

35 These demands took various forms. Amongst the most common, as indicated in the women's interviews, was the demand for the women's acquiescence to the husband's choice of location for their marital residence. This was contentious either because the husband wanted to live with his family, where the wife preferred to live separately as a married unit, or, in the case of marriages conducted abroad, because the husband insisted that the wife join him and his family in that country (primarily Pakistan), where the wife preferred to remain in Britain and to bring her husband over here. Other demands included restrictions on the woman pursuing employment, restrictions on the woman's choice of clothing, prescriptions regarding sexual relations, and the demand that women raise no complaint about their husband taking on a second wife.

The option of entering into polygamous marriages[36] meant that the men had little to lose in these exchanges. Whilst in theory it is incumbent on the husband to maintain his wives financially (and there might therefore be a financial incentive not to marry multiple times), the women in this study reported that many men simply ignored this provision or considered it taken care of by the welfare state. Thus the men could, with limited consequences, abandon the woman in question if the relationship had broken down and marry another, whilst the wife was considered to be shackled to the marriage with no option of further relationships.[37] As a result the issue of polygamy provided a further buttressing of the power of men over women. One conversation with a young Pakistani woman was representative of such discussions. She relayed that her husband and his family had said to her that, due to her refusal to move to Pakistan (which had not been part of the marriage negotiations), her husband would marry again and had "plenty of proposals". However, they would not divorce her in any case so that she would have to "stay like this [married but alone] for the rest of her life." Another woman who suffered an abusive marriage noted: "Islamically he could remarry at any time. I mean he may have remarried last year, I don't know. But it means then to me, despite everything I've been through, he can move on with his life and I'm still sitting around being his wife."

Although I have noted the ways in which the understandings of law impacted on the respective power of men and women in the marital relationship, many of the women placed the blame for the ills that they had suffered in this context firmly in the remit of 'culture', as opposed to 'religion'. The prevailing assumption was that the patriarchal nature of their experiences was simply the product of culturally skewed interpretations of what is in reality a just and equal law (in line with the Muslim feminist debate). A few

36 All the councils in this study were comfortable with the idea of polygamy and made no effort to advise against it or to prevent its occurrence.

37 Note the disparity of theory and practice, and how both theory and practice are applied to the two genders. Whilst particular interpretations of Islamic law afforded protection for the women in the event of polygamy (primarily in terms of financial provision but also with the injunction that men should treat all their wives equally), in *practice* communities overlooked offences on these fronts, and no social sanctions were put in place. Several women commented that their communities were much more lenient in the application of norms to men than to women, (meaning that the men could more easily ignore the norms without serious consequences). Thus community practice on this front greatly augmented the already unequal balance of power between the genders that was dictated by community norms and understandings of Islamic law.

of the women were at great pains to explain the liberating nature of Islamic law in giving them, for example, a right to divorce – noting that it was cultural practices that made that option difficult. Some commented that their parents were reluctant for them to ask their husbands for a divorce, even in the context of abusive marriages, as a result of cultural concerns because it was deemed to bring 'shame' on the family. Others noted the greater leniency with which men were treated in general life decisions (for example with things such as "going clubbing" being tolerated in the men, where it would be unthinkable for the women). It became apparent in the course of these conversations that, from the women's perspective, male disregard for their obligations in the marriage context (the man's financial responsibilities) or severe mistreatment of their wives was treated with relative indifference by the community, where women's actions were imbued with great significance. One woman noted: "Family honour is only based on women – whatever women do, but there's nothing guys do that reflects on the honour." Summing up how she felt about what she perceived to be cultural pressures, she noted with some emotion: "[It is] truthfully a nightmare to *be* a woman in this day and age more than anything else."

Some were more ambivalent about the boundaries between religion and culture. One woman commented on the unequal dynamic of divorce laws:

> Obviously in Islam I can't divorce him unless I go to the Shari'a panel – but it's one thing that annoys me as well because I had to wait nine months[38] to get a divorce whereas if he wanted to divorce me, he could have done it instantly – and it annoys me that a man has so much power. And obviously the religion will never change – that's set in the religion you know.

Nevertheless, interestingly she went on to concede: "But at the same time I'm very grateful that the religion gives us the option to go through the correct channels – to still get that [divorce]. Yes it takes longer, but then it could have been said that a woman can never divorce!"

There was, in brief, a significant imbalance of power between husbands and wives as a result of these interrelated trends: the non-reciprocal rights and duties of the Islamic marriage as understood by the individuals in this

38 Note that the time frame for issuing a divorce was, on the whole, the shortest at the BSC (where this woman's divorce was obtained).

study and gleaned from their communities; community perceptions of men and women's roles and the stigmatisation primarily of women rather than of men in marital breakdown; the perceived difficulty of obtaining a divorce as a woman without the husband's approval; and the limited cost to the husband of keeping the marriage going due to the option of taking on other wives and the practice of ignoring principles of maintenance and equal treatment of wives with limited social (or other) sanctions. This imbalance of power gave the men greater scope to make particular demands throughout the marriage, and left them in a strong bargaining position at the end of it. Thus husbands were able to demand various goods (over and above the *mahr*) in exchange for their agreement to the divorce, or (in the absence of a desire for particular goods), simply to make life very difficult for their wives should they wish.

Interactions with the Civil Law

The previous section considered some of the primary discourses that work together to construct the (perceived) field of possible action for Muslim women who choose to take up their disputes in the Shari'a councils in Britain. A remaining factor of some significance is the perceptions of, and realities of, English law that prevail in these contexts, and the ways in which the civil system contributes to the options available to the women (if it is perceived to contribute to them at all).

The options associated with the English legal system do not emerge initially at the point of divorce, but are largely determined at the point of marriage. Of the forty-three women in this study, twenty-eight had conducted marriages that were recognised under English law (some ten of these were marriages conducted abroad), whilst fifteen had conducted only an Islamic *nikah* (within the United Kingdom) and were therefore considered unmarried according to English law. I look at each of these groups in turn.

At the point of considerations regarding a divorce, all of the women who had undertaken a civil marriage as well as the *nikah* intimated that the civil divorce did not resolve the issue of their Islamic marriage, and that they had to deal with the two legal systems separately. As was discussed above, a number of these women had not been of this opinion originally – in that they had initially assumed that the civil divorce would put an end to their Islamic marriage as well as their civil one. However, these women were then 'informed' by family and friends that the civil divorce was irrelevant to the Islamic marriage, or had simply found that their communities continued to consider them as

being married according to Islam, despite the civil divorce.[39] As a result, they felt that the only way to conclusively end any tie with their previous husband was to pursue a divorce on both fronts. Thus the relevance of the civil divorce in contributing to the options available to Muslim women as they sought an Islamic divorce was greatly abated by the overarching discourses that structured community norms.

The responses of the Shari'a councils to the civil divorce provided a more complex interaction. The BSC for example, in accepting the civil divorce as a basis for the granting of the Islamic divorce (regardless of whether the civil divorce was instigated by husband or wife), drew the obtaining of the civil divorce, and the multiple options and possibilities that that route afforded to women, into the Islamic system. In these cases the issuance of an Islamic divorce appeared to be largely a matter of certification at the end of an otherwise English route.[40] Here the provision of a certificate of Islamic divorce from the Shari'a council, regardless of its basis, appeared to be enough to satisfy community concerns – or at least to arm the women with official means of fighting back should detractors in the community attempt to discredit their divorce. The MAT also accept the civil divorce as a basis for the Islamic divorce, but the website notes that a separate Islamic divorce may still be required depending on the details of the case.[41] As observation data from the MAT is very limited in the field, it is unclear in what respects the civil divorce is accepted in practice, and how the civil divorce impacts the process of obtaining a separate 'religious' divorce.

The civil divorce had little impact on the divorces dealt with through the ICE, although this is not just a matter of varying interpretations of law, but of the realities of the Iranian legal system which does not accept English civil

39 Note again the caution from Warraich and Balchin (2006:73). The nature of the fieldwork of this study means that the data is drawn from a self-selecting group of women who are much more likely to come from communities where a distinction between a civil divorce and a separate 'religious' divorce is upheld. There is no necessary dichotomy between the two however, and we must be careful not to privilege such a viewpoint. Warraich and Balchin are right to remind us of Muslim women who marry and divorce only through the civil legal sphere, and who would presumably consider a dichotomy between the civil and religious marriage on this front to be false.

40 Douglas et al (2011:47–48) write for example that for the BSC, the civil divorce "is conclusive, such that [the council] does not deem it necessary to grant a religious divorce to enable the parties to remarry under Islamic law (although it will do so to reflect the parties' wishes for 'recognition' by the Council of the ending of their marriage)".

41 http://www.matribunal.com/faqs.php [accessed 1 May 2015].

divorces as legally terminating an Iranian (assumed to be coterminous with 'Islamic') marriage. As a result, women who wish to have a divorce recognised in Iranian law need to go through the procedures of the ICE and the Iranian Embassy (who appear to work in concert on these issues). As was previously noted, this is an important issue for women who wish to travel to Iran.[42] The English civil divorce remains, then, confined to a separate sphere, unable to contribute to the structuring of the options available within the 'Islamic' discourse.

The views of the ISC require closer attention as there has been some disparity with regards to their positioning as it has been presented in the academic literature. As was discussed in Chapter 1, the ISC does not accept the civil divorce unless it has been instigated by the husband, or can be shown to have had his formal consent in writing (although even here there is potential for complications as Bowen (2013b:142) notes). Thus women who had obtained the civil divorce in any other manner found that the English system proved irrelevant to the options and tactics that were open to them within the ISC context. Bowen's (2010:420) comments (echoed in Bowen 2013b:138) that "Once a civil court grants the final divorce decree, the councilors [judges at the ISC] will likely proceed quickly to grant the wife's request; they say that the marriage is over and little sense remains in prolonging its Islamic dimension" were not born out by the findings of this research, the articulations of the ISC in writing, the opinion of prominent individuals within the ISC as expressed online,[43] or indeed by Bowen's (2013b) own reported case studies.[44] It must be noted that the ISC were not always consistent with their judgements or reasonings, which may account in part for the discrepancy. Nevertheless, the findings of this study (as will be elaborated on in greater detail in Chapter 4) demonstrate that there were many examples of cases where the judgements of civil proceedings appeared to be discounted or ignored by some of the judges at the ISC. Indeed, as I will further note in Chapter 4, one judge from the ISC indicated that the

42 See Chapter 1, footnote 14.

43 See Grillo (2015a:100,101) for example for comments by the ISC and by Haithan Al-Haddad. Note that Al-Haddad was replaced as a judge at the ISC in 2014 (with a spokesperson from the councils stating that his views "do not in any way represent the ISC" (Adams 2015)), nevertheless, my interactions with the ISC during the years 2008–2012 would suggest that he was at that point a highly respected and influential member of the panel.

44 Bowen (2013b) notes two cases where, having already obtained a civil divorce months previously, the women in question were still battling through the process of the ISC for an 'Islamic' one (although in one case financial concerns seem to have prolonged the situation).

council actively attempts to reconcile the Islamic marriage, even after a civil divorce has been obtained.

The relevance of the civil procedures on marriage and divorce with regards to women's options as they attempted to obtain an Islamic divorce is thus based on multiple contingencies. These are understood in reference to norms emanating from the women's communities, from the Shari'a councils, and even at times (particularly in the case of Iranians living in Britain) to legal systems of countries of origin. As such, the English legal system as it specifically relates to matters of divorce is a matter of varying importance in the women's lives, and has a varying impact depending on these other factors at play.

Where the obtaining of a marriage recognised by English law and a subsequent civil divorce had a more consistent impact however, was with the greater protection it afforded the women in relation to child custody issues and financial provisions.[45] These are separate issues to the actual granting of a divorce, and once again the councils have their distinct understandings of the appropriate levels of their own involvement. The BSC appeared to consider these issues to be outside of its remit, and directed all clients who wished to deal with any concerns not directly related to the status of the marriage to the English system. This was discussed not only as a matter of pragmatic reality (in that the BSC does not have the power to enforce any rulings on these fronts), but also as a matter of the council's understanding of the operation of Islamic law in contexts where Muslims reside as minorities. Thus, for example, Billaud (2014:165) notes two judges on the BSC panel, Dr Naseem and Amra Bone, commenting that "The law of the land applies to Muslims, wherever they live" and that "Allah does not want us to have a conflict" – sentiments that were echoed by that panel throughout the fieldwork for this study. The ICE followed a similar pattern to the BSC in referring the child custody and financial concerns of its clients to the English courts, although this appeared to be primarily a pragmatic orientation, rather than an ideological one (in recognition of the fact that the ICE does not have the legal power, or the desire necessarily, to intervene on these issues). As a result, women who approached these councils found that the structure of the English legal system and the opportunities and options it afforded with regards to child custody and financial settlements provided the primary framework in which these battles had to be navigated. (This was so even where separate and smaller scale specifically Islamic arrangements

45 Although note Fournier's (2014) case studies of the ways in which the civil process can be used by both men and women to their own ends. As such both the civil and the 'Islamic' sphere can be used sometimes to the cost, and sometimes to the benefit of Muslim women depending on the specificities of the cases involved.

regarding the *mahr* or the dower were attempted to be worked out between and within families.) The MAT appeared to operate according to the desires of its own clients – attempting to discuss issues pertaining to child custody and financial arrangements if the women and their partners so wished.

Some of the members of the ISC were unique amongst the judges in this study in appearing to attempt to pressure and coerce women into various child custody issues (in particular visitation rights for the husband even where formal legal proceedings were in motion with regards to the father's competency to have access to his children), and financial arrangements. The following, for example, is taken from fieldwork notes of one client meeting in which a woman who had been the victim of domestic violence spoke with one judge from the ISC about getting an Islamic divorce. In the course of the interview she mentioned that she had been separated from her husband for three years:

> J:[46] What do you mean "separated"?
> A: I went to live in a women's refuge.
> J: After he hit you?
> A: Yes, that's right.
> J: With your children?
> A: Yes, that's right.
> J: So was there any effort to reconcile in this period?
> A: No.
> J: Did you ever see each other?
> A: A few times, to see the children [they had arranged meetings so that the husband could see the children] – we met somewhere outside. [She explains that refuge rules mean that the address cannot be given to the partner and if the women choose to have any contact, they need to do that elsewhere.]
> J: Every week?
> A: No, no, no… he's only seen the children once this year. [She says this as though she is proving a point – showing that the husband is entirely uninterested in her or the children, but the judge in question asserts an alternative reading]:
> J: This is not in your favour – you are denying him his right to the children.

46 I've assigned the initial 'J' to the comments and questions from the judge, and 'A' to indicate the women's answers. Note that the comments are not intended to indicate direct quotations as the encounter was noted down in the course of observation rather than recorded. Thus the interaction as presented above is my understanding of the encounter in the moment.

A: No! He didn't turn up – twice – to the hearing for access to the children.
J: Who initiated the hearing?
A: He did.
J: This is natural – you were denying him.
A: No! I have no problem with him seeing the children in a children's access centre –
J: [Cuts her off] You went to the hearing to deny him access!

The meeting is antagonistic, and when I later interview the woman privately she is deeply frustrated by her encounter at the ISC. She tells me: "I don't even mind him [her husband] having access to the children but he's not gone through the right channel to do that and I'm not letting him take the kids just like that, whenever he wants – I've never let him do that." (I am not able to track the case further, and see if she is able to stand her ground in subsequent meetings with the ISC, or whether her desperation for a divorce leads to a capitulation on this front). Again, Bowen's assertion that the judges at the ISC "do not rule on the issue of child residence or the division of property, knowing that these matters will be determined in civil court if they are not agreed to by the parties" (2010:419), and his further comments that the "councilors wish to work in a way that complements the proceedings of the civil courts" (2010:420, echoed 2013b:138) were difficult to reconcile with the findings of this study in any straightforward fashion (or indeed with the observations and analysis that currently exist in the field).[47] Zee (2016:127) writes with characterstic bluntness: "it is… a problem that academics repeat the Shari'a Council's lie that they do not rule on custody issues" (referencing Bowen directly). Bowen (2013b:138) himself notes that "if… the father has indicated that he has difficulty getting access to [the children], they [the ISC] ask [the mother] to give an affidavit that she will allow the father to see his children. In recent years, the wife often swears to this undertaking in the presence of a solicitor" and goes on to write "some councilors [judges at the ISC] believe that English family courts tend to give insufficient weight to the father's need to see his children and that, consequently, they need to pay particular attention to this issue."

Another case exemplifies the encounters that occurred over finances. The woman bringing the case had been subject to repeated violence from her husband, and had already obtained a civil divorce. She had been attempting to obtain an Islamic divorce from the ISC for over a year and told me that she had

47 See for example Griffith-Jones (2013:199) and Zee (2016:127–133) as well as a growing number of press reports that raise caution regarding the treatment of domestic violence cases as well as child custody issues at the ISC.

rung the ISC office on numerous occasions to ask what was going on and why her divorce was being delayed. On one such call, when the divorce was already meant to have been finalised as per a previous discussion with the ISC, she relays that she was informed that the divorce could not go through because her husband had told the council that the financial issues involved were not resolved. At which point she had raged: "The judge has ruled! [Indicating that the English judge, who had dealt with her civil case, had ruled on the financial details of the case.] You have no right to judge!" She comments that she was told that the council had to make sure of the outcome.[48] Difficult questions remain then as to the positioning of the ISC on these issues. The findings of this study did not correlate with the formal assertions by the ISC that it does not encroach upon English law. Rather fieldwork observations of the workings of the council as regards its treatment of the judgements of civil proceedings (whether in regard to the divorce itself, to injunctions whereby husbands were not to be in the same vicinity as their wives, to child custody arrangements, or to financial settlements), suggested some significant cause for concern.

The power of the English law to intervene, or to shape the boundaries of the possible options open to women as regards to their children and to financial issues, is thus ultimately tempered through the norms of their own communities as well as through the various orientations and philosophies of the councils. There were, however, as mentioned above, a second group of women encountered in the course of fieldwork who had little recourse to the civil process in the first instance due to the official status (or lack thereof) of their marriage. This latter group were unable to access the structures of the civil sphere as regards their divorce because they had not registered their *nikah* and so were not considered to be married according to English law.[49] Multiple reasons were given why the registration had not taken place, the most prevalent of which

48 Note that I did not have the opportunity to observe this interaction between the woman and the ISC, and the narrative here is based on the woman's own interpretation of events as taken from her interview.

49 The number of unregistered marriages in the British Muslim community is said to be on the rise. In Shah-Kazemi's (2001) study, twenty-seven per cent of respondents had not registered their *nikah* in English law. More recently, family solicitor Aina Khan has claimed that some 80% of Muslim marriages now fall into this category (*Register Our Marriage*, The Upcoming, 22 June 2015). See Balchin *Registering Muslim Marriages* (http://www.musliminstitute.org/upfront/religion/registering-muslim-marriages-cassandra-balchin), Muslim Marriage Working Group report to the Ministry of Justice (2012) and The Muslim Women's Network (2012) for some of the broader discussion regarding the potential challenges an unregistered marriage might raise for Muslim women in particular, as well as avenues through which the situation may be rectified.

were either that the women had been under the (mistaken) impression that their religious marriage was valid according to civil law, or that their husbands (or husbands' families) had prevented the registration of the marriage. A few of the women had not registered their marriages due to financial considerations; and two women noted that they had not registered their marriage due to a general disaffection with English law.

The majority of women (within this study) who did not have a marriage registered according to English law were not entirely clear about the status of their marriage, and at least three had explicitly thought that their Islamic marriage was valid under English law. In all three cases the women were only alerted to the fact that their marriage was not recognised under English law when they contacted a solicitor to enquire about a divorce, only to be told, much to their shock and concern, that "You are not married." This misunderstanding of their status was not always simply a case of having false assumptions that had gone unchecked. One woman told me that her husband had actively misled her:

> I got married… eight years ago, and it was an arranged marriage. My husband – he's a [family law] solicitor, so he was very aware of the law of this country. When we got married he didn't register the marriage according to the English courts – he told me that having the Islamic *nikah* was sufficient, and I did sort of question it a couple of times, but he'd always push me back saying: "I know more because I'm a solicitor." So I believed him. You know at that time you don't really think about divorce like that – you know? You go in with an open heart.

Others had wanted to register their marriage, but had been prevented from doing so by their husband (or husbands' families) who did not necessarily explicitly say "No" to such a plan, but simply dragged their feet and prolonged the process until months had passed, and the issue had retreated from the women's minds as being of particular importance. When I asked one woman why she had not registered the marriage she answered:

> His father [referring to her now ex-husband's father]… decided that just having the *nikah* was enough. But then his father's very… […] He's one of those people who will think like ten steps ahead. So even *then* he was thinking like… […] I mentioned it [getting the marriage registered according to English law] when we first got married Islamically. Before my honeymoon I said "We should get registered." Just a small thing, just go and get registered and come back whatever – it's not a big thing. And his

> father had obviously thought about the years ahead. And… I could just tell from the way he said it that he didn't want me to [to get the marriage registered according to English law] because my rights would become…
> TW: Augmented?
> Yeah, there would be like – I could do what – I could get what I deserve, and what's rightfully mine. So now it's more difficult for me.

Another told me that her husband had not wanted to have the marriage registered: "I don't know why he wasn't – he didn't want it… but I just didn't question it because I was like 'Well, you know, I'm married.' […] Maybe if I had got the damn thing done it would have been a lot better." Thus the very decision that made possible the use of the avenues and options of the English legal system in negotiating the termination of a marriage – the decision to register the marriage according to English law – was often itself subject to power relations which hindered or prohibited such a course of action.

A small number of women on the other hand had purposefully avoided a marriage recognised by English law. Of these some had made the decision based on financial or administrative concerns. For example, one woman who was obtaining a divorce for her second marriage told me:

> Throughout the [first] marriage I was the one who bought the house and paid the mortgage off and everything and financially I was always secure. But when the divorce was going through it just dragged through the courts […] and I thought, you know, "Divorce itself is very stressful as it is but then having to go through the courts" – the law in this country which drags on, solicitors and everything like that and you're drained financially as well. Well I thought "Islam doesn't say I have to get married legally because I'm living in England – that's the English rule and the English rule doesn't say you have to get married either – you can just live with somebody." So I thought "Islamically that's all I need. I don't need to go and get it registered in an English court." I thought "That's all I need." And that's what I chose the second time.

Another noted that she did not trust her second husband when she married him (as she was financially better situated than he was, living in her own council housing and on benefits), and so decided not to register the marriage in case its legal status gave him access to her funds. These women thus attempted to navigate the options before them in such a manner as seemed to ensure a better financial outcome should the marriage fail. The women were not disappointed in their calculations on this front, although it must be noted that their

tactics were largely successful because these women were interacting with the BSC (who does not interfere with financial concerns). Interactions in other contexts may have produced a different result and left the women in greater, rather than less, financial vulnerability.

A few women conveyed that they had not registered their marriages in English law because the English system was not important to them. One woman said:

> I'm not really fussed about the English marriage or anything. I just think "Well, at the end of the day you're married Islamically, so you're married." Why would I need to just go to registry office to get it certified that I'm actually married just by Western law?

Another said:

> I didn't have that [the civil ceremony] cos in my eyes I was married, I didn't need to have that civil ceremony, that was just for the English people could recognise that I've been married and that wasn't important to me.

This same woman told me, however, that when it came to getting a divorce, her husband refused to resolve the child custody and property issues at the MAT as she wanted, but insisted on going through the English courts (this presented a somewhat exceptional case with regards to the preferences of the two genders). It must be noted that these sentiments were exclusively the remit of women who were followers of Shaykh Siddiqi and even where others had knowingly avoided English "officialdom" (as one woman put it), they had done so on the basis of particular financial concerns as opposed to a general disaffection with the English legal framework.

As the foregoing discussion has highlighted, women's options with regards to the English legal system do not emerge initially at the point of divorce, but are largely set at the point of marriage. The options and opportunities that the civil sphere provides for Muslim women in these contexts is tempered through multiple exigencies, including community norms and the orientation of the various councils, as well as (of course) the specificities and power structures of the civil system. Fournier (2014) writes insightfully of the ways in which the civil sphere is sometimes used to the cost, and other times to the benefit of the women involved, and how both 'civil' and 'religious' law are contexts which are negotiated by both men and women to their own ends. Nevertheless, whilst there were a few exceptional cases where the women involved

had purposefully avoided the English system and used this to their advantage, fieldwork interviews suggested that those who did not have a civil marriage were on the whole more vulnerable.

The Field of Possible Action

It was argued, in Chapter 2, that the question of women's motivations and reasoning as they approach the Shari'a councils cannot be adequately answered with reference to the ideals of authority and religious freedom. Here in this chapter the first part of an alternative hypothesis to these concerns has been presented.

I have argued that the interplay of law, community norms, and the practices of the Shari'a councils work together to construct a particular set of boundaries – a "field of possible action" – around which women feel they have to navigate in the pursuit of their own objectives. These norms work not only to construct the possible actions open to women at the point of divorce, but also structured the bargaining power of husband and wife within the marriage relationship.

This felt sense of being constrained by prescribed boundaries of acceptable behaviour is not necessarily (and not in fact for the most part) an indication of the women's adoption of community norms as their own. The women did not (on the whole) attach a sense of rightness or legitimacy to these norms or consider the discourses emanating from their communities to be authoritative. Rather, the sense of constraint, and the choices of the women to adhere to community norms, must be understood as indicative of the women's realism in attempting to navigate their own objectives in the manner most achievable, and with the least potential costs.

The cumulative effect of the power relations that make up the women's social field is to leave the women with few (and often costly) options, either needing to negotiate their decisions and actions within norms that invest unequal power in the hands of men and women, or to transgress those norms at the risk of being ostracised or disowned by their families. These dynamics must not be misunderstood, however, to connote that the women are definitively coerced in these fields in such a way as to leave no options. Rather, the options available to them are structured and limited in certain ways, meaning that there is limited room for creative negotiation of these norms towards the women's own ends.

In these complicated contexts the imposition of English law and the alternative possibilities it affords are not an escape from one power into freedom,

but of course must be understood as representing a separate power structure and separate field of possibilities (see Griffith-Jones 2013). These alternative possibilities however, (even though understood in reference to another discourse of power), can nevertheless be used by the women as a tactic of resistance. The use of the civil law can act as a mode of safeguarding and protecting particular interests of the women against the treatment they receive in some of the Shari'a councils and even at the hands of their own communities – a way of redressing unequal distributions of power between men and women in particular. As we have seen however, even the possibility of having recourse to the English system is at times navigated and circumscribed by prevailing discourses of power that emanate from the women's own communities, from understandings of Islamic law, and from the various positionings of the Shari'a councils.

CHAPTER 4

Tactics of Power

The women who use the Shariʿa councils find themselves within structures of power that, through a variety of ways, greatly limit the field of possible action that are open to them. This is done in part by attaching prohibitive 'costs' (largely emotionally speaking) to choices that run counter to hegemonic norms, or simply by rendering such alternative choices futile through the refusal of community members to acknowledge their legitimacy (such as the refusal to acknowledge the validity of a civil divorce). This provides part of the story.

In the following pages I argue that women turn to the Shariʿa councils as a last resort, as a result of a specific understanding of authority, and ultimately motivated by a desire for freedom. The concept of authority is thus reintroduced into the analysis, but not in the manner or the form suggested by the Shariʿa councils and assumed by some of the liberal, multiculturalist debate (specifically, not connected to the women's exercise of their freedom of religion). Rather, I highlight an important distinction between the women's understanding of the Shariʿa councils as being authoritative for the women themselves, and an understanding of the councils as being considered authoritative (in the women's perceptions) by the communities of which they are part.

Although the women did not personally consider the Shariʿa councils to be authoritative, they believed that *their communities* did so. This distinct understanding of the authority of the councils became part of the web of power that surrounded the women, forming (in the women's minds) the normative boundaries within which their communities operated. These boundaries in turn dictated the field of possible action in reference to which the women must navigate their desires if their affective ties were to be maintained. Thus, conceptions of authority *did* form an important part of the women's calculations in approaching the Shariʿa councils. These were, however, tactical calculations of power, rather than a freely given assent to the legitimacy of a normative framework. The women attempted, in short, to use processes that (they assumed) were held as authoritative by their communities, in order to govern and to manipulate the responses of those communities in line with the women's own desires.

Two questions arise from this discussion. Firstly, are the attempts to use the Shariʿa councils in such a manner successful? In short, do the "patriarchal bargains" of the use of the Shariʿa councils achieve their desired objective? I will

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argue that these bargains leave the women disappointed as they yield mixed results. A related question takes us back to one of the primary claims of the Shariʿa councils. As the women attempt to use the councils to carve out greater space for themselves within specific frameworks of power, and as they look to secure certain rights for themselves in the process, the discourse of the Shariʿa councils regarding their role in safeguarding the rights of Muslim women, is pertinent. This presentation of the Shariʿa councils is a key component of calls for their existence (and/or recognition in law). A related question then, is: "Do the Shariʿa councils in Britain in fact safeguard the rights of Muslim women?" Significant distinctions at the level of practice as well as in theory between the Shariʿa councils in this study (as will be elaborated below) mean that generalised answers to such a question must be used with caution. Nevertheless, and with this important qualification in mind, I ultimately argue that the patriarchal laws applied in such contexts, the manoeuvrings of particular judges in ways that further disadvantage the women involved, and the manner of the interactions between clients and judges, mean that this claim of the councils cannot, on the whole, be upheld.

The Decision to Use the Shariʿa Councils: A Particular Logic

In coming to the decision to end their marriages, many of the women had first called on the help of family members, of *imams*, or other 'elders' in the community, to attempt to mediate between husband and wife (or otherwise explained why this option had not been open to them). Of those who had civil marriages, many had attempted to go through the civil divorce route initially, only to find that their communities, and their husbands, ignored this divorce as "irrelevant" to the Islamic marriage. Many had pleaded with their husbands, and with their husbands' families, using any means at all that might enable them to exert pressure and give them an advantage to manipulate a response (these were specific to each relationship).[1] In short, the majority of the women in this study, before they turned to the Shariʿa councils for help, had first pursued any other means that they could conceive of in

1 One woman, for example, having been pressured into a marriage with a relative in Pakistan, upon returning to the United Kingdom telephoned him to say that she would go through the process of sponsoring him to be able to migrate to Britain as a spouse, if he would guarantee that he would divorce her Islamically once he had arrived here (the English divorce could then be pursued at a later date once the husband had obtained the right to remain in Britain).

attempting to obtain their desired outcomes.[2] In doing this however, the women repeatedly found that they were in unequal relations of power, with limited bargaining power and limited room to manoeuvre.

The decision to turn to the Shari'a councils in such a context was not, however, simply the mark of desperation, or of limited options. Rather, it formed part of a calculated tactic that had a very particular logic to it. In the pursuit of outcomes that run counter to community expectations,[3] or to the expressed will of their husbands, women looked to tactics that might confer on them the very power of community norms as a means through which to redress the balance of power, and to achieve the women's own aims. Crucial to this tactical choice is the concept of authority. As was noted in Chapter 2 above, the women in this study (for the most part) did not attribute a *personal* sense of authority to the Shari'a councils. The women did not consider the councils to invoke a duty, on behalf of the woman, to obey, and bestow on the judges the "right to command". Neither did they personally consider the Shari'a councils to be part of a normative framework which the women themselves considered legitimate, and to which they gave their free assent. Nevertheless, despite this lack of personal investment of authority, the women assumed that the councils would somehow hold such an authority over their husbands primarily, and at times, over their communities (or *hoped* that they would). They hoped that the councils would create in their husbands and in their communities a binding duty to obey, or (at least) a resigned acceptance to decrees, or ultimately, failing that, that the council would somehow be able to force their husbands to comply, much as the English legal system might do. One Pakistani woman, for example, was representative of the responses of the women as she commented on her decision to use the Shari'a councils:

> I wanted *them* to tell him [her husband] my rights [...] I only went to the Shari'a council because he wouldn't listen to anyone else – they were my last resort. It wasn't that these people have the highest word in my life or anything like that.

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2 Mir-Hosseini (2000:29) equates the hesitancy to use the courts with considerations of shame and honour in the Iranian and Moroccan case. In the interviews conducted for this study however, the overriding concern seemed to be the fear and distrust with which the women held the councils (I discuss this concern in greater detail shortly). Considerations of shame and honour remained relevant but appeared not to be paramount.

3 In particular, the pursuit of a divorce, which was considered a matter of stigma for women who initiated it within the Muslim communities of which the women in this study were part.

The use of the councils was thus the outcome of a process of tactical decision-making that was informed by the power structures in which the women were part (see de Certeau 1984), and by their attempt to use the "language of the dominant class" (Scott 1990) – the *means* or *mechanisms* of power available within the structures of power – for the women's own (counter-hegemonic) ends.

These decisions were made regardless of the women's own perceptions of the councils, and at times with great misgiving and trepidation. A number of women, for example, commented in interview that they had been "very scared" as they approached the Shari'a council to which they had taken their dispute, as they had expected to encounter misogynistic rules and judges in the process. Nasreen for example, a Bangladeshi woman in her mid-twenties, had not registered her marriage according to English law. When it had come to the decision to obtain a divorce, however, she intimated that she could not face the prospect of going to a Shari'a council and was scared of what she might find there. As a result she had gone to an English solicitor instead, pleading: "There *has* to be some kind of a loop hole, there *has* to be something that you can do for me – you can't just *leave* me where I am." She went on to say that she knew "deep down [that] there wasn't anything… I just had to sort of… suck it up and get on with it." Later she tells me:

> I *had* been talking to my solicitor and saying to him: "Is there *no way* that we can get this sorted?" And there wasn't any other option [because her marriage was not registered]. But again I was very wary about it [about going to the ISC] though because I was kind of like: "Woah, that's more male oriented and they're not going to take me seriously enough." And I was very worried that they would take *his* side [her husband's side in the dispute]. Cos there *are* a lot of… *aspects* within our religion that – it *is* very male orientated, very male dominated, and I just thought they wouldn't take me seriously. They'd probably just take one look at me and say something like: "Well, she deserved it." I don't know, it was just at the time it was kind of like: "They're just going to take his side so what's the point? I'm just sort of … buggered…. So there's nothing I can do." […] I was thinking: "Oh my God they're just going to shoot me down – I can't, I can't show my face to these people." And then I did go on to the website that it [a pamphlet she had been given by the solicitor about the ISC] referred to as well, and again it didn't make it any better.

In the end, she relayed that after many months of trying other options and ultimately pleading with her husband for the divorce (to no avail), she realised

that if she wanted to obtain the freedom that she was seeking, she would need to approach the ISC. She comments that it is the "only way" to obtain the Islamic divorce that she is pursuing. Thus decisions to use the Shari'a councils were made even in light of the lack of trust with which many of the women held the councils, and the anxiety that at times surrounded their interactions.

Despite these misgivings in some however, the overriding objective of using the perceived authority of the Shari'a councils to redress the balance of power with unscrupulous husbands, and to attain outcomes which the women felt could not be challenged within their communities, was of paramount importance. As a result the women made their decisions to use the councils regardless of their personal preferences concerning this avenue towards their aims. In doing so they ultimately hoped that the authority with which (they assumed) their communities invested the Shari'a councils, could be used to control and to direct the behaviour of those against which they were struggling. Thus the use of the councils was an attempt to exercise power through a medium that had a superior position to the women within the structure of power in which the women are caught up. Mala's case was particularly striking on this front and demonstrates the (at times desperate) hopes of the women in these calculations.

Mala's Story

Mala is a young Bangladeshi woman who approached the BSC for a divorce, despite the fact that she was already in possession of one. Her husband had divorced her two years previously (through the *talaq*) and she had with her a divorce certificate drawn up by a 'scholar' who was a friend of her husband. The certificate included her husband's signature as well as the signature of his friend. Dr Saeeda and Saba gently but persistently attempted to convince Mala that she was already divorced and need not go through the procedure again. Despite their best efforts, however, Mala was adamant in her chosen course of action. Sitting somewhat uncomfortably and visibly shaken by the whole encounter, she said that her husband (note that she continued to refer to him as such even though he was in fact her *ex*-husband) no longer accepted the divorce (the one that he had issued) and was harassing her. She confided that his behaviour was causing her great emotional instability. As a result she wanted something "official" and went on to say: "I want something that has 'Shari'a law' on it – because everyone has to listen to the Shari'a don't they?" This was a revealing statement, pointing to the young woman's assumptions about the power that could be wielded, through the use of the council's authority over her ex-husband, to control his behaviour. Although the *talaq* had been issued

two years previously, and there was as a result no means through which the ex-husband could revoke his divorce within any interpretation of Islamic divorce laws, Mala went on to assert: "If it's my husband's divorce, he thinks he can take it back, maybe if I get a divorce, he will know that he can't take it back." (I discuss this and other cases in greater detail shortly to consider the efficacy of such attempts.)

Three other cases of similar intent (attempting to use the perceived authority of the Shari'a council to control the behaviour of others), involved women who initiated divorce proceedings against their husbands through the Shari'a councils, not with the intention of actually getting a divorce, but hoping that such drastic action might force the husband to re-engage with the marriage. In two of the cases, the husband had taken on a second wife, and in all three cases the husband's behaviour towards the wife, or their children, was causing the woman distress. The threat of a divorce was articulated, in these cases, as an attempt to reassert the woman's position through a two-fold tactic. Firstly, the hope that the Shari'a councils would give some form of stern rebuke to the husband, scolding him regarding his conduct and applying some pressure for him to become a better husband. Secondly, the women hoped that the very act of filing for the divorce would shake their husbands into action: they envisaged that upon realisation that his wife was 'serious' about her threats of leaving him unless he shape up, the husband would change his behaviour. One woman noted:

> You see what my husband wasn't aware of at the time whilst he was out partying [was that] all these things came to mind [the possibility of threatening a divorce] [...] I can say to you when I sent him that divorce letter in September last year it was actually a threat. I didn't mean to carry it out. But because of his behaviour escalating and things getting from bad to worse it almost felt like this time I have to honour my word. It was never meant to be issued – I actually sent it as a threat.

Another woman, Rasha, spoke of her pain at her husband's taking on of a second wife. She said that she could not help continuing to love her husband, and wanted to maintain the marriage even with the pain he had caused, if he would only consent to her two requests: to treat the two women equitably, and to inform the second wife of Rasha's existence (her husband had kept his first marriage a secret). She finally initiated the divorce as an ultimatum (as her pleading had proved ineffectual), an attempt to force him to either grant these requests or lose her in the process. Ultimately, this attempt failed as her husband simply agreed to the divorce.

Others still went to the councils seeking Islamic divorces where civil divorces had proved ineffectual to cut marriage ties conclusively in the eyes of their husbands or of community members. Meanwhile, for others, no civil marriage existed which could provide an alternative route, and the Shari'a councils appeared as the prescribed method through which to obtain a divorce that would be recognised within their communities in the absence of the husband's consent. There were thus numerous examples of women who went to the Shari'a councils, wanting the particular council in question to prove strong on their behalf. As these cases show, there were a variety of specific 'end' goals mentioned by the women as forming the objective in mind as decisions to go to the Shari'a councils were made.

Despite these specificities however, there was, as was noted in the introductory chapter, an overriding theme to the majority of discussions with regards to the women's decision-making on choosing to approach the Shari'a councils: the desire for, and the pursuit of *freedom*. The games of power and the tactics that the women used, and the ways in which they tried to use the Shari'a councils, were all ultimately geared towards their desire for freedom. Discussions on this front were considered primarily in reference to negative conceptions of freedom, as the women focused on the constraints and obstacles with which they were faced, in particular, the controlling power of their husbands and communities.

In the short term, for example, this desire for freedom was centred on the divorce, the focus of which was obtaining freedom from the ties of the marriage (as opposed to being articulated in reference to particular aspirations for which the women were striving outside of the marriage). There were numerous specific concerns which had led to this desire for the termination of the marriage, for example, concerns regarding domestic violence, financial struggles, a lack of compatibility between husband and wife, interference from the extended family which had put unsustainable pressure on the marriage, and so forth (see also Bano 2011:173) but a significant majority of women interviewed talked of freedom as an overarching concern. Several spoke of feeling "trapped" by their husbands and within their marriages. Others talked of the abuse they suffered from their husbands and wanted to be free from their power. Many accused their husbands of trying to "control" them, both within the marriage context, and through the withholding of the *talaq*, and expressed their desire to be free from this controlling influence. These discussions culminated in the women's explicit wish to be conclusively separated from their husbands, not only in their own eyes, but in the eyes of their communities and of their husbands also. One woman, for example, explained her decision to pursue an Islamic divorce through the ISC in these terms:

> Because as far as I'm concerned the English divorce doesn't mean anything to any of us – I'm still his property. It's the culture of the community – I've not had contact with him for nine years, and separated for four years, but until I get an Islamic divorce they [referring to 'the Muslim community' in abstract form] still say I'm married.

Another woman noted:

> The Islamic one [divorce] *was* important to me – it was like something to actually say that our marriage was… broken. It's like I didn't want to live on… being his wife. You know what I mean? – Being that man's wife. I wanted to get the divorce – you're like nobody's wife, you're your own person now, and… like in our culture they – people – as long as you haven't got that divorce, they still see you as that person's wife. So it was just – to separate myself… altogether from him really.

It must be emphasised that the discourses of the women within the context of the Shari'a councils with regards to their own desires were, of course, not articulated in terms of freedom, but in terms of various specificities of the husband's failure of his marital duties. Thus whilst the women talked in private of the desire to "be free", an attempt was made to translate this desire into the language deemed most effective in the context of the councils.[4]

Thus the use of the Shari'a councils was a way of conclusively ending the marital relationship in such a manner as was dictated by community norms, and therefore recognised by those same communities. The women conflated this with the understanding that such an action would be recognised by their husbands as well, or at least that once they had fulfilled the required procedures, community recognition of the ensuing divorce would leave their husbands with no option but to accept the divorce. Meanwhile, the *manner* in which the Shari'a councils were used was a tactic dictated by the women's understanding of the norms of the councils themselves.[5]

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4 Mir-Hosseini (2000:46), writing of the Iranian and Moroccan contexts, makes a similar observation. She notes the prevalence of the use of accusations regarding "maintenance" as "the ultimate strategy" by the women in translating their private concerns into concerns most likely to yield a divorce. See also Shehada (2005:169–184).

5 It is a point of interest to note that anthropological studies of Shari'a courts elsewhere in the world (for example Mir-Hosseini 2000, Peletz 2002, Stiles 2009) suggest that a greater breadth of motivations are involved in approaching the courts, and a greater proportion of time spent considering in particular the specificities of financial arrangements. The lack of enforcement mechanisms in the British case, and the apparent preference of women to use

In navigating such a route, and in articulating their desire for freedom, many of the women also mentioned longer-term objectives (beyond the immediate divorce). One of the most frequently cited reasons given by the women for why they were choosing to use the Shari'a councils to obtain a divorce was that they wanted to be free to remarry. This again was articulated largely in negative terms, in reference to the desire to remove anticipated problems or obstacles they might face from the Muslim community at large in this eventuality. Several women thus noted in particular that they wanted to obtain a divorce within sufficiently stringent rules to limit the potentiality of complications to a prospective marriage occurring in the future (whether as a result of the future husband's convictions, or the orientation of the future husband's family or community, or an *imam* who refused any other form of divorce as valid). Sarita's case is instructive here. Sarita is a Bangladeshi woman in her late twenties, confident and independent. She had been given a *talaq* privately from her husband and told me that she was clear on where she stood before Allah: she considered herself divorced, and her conscience clean. Nevertheless she had decided to go through the process of using a Shari'a council (in her case the BSC) to have something concrete she could show the community.

> It wasn't so much for me because for me I've been divorced for two years. Because when he left [...] he gave me the *talaq* – that's final. There may not be witnesses from his side but the judge is Allah. So to protect yourself Allah has actually said this is the procedure you have to follow [using the Shari'a council] because ultimately God won't come here and be a witness. As far as I was concerned I was divorced way before – that's why it's taken me so long to go to the Board of Shari'as [referring to the BSC]. I didn't have to, but in the end when I was speaking to some friends they were like "Don't let it be the end of it, you are going to get married again." [Note the assumption that if she did not obtain a formal certification of her divorce through a Shari'a council, her divorce would not necessarily be perceived as valid.]

Earlier she had commented: "But if I did get married, in ten years down the line, the guy that I'm getting married to will ask for evidence that I'm divorced. If *he* doesn't, his family will be asking. So I've got proof there [in the

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the civil courts in any case to resolve their financial and child custody issues, means that the use of the Shari'a councils in Britain appeared to have a more singular motivation from the women, (namely, the pursuit of 'freedom' specifically rooted in the desire to conclusively end marriage ties, or as mentioned, in some exceptional cases, to re-engage the husband).

documents from the BSC] that I am. It's just to cover your back." In the course of our conversation I asked her whether she would feel relieved when it was all over. She replied:

> No, no because it's been all over for ages. My mum doesn't even know that I've been to the Board of Shari'as, because to her I'm already divorced and she's happy with it. So I didn't do it for my family. I did it for society let's say [...] Cos I knew if, for example, five years down the line I was in the position where I'd met somebody and I wanted to get married... Obviously people in our generation [...] when you divorce they don't really care about what society thinks I don't think our generation [indicating that the younger generation, and therefore a potential future husband, may not be so concerned about the formal certification from the BSC]. But to me to have that certificate wouldn't be for the person I'm getting married to, it would be for the society itself. And for him [her future husband] to actually say: "Yeah she is divorced so whatever he's [her previous husband] saying, if you choose to believe it that's fine, but this [the divorce certificate] is what the Board of Shari'as has presented her with."

Thus her use of the Shari'a council was not for herself, not for her immediate family, not even for a future husband, but for the benefit of her hypothetical future husband's hypothetical community – a tactic to safeguard the freedom of future choices and to obtain the upper hand against a future set of constraints that she wanted to hold in check. This dynamic was a very familiar feature, and demonstrated one way in which the anticipated response of 'the Muslim community' shaped and determined the actions and tactics of the women I interviewed.

Whilst the desire for freedom was understood in reference to constraints imposed in part by the women's own communities, however, it must be noted that these relationships remained an important feature in the women's lives. It is vital to note, for instance, that the desire for freedom was not articulated in terms of liberal ideals of autonomy or of a stark individualism attached to ideals of a transcendental self. Rather, community relationships and identities, and the mutual formative investment of lives, held a positive role in the women's thinking and were a matter of importance throughout the interviews. A number of women for example, noted that the process involved in obtaining an Islamic divorce should be made easier for women. They wished that their communities would be more amenable to women making decisions to obtain a divorce, and more flexible in the norms they required women to fulfil. None,

however, expressed a desire to abandon their communities. Speaking of these dynamics more broadly, many of the women noted in particular the tendency of their communities to "know each other's business", and acknowledged the impact of community gossip and community opinion in shaping their perception of the options that were open to them. Several of these women however, went on to explicitly articulate that these same community relationships were nevertheless very important to them. One woman noted: "I *do* believe that the community would be so much more *different*, and maybe not even in a good way, if all of that [the gossiping] didn't happen. Because you do kind of feel a bit – *I* would feel a bit lost if the community wasn't there and that kind of... interaction wasn't there." Many others intimated their desire to remain in relationship with their communities despite the struggles they experienced, by noting that their choices had been informed by the desire not to transgress accepted community boundaries to the point that might result in them being "disowned" or cast off by their families. Meanwhile, the few women in this study who had forfeited their communities as part of the process of attempting to govern their own lives saw this as a great loss, and had either ultimately made conscientious attempts at reconciliation, or talked of a future date where that reconciliation would be possible. Even in one, highly unusual case, where it was the woman who had ultimately disowned her family as a result of a breakdown in relationships following what she perceived to be a betrayal of trust in the process of her first marriage, she noted somewhat wistfully in interview:

> One day I will go and see my family properly and we will be on communicating terms – you know properly as a family does – as we did before any of this happened. [...] It's just that right now I'm trying to get a balance for myself and maybe I'm being a bit selfish but I'm just getting on with my – I'm trying to make amends with *my* life.

She went on to comment that once she was re-married (she had her own choice of partner in mind), she would no longer be the responsibility of her parents and could then reconcile with them, without losing all ability to govern her own life.

Thus, although the women talked of freedom from constraints and obstacles to their will, and explicitly associated some of these constraints with community norms, behaviours, and expectations, they envisaged their freedom *within* the frameworks of power within which they were engaged. The pursuit of freedom was, in short, for the opening up of alternative options and boundaries within given relationships and communities, giving them greater

flexibility and choice, rather than conceived of in reference to an escape from their relational framework in its entirety.

As has been noted, the majority of discussions that indicated a desire for freedom were articulated in reference to the desire to be free from the marriage, and to be free from constraints to a future possible marriage. As such they were understood in relation to *external* boundaries and prescriptive norms of husbands and of communities. There were however, a few cases where the women talked about *internal* constraints and the desire for "closure" within themselves. Here the recourse to the Shari'a councils was not primarily an attempt to use the Shari'a councils to control or to govern (to exercise power over) others. Neither was it primarily considered as a way of the women ultimately getting what they wanted – freedom from their husbands and from their marriages – but navigated and negotiated through the patriarchal boundaries which inform the women's social field. Rather, the use of the councils appeared to be a quest to assuage the women's own consciences and to obtain an internal, emotional sense of release from unwanted marriages and "bad" choices from the past. As such, these more uncommon examples suggested that, in these cases, there was a measure of personal investment of authority or legitimacy in the councils on behalf of the women involved. Amala's case was one of very few cases almost entirely motivated on this front, and I consider it in the following section.

All of these factors combined, then, bring us for the moment to a summarised response to the central question of this book. Women approach the Shari'a councils because they exist within frameworks of power that present them with limited options; in response to a particular logic, which involves perceptions of authority and power; and in search of particular objectives, which are bound up in the pursuit of freedom. This freedom was conceived of largely in terms of freedom from constraints (primarily from obstacles put forward by husbands and by communities), but must not be understood to entail a complete abandonment of the women's communities and cultures, and was rather akin to Foucault's conceptions of liberatory power relations. In the majority of cases this desire for freedom was pursued with regards to external constraints, but in a few cases the women discussed a desire for internal freedom – a release from the choices of the past and the obtaining of closure on a painful period of life. Two questions suggest themselves to such a response and are considered in the remainder of this chapter. Firstly, are the attempts to use the Shari'a councils in such a manner successful? Secondly and relatedly, do the Shari'a councils live up to their claims to safeguard the rights of Muslim women?

The Efficacy of Women's Use of Shari'a Councils as a Tactic of Power: Are Patriarchal Bargains Successful?

I have argued that the women in this study attempted to use the Shari'a councils in the pursuit of freedom of specific kinds. They did so by striving to draw on the authority invested in the councils by their communities, in order to exercise power against, or to elicit certain recognitions from, their communities and husbands. Others (more exceptionally) looked to draw an *internal* sense of release from the decrees of the councils, and approached the councils with the hope that they might be able to impart a conclusive cutting of ties from past experiences and relationships. Here I question whether such endeavours were successful, and to what extent the women's ultimate objectives were realised, although it must be noted at the outset, as Stiles (2009:27–29) has highlighted in the context of an Islamic court in Zanzibar, that cases cannot be articulated as a "simple 'win' or 'loss'" for the women, as the outcomes were often multifaceted and complex.

Women who persevere for a divorce are, for the most part, eventually granted one in the context of Shari'a councils in Britain, and thus objectives regarding the actual obtaining of an Islamic divorce were realised. The councils were, however, unable (on the whole) to deliver on the promise of authority. As many of the women found out to their great disappointment, the attempt to use this perceived authority/power of the council against husbands in particular proved to be fraught with complications and difficulties. It was only in eliciting the recognition of a divorce from the women's communities that this tactic proved to be, on the whole, successful (in that it appeared to satisfy community norms, even though the social stigma of the divorce itself remained), although even here matters were not straightforward. Thus despite the widespread nature of this tactic and its gains, we must note its very real limits, and the mistreatment some of the women suffered in the process (this latter concern will form the focus of the following section). Several studies have shown that the promises of the patriarchal bargain have "prove[n] to be illusory" (see Kandiyoti 1991:37).

Mala's story[6] is indicative of these trends. In her meeting with Dr Saeeda and Saba, she appeared to be desperate for a divorce certificate from the BSC, and it transpired that she viewed the obtaining of the certificate from the council as a way of escaping the harassment of her ex-husband. Dr Saeeda

6 See the introduction to Mala's story earlier in the present chapter.

and Saba seemed to be uneasy with this assumption, however, apparently feeling that the young woman's choice of action would not yield the results she hoped for, and would thus ultimately be a waste of time and of resources for her. As a result, they made several attempts (but to no avail) to dissuade Mala from her intended course of action. Firstly, they explained that as Mala's husband had issued his divorce two years previously, the time frame in which he could revoke the divorce had long since passed. Furthermore, it was pointed out that the certificate of divorce issued by the BSC did not have the words 'Shari'a law' written on it, but rather simply the heading 'Birmingham Shari'a Council'. (This was in response to Mala's statement that she wanted a certificate with "Shari'a law" on it because her husband would have to obey that.) The women were increasingly direct towards the end of the meeting, making clear that the decision was up to Mala, but suggesting that her husband's refusal to acknowledge his own divorce certificate was likely to be indicative of his refusal to accept any that she might be able to obtain. The meeting ended with Saba beginning the administrative process for the divorce from the council to go ahead (taking the requisite payment, details, and so forth) because Mala would not be otherwise persuaded. The two older women however, looked on with some concern once she had left. It seemed evident that the granting of a certificate of divorce by the BSC would not address the underlying issues of the case.[7]

Meanwhile the women who approached the councils for a divorce as a tactic which was intended to reform their husbands by "giving them a scare" (using the perceived authority of the council to draw them in line rather than to get a divorce), were also universally disappointed.[8] One woman, on receiving her divorce through the BSC, later talked of her extreme disappointment with the council because she had imagined that it would be able to do what she had been unable to do: to force her husband to reform his behaviour towards her and towards their children. In particular, the husband had taken on a second wife, and was neglecting the first wife and their children. She had threatened

7 Unfortunately, although Mala gave her consent for me to witness the proceedings, she did not want to take part in the interviews afterwards, saying that the relationship with her husband had been a traumatic one for her and that she did not want to talk about it. I was, as a result, unable to ask her more about her reasoning.

8 It must be noted however that in the absence of reformed husbands the divorce that the women obtained in these circumstances was considered by them to be a better option than the alternative of carrying on the marriage as it had previously been.

the divorce as a way of attempting to force him to re-engage as a father (primarily), but he had responded with a threat of his own: to cut all contact with the children if the wife continued her pursuit of the divorce. She commented:

> I was a bit disappointed with them [the BSC] yesterday. [...] Maybe I will ring up Saba and I will explain to her, that in my mind they – because they're supposed to be [...] this authority and they're supposed to, not only issue out divorces but arbitrate between marriages. I didn't wholeheartedly... [She was not pleased with the ruling because she wanted the council to mediate between husband and wife – specifically to force the husband to comply – rather than issue the divorce]. If they had said to me yesterday that you know, "We will talk to him, we will arbitrate between you and your husband", I probably would have thought twice about actually divorcing him [...] I think it was Dr Naseem said to me "Shouldn't you go and wait?" You know, "He might change his mind." [About cutting contact with the children.] I thought to myself: "You're sending this question to the wrong person – you need to sit *him* down and you need to tell *him* that 'You cannot cut off from your responsibilities just because your marriage has broken up.'" I did have a lot of thought about this when I had come home yesterday, because I thought to myself: "They are an authority so they should know better."

Meanwhile, whilst the women attempted to manipulate the processes of the councils to their own ends, it must be noted (as the previous example hints) that the men were not passive bystanders in the process, but rather worked in turn to thwart the plans of their wives. The patriarchal bargains of the women were, in particular, further complicated by the active attempts of men to sabotage their wives. Thus one woman commented on her tactic of attempting to use the ISC to exercise power over her husband and obtain greater space for independent action for herself: "It backfired because he said [in one of the joint meetings with the council] I wasn't a proper Muslim woman – he had an issue with my clothes – and said 'I will only listen to Islamic terms if she listens to me.'" This tactic proved to be very successful in greatly multiplying the difficulties experienced by the woman in attempting to pursue a divorce through the ISC. As this example demonstrates, men who have been unsuccessful at directly manipulating and coercing their wives (as evidenced by them coming to the Shari'a councils), often then decide to humour the process of the council (as there is no enforcement mechanism that forces them there), confident in their ability to manipulate and prejudice the judges

against their wives, and clear that both law and culture are "on their side". Peletz (2002:128) notes:

> A recurrent theme, as we shall see, is that men have more readily at their disposal and can otherwise far more easily exploit the deeply ambiguous and frequently contested symbols and meaning of time, space, language, law, and "custom" (*adat*); a corollary is that this greater access to and easier manipulability of these symbols both flows from and further enhances power available to men that women do not have.

This study corroborates Peletz's findings within the British context, and several strategies of the men to frustrate the plans of their wives and to obtain further advantages for themselves were recurring themes. One such theme, as previously noted, was attempts by the men to discredit the moral integrity of their wives, relying on the assumption of the prejudice of the councils against women and the assumption that the judges would be inclined to operate as moral police. A strategy that proved even more successful was the use of the technicalities and processes of the councils themselves to frustrate the plans of the women (see also Peletz 2002). This was primarily accomplished through delay tactics. It seemed that many of the husbands were aware of the multiple ways in which the processes of the councils (in particular the three letters that are sent out, the waiting periods in between, and the obligation, in some councils, for joint meetings) worked in their favour, and they were adept at elongating each part of the process to take the greatest amount of time. Many of the men, for example, set up joint meetings but then telephoned on the day (several times when the woman was already present in the room for the meeting) to rearrange, claiming some form of emergency had come up. In all such cases witnessed during fieldwork at the ISC the judge in question responded by attempting to rearrange the meeting, even in cases where the wife had taken time off work to attend and had come a long distance. These particular judges from the ISC were not unique on this point however, as all the councils were keen to be seen to be fair to the husband in the process, in the hope of limiting complaints. Peletz (2002:173,174) comments on these dynamics in the Malaysian context:

> One of the most common strategies that male defendants deploy involves stalling and waiting out their (current or former) wives and the courts. Men invoke this strategy partly because as defendants, they usually have no strong incentive or desire to participate in, let alone expedite, proceedings and partly because they seem to know (from their own prior

> experience, that of friends or relatives, or hearsay) that there are typically few if any sanctions deployed by the courts to discourage such behaviour. Indeed, they can – and frequently do – miss the hearing that they are asked or formally instructed (via summons) to attend, doing so with little fear that serious sanctions will be imposed on them as a consequence of their behaviour. It should be added that in cases such as these, the informal sanctions of community gossip and censure are not necessarily all that effective either, especially since many male defendants no longer reside with their wives, or even necessarily their wives' communities or their natal villages.

Whilst these strategies appeared in part simply to be the cruel games of husbands who enjoyed the power that they were able to exert over their frustrated wives, Mir-Hosseini highlights that there are specific financial objectives that these strategies are also geared to engender. She writes of the Iranian case:

> Given that men are not required to provide grounds [for divorce], it appears paradoxical that a higher percentage of them resort to deploying strategies (39 per cent of men as to 33 per cent of women). Two factors are responsible for this. First, in practice men need to satisfy the court that their actions are not based on caprice. The court seems to require them to produce grounds similar to those stipulated in their marriage contracts, entitling their wives to a judicial divorce. Second, the financial consequences of a divorce are different if the husband can prove that it was provoked by his wife. Not only does a disobedient wife lose her claim to maintenance, but also, if a divorce results from a wife's failure to comply with her marital duties, the husband is not required to pay for her maintenance during the *ʿidda* period that follows every divorce. Not surprisingly, 92 per cent of men gave their wives' "lack of obedience" as reasons for seeking divorce.
>
> MIR-HOSSEINI 2000:59

Similar dynamics were discernible in the Shariʿa councils in this study (for example in the cases of male-initiated *khulʿ*) but were relatively rare as men appeared to ignore their financial obligations with minimal reprisals within the British context in any case.

The patriarchal bargain thus had many difficulties associated with it, and had varying levels of success as both men and women used the process to attempt to exert their will and to govern the behaviour of the other. The observations of fieldwork caution against the consideration of this tactic as a 'success'

for the women, despite their limited gains. It must be understood that decisions by the women to use the Shari'a councils in a form of patriarchal bargain ultimately only reinforce the patriarchal order that brings them there.[9] Thus it leaves them vulnerable to the rules which govern the broader framework of such a bargain, demanding from them obedience and submission to their husbands as understood in the non-reciprocal rights and duties of the Islamic marriage contract, alongside the other inequalities and disparities of options and opportunities with which they are faced as women. Furthermore, as others have shown (see for example Mir-Hosseini 2000, Peletz 2002, Stiles 2009), and as was further observed in this research, these tactics do not necessarily succeed even in obtaining short-term gains. Many were disappointed in the hopes with which they had approached the Shari'a councils, as the councils had neither the authority nor the power that was envisaged by the women over their husbands. Dr Saeeda and Saba's responses to Mala, in trying to convey the limits of the power and the authority of the BSC, proved then to be applicable across multiple cases (although some of the judges from the other councils appeared to be less forthcoming, on the whole, regarding their limits).

Whilst the limits of the success of tactics of power that attempted to make use of the Shari'a councils to govern the behaviour of another may have been envisaged, however, a poignant discovery of fieldwork was to note the limits of these tactics with regards to the women's own consciences. Just as the women

9 See de Certeau (1984:29,30,37), for a further consideration of these dynamics, and the position of weakness from which these forms of tactics of power are used. Distinguishing between "tactics" and "strategy", de Certeau notes the temporal, opportunistic nature of tactics where strategies possess a longer-term power, and writes that tactics are dependent on the frameworks of power that are instigated by strategies:

> The space of a tactic is the space of the other. Thus it must play on and with a terrain imposed on it and organized by the law of a foreign power. It does not have the means to *keep to itself*, at a distance, in a position of withdrawal, foresight, and self-collection: it is a manoeuver "within the enemy's field of vision"... and within enemy territory. It does not, therefore, have the options of planning general strategy and viewing the adversary as a whole within a district [sic], visible, and objectifiable space. It operates in isolated actions, blow by blow. It takes advantage of "opportunities" and depends on them, being without any base where it could stockpile its winnings, build up its own position, and plan raids. What it wins it cannot keep. This nowhere gives a tactic mobility, to be sure, but a mobility that must accept the chance offerings of the moment, and seize on the wing the possibilities that offer themselves at any given moment. It must vigilantly make use of the cracks that particular conjunctions open in the surveillance of the proprietary powers. It poaches in them. It creates surprises in them. It can be where it is least expected. It is a guileful ruse. In short, a tactic is an art of the weak. (1984:37)

had been disappointed in their investment of authority in the Shari'a councils with regards to their husbands, finding that whilst the councils were able to issue divorces, they lacked the authority or the power to bring about the women's desired controlling influence over these 'others', so too were they equally disappointed in their perceptions of the ability of the councils to offer internal relief in providing 'closure' to these life events. Amala's case illustrates these ambivalent impulses. Amala is a young woman who had been emotionally manipulated into a marriage with her cousin in a Southeast Asian country upon her father's death, and who was consequently deeply emotionally affected by the events that took place.

On the date of her 'hearing' at the BSC, Amala is accompanied by her crestfallen mother and an aunt who tries to provide some strength to Amala and her mother by filling in gaps of information, and corroborating the 'evidence' given. The meeting is a short one, lasting no more than fifteen minutes. As with all cases witnessed at the BSC, the judges have already been given case notes that were collected from the initial meeting with Dr Saeeda and Saba, and are thus familiar with the salient points of the case. The meeting is thus an opportunity to ask further questions and to discuss the matter together, but not a forum in which the details of the case are discussed with the client (unless in response to particular questions the judges have, which the case notes have not made clear). The judges are quickly convinced that the marriage was undertaken under great emotional pressure, but a couple of members on the panel are not sure that it is fair to issue the divorce. One comments that it is not her husband's fault that she was pressured into the marriage, and that she has not given him enough of a chance. These prove to be only momentary dissenting voices, however and, particularly when Amala begins to weep (as does her mother), the judges respond by trying to wrap the proceedings up quickly and to issue the divorce that they feel is rightfully hers.[10] Amala thus leaves the meeting with her marriage over and with the good wishes of the council for a future relationship. When I interview her a few days later, I ask Amala if she is relieved to obtain her divorce, and whether it has achieved what she hoped it would. Her answer focuses on the continued emotional impact of her marriage, and the inability of the BSC to bring an end to its emotional

10 Billaud (2014:166) writes of the impact of the "affective performance" of clients in the Shari'a council setting, with judgements being swayed by the judges "own evaluation of the psychological condition of their clients". She notes "that clients express feelings and emotions is considered proof of their good faith."

consequences by giving her a divorce and pronouncing that the marriage is over (in their words: "It's done"). She is clearly still in great turmoil.

> *TW*: You seem to feel a bit funny about what happened on Monday [the day of her meeting with the BSC] even though they gave you the divorce… Doesn't it feel like "Great, they gave me what I wanted so I can walk away"?
> *Amala:* Not really. Because it doesn't really matter what someone else says to you – "Ok, it's done" – because it's never going to be done in your own head, because obviously you're going to have to live with it [the continued emotional consequences of the marriage and subsequent divorce]. To them it's just another case but to you it's like a delicate and sensitive issue that's always going to be there no matter what someone else says "It's done, it's done." When something like that happens to you, you're never going to forget it, are you? So it doesn't matter how many people say: "Ok, just forget about it, it's done, it's over." But it's never really going to be over to you […] it doesn't really feel like it's finished, it feels like it's going to be there. You can't really say "It's finished" or "It's gone" regardless of what they said. So that's why I got a bit emotional.
> *TW*: Did you think that maybe when they said "It's all over" that you would feel – when you went in before it [the meeting with the BSC] started – "Maybe this will give me closure?"
> *Amala:* Yeah, and it hasn't. I just felt like I dunno… I wasn't sure that they understood where I was coming from. That's how I felt. Or I just feel like they weren't sure what exactly happened [the details of her case] and I didn't really explain myself and what happened. I just went and said "Yup this happened and that's it." I didn't really go into it or know if I should have, cos I explained it before [at her initial meeting with Dr Saeeda and Saba], so I wasn't sure what information they had or not – it wasn't very clear – it happened really quickly as well. It was a bit of a blur and was like "Ok it's done" [the judgement of the council]. And I was like "Ok that's quick."
>
> [We talk a little at this point about the fact that she had had an opportunity to tell her full story to Dr Saeeda and Saba earlier in the proceedings and I ask if it would have helped to talk about it again, even though she obtained the outcome she was hoping for in any case]:
> *Amala:* I know [responding to my comment about the favourable outcome] but I would have liked to have said what I wanted to say I guess. I don't know what they really thought about the whole concept – I don't know if they understood what exactly happened [the circumstances

> of the marriage], or whether what I said before was recorded or not, I'm not sure…
> *TW:* Why was it important to you that they knew?
> *Amala:* Just because if you're going to make a decision I think you should know all the possibilities – every aspect of the situation – what exactly happened. Because they give you the decision – they give you the final consent. I felt like I had to give my reasons why I wanted it. I didn't want someone to just say "Ok it's fine" without any reasons if that makes sense?

Thus, although the divorce was granted, and although Amala *had* relayed the details of her case to Saba and Dr Saeeda at her initial meeting (details which had been passed on), Amala's hopes for a sense of closure as a result of having 'an authority' sanction the divorce were disappointed. It seemed that it was ultimately her *own conscience*, rather than the Shari'a council, that held that power over her. Even where the women's explicit objectives were realised, therefore, and a divorce obtained, it appeared that the ultimate object – the pursuit of 'freedom' – continued to prove elusive for some.

Shari'a Councils and the Claim to Safeguard Women's Rights

As I have argued, the women in this study attempted to use the Shari'a councils to carve out greater space for themselves within specific frameworks of power, and to secure certain objectives, and I have asked the question: "Are these attempts successful?" A related question refers us back to one of the central claims of the Shari'a councils: the claim to safeguard the rights of Muslim women. Whilst the women articulate their objectives primarily in reference to freedom, the Shari'a councils have articulated these objectives in reference to women's rights, and have argued that the Shari'a councils are necessary for the protection of these rights. This is a claim that requires further consideration. In this regard, it is not only the decision-making process that leads up to the point of engagement with the Shari'a councils that are of concern, but the ways in which the processes of the councils themselves are experienced by the women, and their interactions with the judges throughout. These interactions are of course informed by the theoretical underpinnings of various interpretations of Islamic law which formed the basis of the discussion in Chapter 3 but are also (to some extent) distinct from them as judges manoeuvre their own responses in a variety of ways.

As argued above, many women turned to the Shari'a councils as a last resort hoping to redress the balance of power vis-à-vis their husbands, and to elicit

certain responses, a certain recognition, from their communities. In doing so they were met with greatly varying responses, depending on the council in question. The councils observed in this study did, for the most part, (eventually) grant divorces to the women who were willing to persevere for that result, with or without the husband's agreement. As such there was at least this one sense in which the process could be considered an empowering one for the women who ventured there. However, as the following analysis will show, it is a stretch too far to argue that Shari'a councils as a whole safeguard the rights of Muslim women, and a more nuanced discussion must take place. Many of the women expressed their experience of the Shari'a councils as discriminatory and accusatory, whilst several commented that the operations of the councils were those of "a man's world" (see also Bano 2010 for a similar conclusion). It must be noted that the women's experiences on this front were not simply the result of particular provisions of 'Islamic law' as upheld by each of the councils in this study (although I have already argued that certain provisions place women in unequal power dynamics in the home and throughout the course of a marriage relationship). The underlying motivations and attitudes of each council, the ways in which the laws assumed were then further interpreted and applied, and the processes that were used to ensure that the women complied – in other words the *social practice* of the law – also played a significant part.

Disparities of orientation and of underlying rules of operation between the four councils in this study meant that there were significant differences in this 'social practice' of the law and therefore in women's experiences of the divorce procedure, depending on the council with which they were involved (thereby cautioning us against essentialist understandings of law either in theory or in practice). For example, some of the judges from the ISC appeared to have a pronounced tendency towards moralising judgements and directives, which were almost exclusively directed at women. The ICE, by contrast, did not appear to attempt to direct or control the moral lives of its clients, and rather seemed to be broadly pragmatically motivated towards facilitating the resolution of the particular dispute at hand. The BSC exhibited the greatest concern with regards to providing a forum that would be a service to Muslim women seeking a divorce, and also took on a somewhat educative role.[11] Meanwhile the overarching ethos of some members of the MAT appeared to be that of a larger agenda regarding the forging of a British Muslim identity, and the obtaining of a leading role for the MAT within this sphere. The very limited nature

11 Billaud (2014) writes of the pedagogic orientation of the BSC in greater depth.

of observations regarding actual cases at the MAT means that I will not attempt to comment on their mode of operation with regards to the cases themselves. As a result of this diversity of orientations, the following discussion looks to the specificities of law in practice that were encountered in these councils (having already discussed the specificities of law in theory in Chapter 3 above), before going on to comment on some of the broad themes that emerged.

The issue of 'limping marriages'[12] has proven key to the public discourse of the Shari'a councils and we begin there. Proponents of the Shari'a councils have spoken specifically of the problem facing Muslim women in the West who obtain (or are given, at their husbands' instigation) a civil divorce, but are still bound by their Islamic marriages. Badawi (1995:77) writes of the former case:

> A common problem was that you get a woman seeking a divorce in the courts and obtaining it. She becomes, therefore eligible for re-marriage in accordance with the civil law, but her husband has not given her a talaq which is the prerogative of the husband within an ordinary contract of marriage so that the woman becomes unmarried according to the civil law but still married according to the Shari'a law. The man could remarry according to the civil law and according to Shari'a law as well, since it is open to him to have a polygamous marriage.

Yilmaz further elaborates on these concerns by noting the increased negotiating power that the prospect of a limping marriage can garner in the hands of husbands: "[K]nowing the value placed on a religious divorce by their wives… men have used their power to grant or withhold divorce to negotiate favourable settlements on the issue of finance, property or relating to children" (Yilmaz 2003:131).

A consideration of these issues has formed a key part of the justifications put forward for the existence (and in some cases the recognition) of Shari'a councils in Britain (see for example Cesari 2010:156; Shah 2010:133; and Shah-Kazemi 2001). In these discussions a focus on the evils of 'limping marriages',

12 The term 'limping marriages' is used to convey any situation where an individual finds themselves in "a marriage recognised by one system of law but not by another" and can occur where a marriage is recognised or registered in one jurisdiction but not another, or where a divorce is recognised in one jurisdiction but not another (Law Commission 1972:3,4). As a result, some also refer to "limping divorces" (see Douglas et al. 2011:14,15). The term was originally used in a legal capacity in case law arising out of Jewish marriages and divorces, but has now become widely used to refer to similar difficulties relating to Muslim marriages and divorces (see Buchler 2011 and Menski 2008).

and the need to alleviate the suffering caused by these situations, have resulted in assertions that there is a need for Shari'a councils to dissolve and to terminate the Islamic marriage. Important questions remain, however, about the nature of the problem, and how best it might be prevented or alleviated.

If either party (husband or wife) initiates a religious divorce, but refuses a civil divorce, the issue of a limping marriage provides only a temporary problem as a civil divorce, whether instigated by husband or wife, cannot be refused indefinitely. Thus long-term limping marriages arise only where a civil divorce has been obtained by either husband or wife, and the husband refuses a separate 'religious' divorce (the wife has no power to refuse a religious divorce). Two specific types of limping marriage emerge: those where a husband has instigated a civil divorce but refuses to grant a 'religious' one, and those where a wife has obtained a civil divorce but her husband refuses to grant her a religious one, and I look to these in turn.

As previously noted, many of the Shari'a councils consider the husband's instigation of a civil divorce (or his formal written consent to it) to instigate an Islamic divorce also. Furthermore, The Divorce (Religious Marriages) Act of 2002 inserted provisions into the 1973 Matrimonial Causes Act, which enable the court

> [O]n application by either party [to] order that the decree nisi is not to be made absolute until such time as the parties produce a declaration to the court confirming that they have taken such steps as are necessary to dissolve the marriage according to the appropriate religious usages.
>
> DUFFIELD, KEMPTON and SABINE 2008:49

The act was originally conceived in relation to divorces in the Jewish Beth Din, but could apply equally to the Muslim community should they so wish.[13] Thus the problems considered to arise from a limping marriage where the husband has instigated the civil divorce (or formally consented to it), but wishes to resist a 'religious' divorce appear, in theory, to have been redressed, and it is not clear that a Shari'a council would be needed to implement the outcome.

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13 See the parliamentary debates in the years preceding the passage of the bill (*Hansard* HL Deb 30 June 2000, vol. 614, cols. 1241–1263; *Hansard* HC Deb 31 January 2001, Vol.362, cols. 321–324) and, in particular the greater recognition of the relevance of the issues to the Muslim community in 2002 (*Hansard,* HC Deb 12 April 2002, vol. 383, cols. 264–282). See also the discussion in Shah (2010:135,136). Note that Menski (2008:58,59) writes that whilst Muslims could be "easily brought under this act" such an outcome awaits an application to that effect by British Muslims. The situation presently remains unchanged.

Moreover, the BSC consider the granting of a civil divorce to constitute the end of the 'religious' marriage also, regardless of the basis on which the civil divorce was obtained, and regardless of who (whether the husband or the wife) initiated the proceedings (a position that was corroborated by fieldwork observations at the BSC). One of the judges from the BSC, for example, commented that where a civil divorce existed, an Islamic divorce was not needed, and that the role of the council was primarily to issue Islamic divorces where no civil marriage had taken place (and hence no civil divorce possible).[14] Furthermore, where individuals came to the BSC having obtained the civil divorce more than three months previously, (but still wanting to have a separate Islamic divorce issued) the BSC issued an Islamic divorce certificate without stipulations for a waiting period, as the waiting period was considered to have occurred from the time of the granting of the civil divorce. Thus the provisions of one of the leading Shari'a councils in Britain entail that the Islamic divorce is implicit in the obtaining of a civil divorce, and no issue of 'limping marriage' should arise.

The MAT follows a similar approach, although there is a greater formality to the continued judgements of the councils (judgements regarding the type of Islamic divorce, and the required time frames for the waiting period, depending on the manner in which the civil divorce was obtained). Written correspondence from one member of the councils indicated that: "The view that MAT takes is that a civil divorce will constitute an Islamic divorce, whether it be instigated by the husband or the wife. There will be differences however, as to when the Islamic divorce will occur depending on who instigated the civil divorce."[15] As no observations of such cases were conducted during fieldwork, it is not possible to comment on these dynamics in practice. Nevertheless, whilst the MAT appear to envisage a greater scope of action for the council in managing the details of the divorce procedure, it would seem that the obtaining of a religious divorce itself is entailed within the civil divorce, and, once again, no issue of limping marriage should arise.

The Shi'a councils observed in this study appeared to be less focused on the issue of limping marriages, and this was further exemplified by their relative lack of coordination with English law. Some of the Shi'a judges, for example,

14 Nevertheless, it was noted that individuals come to the council specifically wanting an 'Islamic divorce', even where a civil divorce has been obtained, and in these cases the BSC simply issues the Islamic divorce automatically. See Billaud (2014:165) and Douglas et al (2011:40) for a similar analysis of the BSC.

15 Email correspondence 7 June 2011.

insisted on individuals obtaining a civil divorce before they were granted an Islamic one, whilst others were happy to issue Islamic divorces without the need for a civil divorce. Regardless of these preferences, the Shi'a councils appeared to consider the Islamic divorce to require an entirely separate procedure to that of the civil divorce (whether instigated by husband or wife), and thus the obtaining of the civil divorce did not seem to significantly affect the process followed by the Shi'a councils in granting an Islamic divorce. Thus, whilst the outcome of the work of the Shi'a councils may alleviate some of the hardship associated with limping marriages, such an objective did not appear to be a primary motivating factor in the procedures used.

The ISC were the most vocal on the issue of limping marriages as part of the justification and need for their existence, and it forms a segment of their website. They note:

> The majority of these cases [cases dealt with by the ISC] concern divorce, where the wife has obtained a British divorce which is not accepted by the husband, who considers such a divorce to be unacceptable with no bearing upon his right as a husband. As a result, the wife does not feel completely free to enter into another marriage before obtaining an Islamic Talaq.[16]

Despite raising concerns over limping marriages, however, the procedures of the ISC appeared to indicate that bringing to an end the hardships caused by such tensions in law was not a primary motivating factor for the judges. Rather, the focus seemed to be on the pursual of the appropriate Islamic procedures (as interpreted by the judges involved) regardless of the status of the marriage in English law. Thus, for example, multiple cases witnessed at the ISC involved women who had obtained their civil divorce one, or even two or three years previously, but were still being instructed by some of the judges of the ISC to attempt reconciliation with their ex-husbands. One judge told me (as a matter of positive reference) that even where a civil divorce had taken place, the judges attempted to reconcile the "real" (Islamic) marriage, and that they had been successful at getting husband and wife to continue their relationship (within an Islamic marriage) on a number of occasions. These claims, and the disregard of some of the judges for the civil divorce when it was instigated by a woman, thereby suggest that attempts by the ISC to orient the need for their

16 *Islamic Shari'a Council,* "About Us," http://www.islamic-sharia.org/about-us/about-us-7.html [Accessed 3 November 2011].

existence in reference to the issue of limping marriages should be considered with care.[17]

Outside the issue of limping marriages, there were, again, significant disparities in orientation between the Shari'a councils with regards to their response to and treatment of their female clients, as the following discussion makes clear.

Monthly Meeting of the Judges of the ISC, October 2009

The judges[18] deliberate on a case where the husband has failed to reply to three consecutive letters from the ISC (according to the ISC procedure, this should mean that a divorce is granted to the wife). One member of the council notes that a telephone call was made to the man in which his name and address were verified (meaning that the letters were sent to the right address), but that when the husband realised they were telephoning from the ISC, he "changed his story". This has caused some confusion amongst the judges as to whether or not the letters have been received. Two (of the three) letters have been sent back unopened with a "return to sender" stamp. A few of the judges suggest granting a divorce (there has been a recent letter from the wife pleading for this outcome and outlining again her particular complaints which include the husband moving in with his girlfriend) but one judge appears to feel strongly that another meeting with the man should take place and the divorce postponed.[19]

17 I have already noted the disparity between the findings of this study and Bowen's (2010:420) claim regarding the ISC that "Once a civil court grants the final divorce decree, the councilors will likely proceed quickly to grant the wife's request; they say that the marriage is over and little sense remains in prolonging its Islamic dimension. The councilors also wish to work in a way that complements the proceedings of the civil courts" (see the discussion regarding the options afforded to Muslim women by the civil law in Chapter 3). Note my previous observation that Bowen's case studies themselves seem to question such a comment (as they relate to women who are continuing to pursue the ISC for an 'Islamic' divorce, having obtained the civil divorce months previously). I have noted that the ISC were not always consistent with their judgements or reasonings, which may account in part for the discrepancy. It would appear also that Bowen privileges the discourse of the dominant class in the ISC. The greater opportunity for the observation of the cases themselves as well as interviews with the women involved, which was a privilege of the present work, brings into focus the lived reality of these discourses as they were experienced by the women in practice.

18 Note that not all of the judges are present at any given meeting, but that the deliberations go ahead with as many of the judges as are able to be present at that time.

19 The refusal to acknowledge the letters from the Shari'a councils is a common delay tactic by husbands in these contexts.

Eventually a telephone call is made by one of the judges to the husband involved in the case as the others look on. Once the call is concluded, the judge relays that the husband claims the case is not necessary because he has already granted the wife a divorce two months ago, and the wife has already remarried (this despite the fact that the latest letter from the wife requesting a divorce is dated just over a month ago). As a result, the judge in question instructs the administrator to write the words "BE CAREFUL" in bold print across the file should the wife be in contact again, as he comments that this new evidence indicates that the woman has not been truthful, and may be trying to use the case to obtain some more money or some other benefit. The council eventually decide to call the woman for another interview (the case was first opened over a year previously to this date).

Whilst there was no way to verify the truth of the particulars of the claims of husband and wife in this case, and I did not have the opportunity to trace the case any further, it is a point of interest that, in this and other cases, the wife's claims appeared to be treated with greater scrutiny, whilst the husband's motives were not examined in the same manner.[20] The apparent difference with which testimonies from husbands and wives were viewed did not ultimately have the effect of stopping the possibility of the divorce altogether, but many husbands proved quickly aware of these dynamics and used them to their advantage in greatly prolonging the time frame for divorces. Thus it was not unusual to see cases that had been on-going for a number of years at the ISC, regardless of the wife's wishes. The panel did not seem to regard this as a problem as it was suggested that longer time frames were advantageous in giving the couple a chance for reconciliation.

Other indications of the orientation of some of the judges of the ISC revolved around the treatment of cases involving domestic violence. Whilst in theory a woman could obtain a divorce on specified grounds which included even non-physical "aggression" from the husband as long as she could show evidence of this aggression,[21] in practice there was a much more complex

20 See Bowen (2013b:140) for a similar account of the epistemological wariness which characterises some members of the ISC, particularly as they relate to women. Such a questioning of the truthfulness (or otherwise) of the women in these cases provides an interesting contrast to the findings of Peletz (2002:75) in the Malaysian context. In that study a chief clerk to one religious court noted that it is men rather than women who usually lie in their cases, and men, rather than women who are "typically at fault" in cases of divorce. It must be noted that even within the ISC there was a measure of variability regarding orientations on this front.

21 See the discussion in Chapter 3 above. Note that other studies make clear that the burden of proof with regards to claims to 'injury' rest with the woman (see for example Welchman 2000:290).

interaction on this issue, even where there were police or hospital records on file.[22] My observation of cases suggested that claims regarding domestic violence were treated with some scepticism, and all such claims were closely considered for potential falsehoods and cases were thus prolonged. One case, for example, involved a woman who had written to the council to ask for a divorce, claiming that her husband had attempted to take her life. The letter included the wife's articulations of the nature of the (extremely severe) domestic violence involved, and a copy of a health visitor's statement, which had been enclosed as supporting evidence. The case had been running for two years and the husband had not attended any of the scheduled meetings. Whilst some members of the panel discussed the possibility of issuing a divorce at this point, the final decision was to prolong the case, as one judge argued that the claims of violence needed to be further investigated (it was unclear what this investigation would look like).[23]

Whilst the discussions regarding cases of domestic violence (both amongst the judges, and in some of the judges' interactions with the women) appeared to focus on examining the women's testimony in order to ascertain whether there was truth to the claims made, direct interactions with the women on these issues regularly involved questions which, in any case, encouraged the women to consider what part they had played in enraging their husbands, or provoking the alleged attacks. These interactions included suggestions made by some of the judges of behavioural modifications that the women should pursue to invite different treatment from their husbands in the future. Thus in one exchange with a woman who had fled her marital home for a women's shelter, the judge in question asked her why it was that her husband had beaten her, and what behaviours she had shown to encourage such a response from him. In another similar case it was suggested to the women involved that she had provoked her husband to his violent behaviour. None of the cases witnessed during fieldwork in which domestic violence was alleged resulted in the judges involved taking immediate action to terminate the marriage, and I witnessed no occasions where the woman in question was told of her rights under English law, or encouraged to seek help or safety should the need arise whilst the case was being deliberated.[24] Thus, although the ISC has repeatedly claimed that the council "takes a harsh stance on domestic violence", and that

22 Others have also recorded a somewhat relaxed attitude by religious courts to the issue of domestic violence (see Peletz 2002:103,104).

23 Bowen (2013b) writes along similar lines with regards to the spectrum of views that exist within the ISC.

24 Note that both the BSC and the ICE did, at times, make attempts to refer women to external counselors or to encourage them to contact the police should the need arise.

"women who cite domestic abuse in their applications for divorce are advised strongly to report it to the police" (Binns 2013), this study was unable to corroborate these claims with regards to the *practice* of the council, although of course it does not preclude such a stance from providing the framework for rulings at the ISC in theory.

The lack of guidance or encouragement to report cases of domestic violence were one area of significant concern in the fieldwork observations of this study at the ISC. A further concern arose from what appeared to be the insistence for women to attend joint meetings[25] and pursue reconciliation attempts with their husbands even where the allegations of domestic violence were severe and even where injunctions against husbands existed.[26] Thus, for example, one woman who had approached the ISC for a divorce noted that she had refused to comply with the instructions regarding attempts for reconciliation, and intimated that there had been negative repercussions on her case and the manner of her treatment at the council as a result. In this case, the woman's husband was the subject of various court orders and injunctions as a result of his violent behaviour towards her, and the instruction of the council had been for husband and wife to attend joint meetings in order to attempt a reconciliatory process. She relays that they insisted: "Don't worry we have CCTV, nothing can happen."[27] She had eventually sought the help of an English solicitor who warned her that if she herself broke the terms of the injunction it might work against her in the civil divorce battle that was simultaneously making its way through the English courts. As a result, she was advised to write a letter to the ISC explaining her claims and the fact that she would be willing to meet with

25 'Joint meetings' were meetings that the councils arranged between husband and wife with one or more members of the council also present in order to attempt reconciliation.

26 See similar findings in Bano (2007, 2008) and Malik (2008). The insistence on joint meetings and reconciliation attempts regardless of the particulars of the case, is a disparity not only with the other Shari'a councils in this study, but with Shari'a courts elsewhere. Welchman (2000:285) for example, writes that the Law of Family Rights applied in Gaza awards the wife the right to divorce, if "injury or cruelty" from the husband have been established, without the need for the appointment of arbiters in attempts for reconciliation (see also her discussion of Jordanian law). As a result, it is not uncommon for scholars to comment on the relatively greater conservatism of the 'Shari'a rules' being applied in Britain when compared to counterparts in Muslim-majority states (see Griffith-Jones 2013:141, Giunchi 2014).

27 Note that I was not privy to these interactions, and the quotations and sentiments expressed are to be understood as the views of my interlocutor, who shared her perceptions of her interaction with the ISC and paraphrased their discussions.

an *imam* on her own, but that she was not able to meet with her husband. She did this, but on a subsequent telephone call to check the response of the ISC after she had not heard back from them, she intimated that she felt that she had been spoken to in an aggressive manner that had left her somewhat shaken. She elaborates: "[He] literally had a go at me – 'Oh, you didn't come to the council and this and that and blah blah blah blah blah blah blah' and I was like '*OK, what did I do here?* – I'm just calling you to ask what's happening!'" Note here again that the recent assertions by the ISC that reconciliation is not attempted where clients hold "non-molestation orders" against their partners[28] were thus not borne out in any straightforward fashion by the claims of the women interviewed in this study. (Although, as I will elaborate on shortly, the ISC states that significant developments have occurred within the organisation over the past two years – after the years of fieldwork – which may account in part for the disparity, and, if so, would be a welcome development.)[29]

The significance of these concerns, and the differences of interpretation that exist in the current academic literature with regards to the dynamics at play, require some further comment. The issue of domestic violence and the treatment of Muslim women as they interact with the Shari'a councils has been a recurring point of consternation amongst women's rights groups, politicians, journalists, and academics. The ISC has consistently rejected claims that it discriminates against women and deals inappropriately with cases of domestic violence, and has had eloquent defenders in the form of Bowen (2013a) and Grillo (2015a). Two points are pertinent. Firstly, it is noteworthy that Grillo (2015a) somewhat self-consciously refers to what he says might be seen as an "overly charitable" approach (2015a:xi, and throughout the text) with regards to his dealing with the subjects of his book, be they proponents or opponents of the Shari'a councils, and he writes that he hopes to be "equally charitable" to both ends of the spectrum. Despite this endeavour, his analysis appears at times to be charitable to the Shari'a councils in a manner that is peculiar to them. Thus he writes for example that the ISC deny dealing with domestic violence cases in a way that is at odds with best practice principles within the British context, and goes on to note "Despite such denials,

28 See letter of complaint lodged by the ISC with The Independent's complaints department on 8 December 2015, point 10. (http://www.islamic-sharia.org/the-independent-sharia-courts-the-inside-story/).

29 See letter of complaint lodged by the ISC with The Independent's complaints department on 8 December 2015, point 5. (http://www.islamic-sharia.org/the-independent-sharia-courts-the-inside-story/).

opponents of the councils (and supporters of restrictive legislation) constantly refer to their encroachment on the criminal law" (2015a:36). Grillo does not go on to consider whether those who "constantly refer" to such encroachment do so on the basis that there are multiple sources of information that suggest that such an encroachment does in fact occur (Grillo 2015a:118–123 himself cites some of these sources). Similarly, he writes (2015a:114) of what he says might be seen to be a "cynical/realistic?" view that some Muslim women "may find it advantageous to emphasize their victimhood" in order to obtain the pity of lawyers and judges who might then award a more favourable outcome to their case. The public discourse of the Shari'a councils, however, is not problematized in similar fashion. Grillo instead simply reports the rejection by the ISC of the accusations against them, and notes that the ISC asserts that they follow best practice principles in dealing with cases of domestic violence. Perhaps a similarly "cynical/realistic?" view might question whether such an assertion is a public performance used to assuage the concerns of a liberal public, particularly in light of developments in policy that promise a closer scrutiny of these bodies with regards to the rights of women (May 2015), and need not necessarily bear significant relation to the practices of the council in private? Grillo (2015a:118) himself notes the comments of Al-Haddad, until recently a prominent member of the ISC as stating:

> A man should not be questioned why he hits his wife. This is something between them. Leave them alone. They can sort out the matters among themselves. Even the father of a daughter who is married to a man should not ask his daughter why you have been beaten or hit by your husband. Why? Because Islam is looking to the bigger picture to keep the relationship between husband and wife together… marriage breakdown is a very bad thing and Shari'a is very keen to keep the matrimonial relationship intact.

Although Al-Haddad has now been removed from his position,[30] his comments suggest that cases involving domestic violence that were heard in the

30 See Adams (2015). A spokesperson from the ISC is quoted as saying that three of the seven judges of the ISC have recently been replaced "after complaints were made" about them. Adams writes: "One of them, it turns out, was al-Haddad, 'whose views do not in any [sic] represent the ISC'." Note that attempts to suggest that the removal of Al-Haddad deals conclusively with the concerns regarding the ISC should be resisted as none of the case studies mentioned in this book relate to meetings between Al-Haddad and clients of the ISC.

ISC, at least by him (my observations suggest he was not alone in such sentiments) would leave some room for concern?

Secondly, the repeated claim by the ISC that the recordings and interviews on which the allegations regarding the treatment of domestic violence cases rely are "taken out of context" (see the ISC website for responses to the various allegations) are difficult to reconcile with the observations of the fieldwork of the present study and appear to lose their potency where there are multiple and separate sources presenting similar dynamics.[31] Furthermore, where both Grillo (2015a) and Bowen (2013b) report the claim by the ISC that they do not encroach on criminal matters, it is a matter of some significance that both scholars are engaged primarily with the discourse of the dominant class,[32] and neither academic refers to fieldwork which would help substantiate the claim with regards to the experiences of Muslim women as they have their cases heard in the council, or in private interviews afterwards. The current fieldwork which has been privy to this more 'private' sphere would seem to question the claims to best practice as they are being presented.

This is, of course, not to argue that all of the ISC's dealings with women are discriminatory or the cause of grave concern, but rather to highlight that the public pronouncements of the council's orientation, the theoretical framework of the 'rules' which it follows in making judgements, and its emphatic denial of certain breaches of women's rights (and safety) need to be considered with greater care. There is much that is concerning in the observations that have been conducted at the ISC. Where changes have been put in place over the past two years to mitigate against the practices on which the concerns are based,[33] they are to be welcomed. For example, the more recent insertion of a page on the ISC website which now gives clear and helpful advice regarding

31 See the multiple reports in the media, from political bodies, and within the academy, that have raised concerns regarding the treatment of domestic violence cases in the Shari'a council context, many specifically with reference to the ISC. For example: Corbin (2013), Cox (2015), Mahmood and Sprenger (2011), Panorama (2013), Zee (2016).

32 By his own admission Grillo's (2015a) study is based in large part on "public speech and writing" and not in as great a measure on ethnographic fieldwork. He writes: "There is, regrettably, less of the informal (unguarded) talk on which so much anthropological research is based" (2015a:x).

33 In an open letter of complaint to the Independent dated 8 December 2015 (see: http://www.islamic-sharia.org/the-independent-sharia-courts-the-inside-story/) the ISC writes:

> The photograph on page 9 of three male scholars is at least ten years old. The deliberate impression given is that the Council is an all-male establishment, and ignores the fact that there are three women in the office: a female receptionist, a female scholar and a female law intern. No effort was made by Ms Boztas to request up-to-date

domestic violence is a significant forward step.[34] It is a point of interest to consider whether the increasing scrutiny under which the ISC has been placed in recent years has helped shape a more appropriate response. To the extent that this is the case, greater scrutiny, discussion, and engagement on these difficult and important issues is to be encouraged. Whatever the public performance of the ISC however, and its presentations in speeches and writing, previous discrepancies in the public and the private workings of the ISC suggest that the public discourse, and the related presumed outcome for women, need to be fully investigated rather than assumed.

With regards to the present analysis, and the fieldwork observations of the study at hand, the vast majority of cases witnessed in the ISC involved women who, according to the provisions put forward by the council itself, would be entitled to a divorce (for example, cases where the husband had not been maintaining the wife, and had been 'aggressive' towards her). Despite their conformity to these theoretical underpinnings of law as espoused by the ISC however, even in these cases many of the women were instructed to undergo lengthy procedures and reconciliation processes against their desires (see also Grillo 2015a:128). When I returned to the ISC in May 2011, for example, one judge spoke of a case which had been on-going from 2008, involving a woman who did not have the consent of her husband but was entitled to a divorce within the provisions of the ISC (as the judge himself noted). Nevertheless, he told me that he would like to further prolong the case, because, in his opinion, the woman should stay with her husband. Whilst the observation of previous cases suggests that it is likely that she will eventually be granted the divorce if she perseveres, it seems the policy of the ISC is to insist on lengthy reconciliation processes as a first point of call, before ruling in line with their own stated interpretation of Islamic laws on divorce. It was suggested by one of the judges that this mode of operation was in part to ensure the seriousness of the women's intentions in seeking a divorce.[35]

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information. Many changes have been made in the structure, policies, training and so forth at the ISC in the last two years, but none of these have been taken into account.

Similarly, Adams (2015) writes of the council replacing three judges at the ISC in the recent past "after complaints were made" about them.

34 See the ISC website: http://www.islamic-sharia.org/domestic-abuse/ (accessed 14 January 2016).

35 Bowen's (2013a) comment that where cases took longer than 19 months they did so "because the petitioner asked the council to wait, or because the council simply failed to act in an efficient manner" does not appear to account for the expressed motivation of some of the judges for whom ideology, rather than efficiency, dictated their approach to the time frames of certain divorces.

Rather than considering their role to be primarily that of assisting the women who came to them for help within the boundaries of 'Shari'a', the focus of some of the judges of the ISC appeared then to be that of attempting to ensure that the women lived according to a standard deemed acceptable by the judges involved. It must be noted that this standard was in practice more stringent than even the patriarchal laws with which the ISC officially deals. A similarly legalistic attitude seemed however to be notably lacking in interactions with the men (see also Bowen 2013b), resulting in an apparent bias against women in the ISC being particularly noticeable in the cases observed, not simply in the patriarchal nature of law applied, but in the skewed nature in which that law was applied (I note some examples shortly).

Fieldwork data from various case studies in recent years has shown how judges sitting in Shari'a courts around the world operate on fluid understandings of law and draw on broad notions of fairness and equity as well as their own (often culturally constructed) notions of justice in their judgements (see for example Bowen 2003, Mir-Hosseini 2000, Shehada 2005, Stiles 2009), and the Shari'a councils in Britain proved to be no exception. Many of these studies note the attempts by judges to secure fair outcomes for the women who come to them for help, although nuances emerge. Shehada for example, notes the judges' recourse to broad understandings of justice and fairness, and writes: "Contrary to the stereotypical view often held of them, *qudah* play a significant role in protecting women and ensuring that they receive the rights due to them" (Sehada 2005:113). Nevertheless, she goes on to "voice a note of caution" in her conclusion:

> Whilst acknowledging the *qudah*'s protective behaviour, [this study] does not overlook their gendered views. *Qudah*, as members of society, are bound to be influenced by the dominant gender discourse, which legitimizes the unequal division of rights and duties within the family. Yet, their daily encounters with the unfairness, oppression and injustices inflicted on women by their kinsmen enhance their sensitivity towards women's plight. It is in this nuanced approach that the study tries to capture the complexity of the operation of Islamic family law.
>
> SHEHADA 2005:323

Whilst Shehada thus acknowledges the nuances and complexities of the practice of law, my observations in the Shari'a councils in Britain, particularly (but not exclusively) in the ISC presented a more overtly gendered practice. There were, in short, many instances where patriarchal interpretations of law were further augmented and strengthened by male-oriented practice. Some of the

judges, for example, appeared to privilege the position of men even within the legal provisions that are intended to safeguard the financial rights of the wife. Thus a striking feature of the power dynamics between men and women in the context of broken relationships was the extent to which even the limited rights of the woman (in terms of financial provision for example), intended to limit arbitrary abuse by men, were circumnavigated by the men, with the help of the judges.

A key example was what Vatuk (2008:220) refers to as "*khulʿ* initiated by the husband" (see also Fournier 2010, Mir-Hosseini 2000:67, Nishat 2003:302,306), where men who are aware of the financial obligations associated with the *talaq* exert pressure on their wives to initiate the divorce instead (wherein the financial obligations fall on the woman). One Pakistani woman in her late twenties spoke to me about how it was actually her husband who had initially wanted to instigate the divorce and that he had "forced her" to file for it, even sending her the filing cheque and the completed paperwork ready for her simply to sign and send in. When I asked her why this was the case she said "It's well understood" within the Muslim community, elaborating on this to explain that men who did not want to pay for the divorce (as they would in theory be obliged to do in the eventuality of a *talaq* divorce) used such tactics. (In fact, I am able to observe the judges deliberate on this particular case and they admit amongst themselves that the man is doing exactly this.) However, whilst Vatuk (2008:221,222) writes that the judges with whom she conducted her research assured her that if they were to "personally have reason to suspect" a male-initiated *khulʿ*, they would try to prevent it,[36] my fieldwork observations suggested that some of the judges in the ISC not only failed to prevent such cases, but actively encouraged them in certain circumstances. Thus Tahir, a young Pakistani man who wanted to divorce his wife but did not want to pay her *mahr* (a substantial sum) was advised by one judge to attempt to force his wife and her family to initiate the divorce (it was suggested that this could be done by simply waiting her out). In the case in question, the young man involved had not registered the Islamic marriage according to civil law and he was thus encouraged by the judge to view himself as free (in that he could take on another wife of his choice both according to Islamic law, where she would be considered his second wife, and in English law, where the first marriage was not recognised), whilst his wife was bound ("locked" and "trapped" in the

36 Nasir (2009:116) notes that both Moroccan and Kuwaiti legislation (Articles 63 and 116 respectively) explicitly requires that for the *khulʿ* to be valid, the woman must "of her own accord and free choice [ask] to leave the husband without coercion or harassment".

marriage). The judge noted that, in time, the wife would want to leave the marriage and to marry again, and she and her family would have no other recourse but to initiate the divorce themselves.

The financial implications of these tactics were further evidenced in Fazia's case. Fazia had been told that she would have to forgive her *mahr* in what was being treated as a case of *khul'*, but she fought to have the judges at the ISC acknowledge that the divorce had been initiated by her husband (assuming this would realign the financial obligations).[37] Despite the admission on this front by the judge in question however, the turnaround was a limited one. The financial advantage of the husband was maintained, and Fazia was told that although it was agreed that her husband had instigated the divorce, the council could not ask him to pay the *mahr*. This case was a demonstration of the power imbalances at play. Some members of the council appeared to feel able to exert pressure on the women to financially comply with their orders knowing that the women had limited options in obtaining the divorce, which gave them little room to bargain. No attempt seemed to be made, on the other hand, to make the men pay even the basic obligations normally attributed to a *talaq*. This was, in part, the pragmatic outworking of the lack of enforcement mechanisms attached to the councils. The judges did not have any power over the men unless the men had a particular need on the basis of which they were at the mercy of the council (no such cases were witnessed).[38] It appeared, however, to also be an indication of some of the judges' attitudes towards the two genders, as there seemed to be little appetite to put pressure on the men or even to appeal to them to take up their financial obligations.

A similar disparity emerged in the work of the ICE, although there were significant differences in orientation between the two councils. The workings of the ICE appear to be largely pragmatically motivated, and no attempt seemed to be made to enforce a particular expression of morality on clients. Rather, much of the process appeared to be geared towards the speedy resolution of divorces without any legal (Islamic or otherwise) complications. Thus an attempt is made, for example, to get husband and wife to agree on the divorce so that there is little room for complaints in reference to 'Islamic law' (on the basis that all interpretations make room for the mutual agreement of husband

37 See Chapter 2 for details. Note that I did not witness the outcome of the case, and the outcome noted here is based on Fazia's understanding of events as relayed in the interview.

38 Bowen (2013b:142–144) also notes the realism of the judges in attempting to provide resolutions to the marriage that would be least likely to elicit complaints or challenge from the husbands involved.

and wife to a divorce, where the divorce of the wife without the consent of the husband is more open to contestation). Furthermore, 'authorisation forms'[39] are taken as a first point of call in an attempt to ward off any potential English legal challenge.[40] It is perhaps an indication of the view of women as being less powerful,[41] and less likely to be able to cause significant problems for the ICE, that attempts to attain these agreements seem to be more often based on the gentle but persistent persuasion of the women (rather than the men) to forgo any financial rights. This is so even where the divorce is deemed to have been as a result of actions by the man that are considered to be in breach of his marital duties,[42] and all of the divorce paperwork is geared towards this kind of settlement. This unequal treatment of men and women did not appear to be primarily motivated by gendered discrimination on behalf of the judges involved however (although Shehada (2005:323) is right to note that judges are not unaffected by the gendered discourses that surround them), but rather by the pragmatic orientation of the ICE, as the ICE has no power to enforce payment from the husbands in any case, even should the women wish to demand their rights.[43] Where women hesitated to rescind their financial rights in this manner, they were reminded that unless they were willing to forgo these rights, their husbands would have the right of *ruju'* (the right to revoke

39 These were documents prepared by the ICE in which husband and wife sign that they "authorize the ICE [individuals are named] to act on their behalf".

40 I was told that one disgruntled husband had raised a complaint in the course of the English civil divorce, saying that a member of the ICE was "interfering" with the case (because the wife had initiated a petition for an Islamic divorce through the ICE). The individual in question was able to argue his case, however, on the basis of having been authorised to perform his duties. As a result, the authorisation form has taken on a great importance for the ICE in their work.

41 This is so because Islamic provisions for divorce (as noted in Chapter 3) place the woman at the mercy of her husband or of the judge (she is unable to unilaterally pronounce a divorce herself), making her in need of the cooperation of one or the other, and therefore more willing to comply to their demands.

42 This breach of duties is most commonly associated with the husband's failure to maintain the wife, but can also include the breach of any of the stipulations set out in the marriage contract of the ICE.

43 Note that Shehada (2005:108) makes a similar observation in the context of the Gaza City Shari'a Court: "[the] *qudah* always advise women to accept less than they deserve because they prefer to get as much as they can through an agreeable solution rather than produce a verdict that may not be implemented." In the particular context of the ICE, with the lack of enforcement mechanisms available to it, this solution often involved only the obtaining of the divorce itself, without any of the resultant financial rights for the women.

the divorce and return to the marriage),[44] which had the effect of compelling some of them to comply with the process without objection. Shereen's case is indicative of these processes. Shereen had been subject to violent and sexual abuse by her husband – a man she was forced to marry by her older brother (her father had died previously). I recount below only a portion of fieldwork notes of the meeting between her, her husband and a member of the ICE, followed by some of her thoughts on the process from my interview with her a few months after the meeting had taken place.

Shereen's Case

When I arrive at the ICE for the meeting, the husband is already there, casually dressed, unkempt. The judge in question explains my presence and the man somewhat meekly assents to my observing the case. When Shereen arrives we go through the introductions again and she simply nods to say it is fine for me to be there. The meeting starts with questions that seek to decipher whether there is a possibility of reconciliation. The judge tells Shereen that before she arrived the husband intimated that he still loves her and wants to be reconciled. She appears to be extremely frustrated with this discussion and bursts out with: "I have come a long way for this meeting. I have not come to play games. If I am not going to get the divorce, I would not have come." Her outburst results in a change in the course of questioning and they promptly reach the issue of the *mahr*. Shereen's forgiveness of the *mahr* that she is owed by her husband, is pragmatically presented by the judge as a matter of course, but she responds to this presentation by looking to me and saying: "In Islam, the wife is nothing, like a bit of dirt on the floor". As a result, the discussion is retraced again, and the *mahr* presented in alternative terms. The judge explains to Shereen that she is entitled to the *mahr*, but that if she does not forgive the *mahr*, it is difficult to guarantee her divorce – her husband may pronounce the *talaq*, but he is within his rights to revoke it within the ensuing three months. If, however, she forgives the *mahr*, the divorce will go through immediately and she can have peace of mind. She appears desperate for the divorce, and seems fearful of leaving her husband the power to revoke the divorce. The *mahr*, however, is calculated as being at a substantial sum. As a result, the equation is not

44 This is a legitimate fear, as Nasir (2009:112) notes that the right of *ruju'* is enshrined in the Qur'an (*sura* 2.228), and "is adopted in all Islamic countries even though it is not mentioned expressly except in the Jordanian Article 97… Sudanese Article 139, and by the Shia." The Shi'a (Ithna-Ashari) allow the husband the right to revoke an agreement to *khul'* if the wife has not compensated her husband for such a divorce (through the return of the *mahr* or other financial consideration) (Nasir 2009:116–117).

a straightforward one. A couple of times, she indicates that she would like her *mahr*, but this does not appear to be understand as her final decision and the discussion of the potential for control she is leaving in her husband's hands (as he may revoke the divorce) continues. At one point the judge comments that he does not think that the husband will change his mind (in other words, that the husband would revoke the divorce), but then goes on to note that if she forgives the *mahr*, the divorce is guaranteed and she does not have to worry about it.

The husband is silent in the exchange, but finally asks the wife "Do you want it or not?" She appears to be fighting back her emotions, and eventually looks at me and says: "It's like I'm in jail, he [indicating her husband] has the key. The key is £X [the sum of her *mahr*]."[45] Her husband tells her that whatever her decision he does not want her to "go from place to place" telling people "he didn't pay." He seems to want to safeguard his reputation, lest it become known that he was unwilling to pay, or that he manipulated her decision, which appears to be exactly what is occurring in the exchange. Shereen becomes increasingly frustrated and distressed, and ends up leaving the room abruptly in anger.

She returns shortly and a heated argument between husband and wife follows. Shereen is out of control, angry and shouting. The husband is calm and appears very much in control. He simply offers a sentence or two every once in a while, suggesting at one point that she is in an illicit relationship which elicits a furious outburst from her. She tells me later that after the sexual violence she has endured from her husband, the very idea that she would allow herself to be in a relationship with another man, or that her husband would sully her character in suggesting such a possibility, leaves her unable to control her emotions.

Eventually the judge steps in, with the paperwork already prepared, and gives it to the couple to read. Upon reading it the husband asks: "What about the *mahr*? What has been decided?" (The forms always indicate that the woman has forgiven the *mahr*.) The judge replies that Shereen has forgiven the *mahr* and I am surprised by this as I had not understood that this was definitively agreed. Shereen sits in silence for the rest of the meeting, signing the forms with tears pouring down her face.

As far as the ICE is concerned, this process appears to be an issue of expediency. The council has no power to force the husband to pay the *mahr*, and seems to be cautious about taking actions that could be the subject of an English legal dispute. Thus the conduct of these disputes appears to be based on

45 The amount has been omitted to help with the anonymity of this account.

the understanding of the limits of what is enforceable here in Britain, and on the desire to direct the system in order to get neat outcomes,[46] rather than a desire to discriminate against women in the application of law.[47] Regardless of these potential motivations however, the disparity of power and of the council's treatment of the sexes was keenly felt by some of the women. In my interview with Shereen a few months after I witness her case at the ICE, she talks of her deep disappointment and frustration with the process and tells me that she is still waiting to receive her divorce certificate (two months after the meeting) despite having abandoned her right to the *mahr*. Thus even the time frame that had been promised Shereen – the quick divorce that was 'guaranteed' if she would only forgo her *mahr*, had not been delivered on, despite her concession of the *mahr*. This was not to say that she would not eventually get her divorce, but rather an indication of her relative lack of power to ensure that the divorce was issued within a certain time frame.[48]

Another woman expressed similar dissatisfaction:

> *A:* In Iran the women are very very – getting a divorce is very difficult for them… [She is mid-flow in a discussion that questions the rights of women under Islamic law]. Even, if you remember – there was a sentence written on the form […] "If" – it was written to my husband – "if you come and agree to the divorce" – *I* had to sign it – "then I don't want my *mehr*." By signing this document I give up any right to my *mehr*. I said to them: "Why have you written this right from the start? Perhaps he will give me my divorce *and* my *mehr*, but by writing this up front – "
> *TW:* You've already taken it off the table –
> *A:* Exactly! You're putting something in his head. They were trying to convince me that this isn't the case, but this is a good example of something that is clearly weighted towards the man.

It must be noted that the ICE did pursue divorces on behalf of the women, and a couple of the women in particular noted that they were grateful for the

46 Where, at least on paper, husband and wife sign their agreement to an accord in such a manner that ensures that the ICE are not left needing to chase further outcomes that are not within their control (such as the payment of a *mahr*).

47 This is borne out by the marriage contract which the ICE have bound as a book, which includes as a default a number of conditions in favour of the wife (although the weight of these conditions taken together still falls short of equality between the sexes).

48 Note of course that it is possible that the council were awaiting the end of the 'idda before the divorce certificate was issued, but this had not been communicated to Shereen.

endeavours made on their behalf. Moreover, observations of meetings with clients suggested that members of the ICE were not unsympathetic to the needs of their clients. Nevertheless, the balance of power between the sexes, and between men and women and the ICE, is such that the women occupy a weaker position in the negotiations. As a result, all but the divorce itself was forfeited by the women in the cases observed during fieldwork. A number of women felt that they had been subject to compromises that had not been the lot of their partners. One interviewee commented on these dynamics in relation to the manner in which the ICE negotiated its interaction with English law. She argued that the men were given the best protections of both, whilst the women were made to endure the obligations of both, without any of the safeguards. She referred in particular to the questions she was asked throughout the process which she considered intrusive (dates of menstrual cycle and the last time she had sexual intercourse), the recording of these questions on the divorce form, and the forgoing of the woman's financial rights as a default position (with the husband benefitting from English principles of distributing the property equitably). She went on to note:

> I'm all for liberalisation but there needs to be clear lines, do you know what I mean? And I'm not sure there is, in the cases where Shari'a and British law clash, there doesn't seem to, there seems to be sort of wishy-washy mish-mash of ideas that don't really follow each other [...] Because if you're going to go by the letter of the law [Islamic law], then don't give him half [referring to the forgoing of the financial obligations Islamic law places on the man]... and if you're gonna give him half, then change the wording [on the divorce forms of the ICE] so it's not quite so sexist [...] It seems to me as though there's a lot of softening in some areas and not in others [...] Because if you're gonna make concessions for the law [on issues relating to men], then why is not the sex discrimination law being honoured?

The BSC provided a different perspective again. The council seemed to consider itself as a body constructed to aid women to obtain a divorce, whilst enabling them to live by the tenets of their faith. As such the panel presented a further distinct mode of operation in conceptualising their role as the provision of a service, including within that an educative element (often inserted into the pronouncing of judgements) in the attempt to aid clients to make less costly choices in the future. The focus was not aimed to catch the women out or to exert pressure on them to live a certain way. Rather, the council dealt straightforwardly with their cases, having neither the resources nor the inclination to

do any quasi-detective investigative work on the truth or otherwise of claims being made (other than basic checks of identification, living address and so forth, together with requests for documentary evidence if women mentioned civil cases, or domestic violence that had involved the police).[49] Judgements were made based on what appeared to be the facts having considered all the information that had been given to them by the woman and her husband,[50] together with witnesses who had been brought by either party. In one case, for example, angry accusations were being made between husband and wife regarding the husband's alleged "drinking problem", and questions were being raised about custody and visitation rights and so forth (the woman was adamant that a man who drinks irresponsibly should not be left on his own with children). A speculative discussion had arisen amongst the judges to consider these claims but was quickly cut short by one member of the council, who commented that it was not the role of the council to ascertain whether one person drank or did not drink, rather, the key question was "Can this marriage work?" The panel quickly assented to this and the discussion was brought back in line to the usual form of the BSC, which does not have a tendency to attempt to regulate the moral choices of either men or women. In another context the judges told the woman involved that there were conflicting stories from her and from her husband, which were not possible for the BSC to corroborate. Thus the ruling was made on their understanding of the viability of the marriage itself (granting the women the divorce), and the couple were encouraged to take up financial and custody disputes in the English courts.

The BSC thus has a more focused approach than the other councils (the viability of the marriage), and is clearer regarding the demarcation of its own remit. Specifically, it stays firmly out of financial discussions (leaving the issue of *mahr* largely untouched) and out of issues relating to child custody and visitation rights, encouraging both the men and the women to seek redress in the English courts should they wish to take up these matters. The BSC operates, in the final analysis, much as it claims to: with the understanding that a woman is entitled to a divorce for any reason, that it is against Islam to force a woman to stay with her husband if she does not desire to do so, and with a clear appreciation for the limits of their standing within English law.

This awareness of and deferment to the English law was a distinctive feature of the BSC and was particularly evident too in another unique feature of the

49 As noted previously, this is in stark contrast to some of the judges at the ISC who spend much time considering the women's applications for potential falsehoods.

50 Note that, on some occasions, the men refused to become involved in the process or to attend the 'hearing' and therefore forfeited their right to be heard.

operations of the BSC – the attempt to play an educative role in the lives of the women, imparting guidance and direction for future choices (one women referred to it as being given a "little talking to" by a school teacher).[51] The most recurring of these educative discussions was the advice that was dispensed to every woman who approached the BSC with a marriage that had not been registered in the United Kingdom. The judges on the panel regularly took a few minutes in these meetings to stress the importance of registering any future marriages to the woman involved (and to family members if they were present). They also noted that the Birmingham Central Mosque does not conduct *nikah* ceremonies unless a civil marriage has already taken place (or does so simultaneously). In one case a woman whose Islamic divorce left her as a single parent with a young son, was accompanied by her father and uncles to the BSC meeting. The council took some time to speak to the father and uncles about the importance of registering future marriages, telling them that they would have thus circumvented the problems of maintenance for both mother and child with which they were now faced.[52] In another encounter the council spoke frankly with a woman in her early thirties who had not registered her marriage and was now facing difficulties, with one judge telling her that it was "ignorance" in the Muslim community that stopped them from registering their marriages and that, as a British citizen, she should live according to the law of the land. The judge in question went on to assert that according to the teachings of Islam, when an individual chose to live in a country where they were given the freedom to practice their religion, they effectively entered a contract with that country and should, as a result, abide by the laws of that country in getting married (specifically, in getting their marriages registered). These forms of discussions, and in fact any reference to the positive aspects or the protections of the English law, were absent from any of the conversations

51 Billaud (2014:164,165) expands on both the pedagogic orientation of the BSC and their careful deferment to civil law. Her description of the council as "knowledgeable facilitators" instead of "coercive arbitrators" (2014:165) is very much in keeping with the findings of the present study.

52 Billaud (2014:165) writes insightfully of the attempt by the BSC to "foster living at peace first with oneself and then with the wider community", noting that the BSC engage their clients not only as individuals, but as members of a community who are impacted by the case (see also the discussions regarding the interconnectedness of communities in Chapter 3). With regards to the educative thrust of the BSC, Billaud (2014:164) comments: "while trying to maintain the boundaries of the permissible within Islam, councilors are also concerned with educating not only their clients, but also their relatives whom they consider as legitimate stakeholders in family disputes."

witnessed in the ISC, ICE or even at the MAT, despite the MAT's positioning of itself under the Arbitration Act 1996.

The issues of access at the MAT mean that conclusive statements regarding its interactions with female clients cannot be made. Whilst all the women interviewed in this study were very positive about all of Shaykh Siddiqi's projects (the MAT included), they had only the most vague understanding of the MAT processes. The women simply trusted Shaykh Siddiqi and his team to deal justly with the situation and to inform them of the outcome when it was made final. As all of the women interviewed were followers of Shaykh Siddiqi, (having given him the *bay'a*), and as they were content to make significant life choices on the basis of his directives alone,[53] there appeared to be little contest and little struggle in the interactions. Furthermore, there appeared to be only the most minimal of interactions with the MAT on the issue of the divorce itself, so the women had little to relay about the process. It is clear then that the (very skewed) sample of women interviewed in connection with the MAT were pleased with the process and confident in its outcome (for those who were still awaiting their divorces).

Despite this feedback, however, practitioners in the field of women's rights have raised questions about the safeguarding of women within the MAT context, particularly in the areas of domestic violence and forced marriage. The Iranian and Kurdish Women's Rights Organisation (IKWRO) for example, have voiced concerns about Shaykh Siddiqi's claims (reported in The Sunday Times (Taher 2008)) regarding six domestic violence cases that had been deliberated on by the MAT up until that date (IKWRO unpublished briefing *Shari'a Law in the UK and Violence Against Women*).[54] In all six cases the judges on the panel "ordered the husbands to take anger management classes and mentoring from community elders" and the article noted that "There was no further punishment." Furthermore, the women "subsequently withdrew the complaints

53 One woman for example, told me that Shaykh Siddiqi had directed her to leave the city she was living in and to move to a particular street that was very close to the Hijaz college where Shaykh Siddiqi is based and where many members of the Hijaz community also make their home. She relayed that she did not know why he had directed her to this specific street, and she had told him that no houses were available there, but he had told her to wait and move when the opportunity arose. She was content to do this without further questioning. (Note that these interactions were not witnessed by me, and were rather relayed by the woman in question, as her understanding of her dialogue with Shaykh Siddiqi.)

54 The briefing was made available in correspondence with a representative of IKWRO on 24 November 2011.

they had lodged with the police and the police stopped their investigations" (Taher 2008). The IKWRO briefing argues that "many MAT members appear to have no understanding of the effective ways to deal with violence against women and children" and that the approaches taken are not only ineffective but can leave women in "significant danger". Writing specifically of the MAT's inclination towards reconciliatory approaches, the briefing notes "The 'advantage' of this approach according to Shaykh Faiz-ul-Aqtab Siddiqi is that marriages are saved and couples given a second chance. IKWRO is very concerned about the obvious disadvantages in terms of the risk posed to the safety of women and children".

Similar concerns were voiced by some members of the audience at an event that was billed as "MAT's first annual conference" on 4 October 2009. One shaykh spoke on issues related to domestic violence, noting that reconciliation processes were encouraged and facilitated through the work of MAT (even with couples where domestic violence had been a part of the breakdown of the relationship). He further suggested that the Quranic injunctions in *sura* 4:34[55] should not be understood to connote domestic violence, but rather appeared to suggest that a small amount of physical pressure could be used if necessary as a symbolic act, rather than an attempt to cause physical harm. When asked by a member of the audience why a similar right was not given to women, the shaykh seemed to joke, in the course of his answer, that most women did not need a verse to allow them to behave in such a manner towards their husbands. Although his comments appeared to be intended as humorous, they sparked a heated exchange in the audience. As access to the MAT was restricted, I will not speculate on these dynamics in action, but note that some important questions remain.

The disparities of orientation and of rules as elaborated above meant that there were significant differences in women's experiences of the divorce procedure within the Shari'a councils depending on the council and the judge with which they were involved. This highlights the importance of distinctions at the level of practice, as well as in theory, and cautions us against essentialist understandings of either. Various interpretations and permutations of law exist, as do various practices borne out of laws that are in theory the same. This recognition of diversity however, should not negate the use, and usefulness, of broad themes that emerge. Thus, despite the work of some of the councils to help and to aid women in their struggles in unwanted marriages, and

55 "... If you fear high-handedness from your wives, remind them [of the teachings of God], then ignore them when you go to bed, then hit them" (Haleem [translator] 2004).

whilst recognising a diversity of experiences, the findings of this study overall are greatly at odds with Bano's (2010:202) claim that "Existing literature does not present consistent evidence to support the view that women are marginalised and denied equal bargaining power during official mediation processes." Fieldwork observations and interviews in fact suggested the very opposite, as do studies of Shari'a courts elsewhere (for example Mir-Hosseini 2000, Peletz 2002, Vatuk 2008, Welchman 2000). It must be noted that Bano herself references Davis and Roberts (1989) for this statement – a text that focuses on mediation in the United Kingdom in general and not on Islam specific contexts, making its relevance less clear.[56] It is not surprising, therefore, when she shortly goes on to note: "A total of 23 women complained about the process [of the Shari'a councils] being incoherent, time-consuming, and at odds with the Shari'a council's own claims that it is sympathetic to the needs of women" (Bano 2010:203). Indeed, this latter comment is more akin with the thrust of Bano's extensive work in the field.

Peletz's (2002) summary of the "gendered differences in court use and experience" of men and women in the Malaysian Shari'a courts was more in line with the findings of this study. He writes: "[What is] strikingly evident from the proceedings summarized in the foregoing pages and from other relevant studies… is that women are buffeted by the courts in ways that the men are not" (Peletz 2002:155). Peletz goes on to note in reference to a case where the judgement extended the legal boundaries in favour of the husband:

> The husband's smooth sailing in this case is by no means uncommon, and of course the asymmetrical legal prerogatives that he enjoys vis-à-vis his wife are extended to all men in their roles as husbands. Women's experiences in the courts, in contrast, could hardly be described as smooth sailing. (2002:155)

It must be noted that the issue of the safeguarding of women's rights presented the biggest contrast between the four councils in this study, and it is thus preferable to talk specifically to each council, although it is also important to note that there were disparities of orientation within the councils as well as between them, with reference to particular judges. The BSC emerged as the most sensitive of the councils to the needs and the issues faced by the women in its

56 Also, as Davis and Roberts (1989) are writing twenty years prior to Bano's own work, it is possible that they were not privy to the same consistency of evidence that now exists on this front.

care, whilst the ISC emerged as the most concerning in its judgements and in its manner. Meanwhile the pragmatic orientation of the ICE means that whilst the women were able to obtain a divorce, they gave up all financial rights in the process. The limits of fieldwork with regard to the MAT mean that no conclusive comments as to orientation can be made, but, as noted, important concerns have been raised with regards to the council's treatment of domestic violence cases.

The observations of fieldwork and the interviews with the judges and women alike suggest then that a great deal of caution needs to be exercised in labelling the councils as a whole as an empowering forum for the women, or as contexts in which the rights of Muslim women are safeguarded. There were, in some cases, instances where women were helped to some measure (within the specific framework of power) through the processes of the councils (this was so particularly at the BSC). Nevertheless, even in the context of the BSC (which, in the present study, provides the best example of attempts to treat the women with respect and with fairness within interpretations of Islamic family law that have taken on many of the reforms of the past decades), the inequalities of rights between genders persist, as no interpretation of Islamic law gives the wife the extra-judicial right to divorce that is conferred on the husband. Furthermore, the BSC achieves its more equitable treatment between men and women often by insisting that financial issues, and issues pertaining to child custody and visitation rights, be dealt with by the English courts, and by recognising the civil divorce no matter its mode of attainment.

Thus despite this exceptional case, and despite the ambiguities of the Shari'a councils operations which meant that there were instances where each of the councils worked in varying ways as mechanisms through which the women were empowered, the claim of the councils as a whole to safeguard the rights of Muslim women were not corroborated by the observations of fieldwork in any simple fashion. Moreover, many of the cases observed raised questions not only about the lack of safeguards, but about the active mistreatment of women and the jeopardising of women's rights. The issue of domestic violence and the manner in which it was dealt with by some of the judges was a particularly concerning consideration on this front.

Conclusion

As was noted in the introductory chapter, multiculturalism as a theoretical ideal, in its various permutations, has formed a significant part of Britain's political will in dealing with its minorities since a marked shift in political thinking took place in the mid-to-late 1960s. This ideal has formed the context in which calls for the recognition of Muslim personal law were first given voice, and present day debates have continued to call for legal pluralism in reference to reconceptualised notions of equality that argue that the same treatment of all is not equivalent to the equal treatment of all. Although these calls have not been heeded, the theoretical ground provided by multiculturalism has been the primary premise on which discussions regarding Shari'a councils have taken place.

The ideal of multiculturalism however, and the notion of group rights to which it is connected, has come under increasing scrutiny. Concerns have been voiced by academics and political figures alike, who have questioned the legitimacy of state implementation of group rights in reference to a growing public unease about the potential for conflict with, and the overriding of, individual rights. These concerns have been raised primarily with regard to the potential for the abuse of women within patriarchal settings, and feminist voices in particular have urged a reconsideration of 'multiculturalism' as an unbounded ideal. Meanwhile, a second strand of concerns has emerged out of the security consciousness of a post 7/7 Britain, where multiculturalism as a political agenda became associated in some quarters with issues of home grown terrorism, and the ghettoisation (and possible radicalisation), of (in particular) Muslim communities. These concerns have led to the repositioning of the British state in recent years towards discourses that draw on ideals of "community cohesion", "muscular liberalism", and "core values".

Set against this political backdrop, it would appear that calls for the recognition of Shari'a councils based on the understanding of group rights, would be made against the present repositioning of British political will. Whilst considerations of multicultural understandings of equality and the call for group rights continue to provide part of the discourse of the Shari'a councils however, a key development has been the increasing recourse to the language of 'authority' and the 'freedom of religion'.[1] This language has the potential to draw on a

1 See Talwar (2012) for an example of one of the press interviews given by the ISC over the past years. On this occasion, Haitham al-Haddad explained the increased demand for the services

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different frame of reference. As a result, it provides an alternative structuring of the debate, which makes more viable the political objectives of those who seek to ensure the safeguarding of the role of the Shari'a councils, and court formal recognition of the processes used.

It has been suggested that Muslim women use the Shari'a councils because they consider them to be authoritative. This claim has particular implications within the modern political theory and sociological literature. Namely, the concept of authority is intimately linked with the freedom of the individual who is subject to that authority, who freely chooses to be bound by its dictates. In our context the claim is that, as a result of a particular understanding of a normative framework (Islam), to which Muslim women give their free assent, the Shari'a councils emerge (for the women) as authorities. Thus the decision to use the Shari'a councils is tied together with the freedom of the individual to practice their religion. These discussions draw on the core liberal commitment to neutrality between differing conceptions of the good, and the prizing of individual choice. As such, they present a complex political challenge. Where individuals choose a course of action 'autonomously', influential strands of liberal theory commit the state to non-interference with those choices (regardless of their content). This commitment remains unless a clear threat to the liberty of others, or to the security of the state, exists (Rawls 1971:215). Furthermore evaluative judgements based on the claimed universalism of concerns regarding individual rights, where those individuals themselves consider their fulfilment and freedom to be found in a different frame of reference, are eschewed as paternalistic (concerns that echo Mahmood's (2005) work). Thus, regardless of the Western secular evaluation of the merits (or otherwise) of the judgements of the Shari'a councils with regards to gender equality, where the women themselves freely choose these processes, there is little scope for intervention within procedural understandings of liberal theory. This understanding is at the heart of critiques such as that presented by Al-Hibri (1999:44), who writes somewhat scathingly of feminist concerns regarding conservative religious groups:

> At least in this country[2] people of faith are entitled to their religious beliefs whether secular feminists approve of these beliefs or not. This

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of the ISC by commenting that "Muslims are becoming more aligned with their faith." The implicit claim is that the use of the ISC is directly linked to the practice of religion.

2 Note that Al-Hibri is writing in the context of the United States, but her sentiments are indicative of similar concerns in Britain.

> principle is at the heart of our democracy. Its violation can lead only to oppression through the denial of basic civil rights.

The efficacy of the narrative of the Shari'a councils has been staggering. The common place assumption of significant portions of the liberal academic (and in some cases broader political) debate has been that the use and existence of the Shari'a councils is a matter of freedom of religion and, in some cases, that there is no other avenue through which Muslim women might obtain a 'religious' divorce should their husbands be reticent to give them one (in short, assumptions which find their reference point in the assertions of the Shari'a councils). As a result the discussion appears to have jumped a step, considering the intricacies of religion in the public sphere and the conceptual boundaries of freedom for individuals and groups to practice their religion, rather than asking some pertinent questions as to the appropriateness of these frames of reference. Thus, for example, Grillo (2015a) quotes from a report by the All Party Parliamentary Group on International Religious Freedom (APPGIRF) in some of his argumentation. Noting that the report expresses two avenues through which a state may deny individuals their freedom of religion (actively persecuting them, or denying them "the possibility to freely choose what they believe and express that belief alone or in a community" (APPGIRF 2013:18)), Grillo turns his attention to the efforts of Baroness Cox and her supporters: "Would the Cox Bill or similar legislation deny Muslims that possibility?" (2015a:267). It appears to be assumed that the use of the Shari'a councils by Muslim women is an act of freely choosing what to believe and expressing that belief. Billaud (2014) writes with similar underlying assumptions: "I aim to provide a more complex analysis of the ways in which Islamic agency asserts itself through ethical disciplining" (2014:160). She goes on to state: "The authority of Shari'a councils does not rely on doctrinal coercion but rather the capacity of the councillors to accompany their clients in their journey toward an ethical way of life" (2014:166). It is not clear how the conclusion was reached that the Shari'a councils are in fact considered by their clients to be authoritative and that this authority is rooted in the clients' journey toward what they themselves consider to be an "ethical" (religiously prescribed?) way of life. As I have noted previously, the tendency is to assume the reasoning and motivation of Muslim women based on the language of the dominant class in the Shari'a council setting. Pearl and Menski (1998), Shah-Kazemi (2001), Williams (2008) and others all proceed in similar fashion. Douglas et al (2011) commonly use the designation of "religious authority" for the BSC in their discussion, a terminology that has echoes throughout the literature. Meanwhile Hockman

(2013) is representative in setting out religious identity as the key issue in considering Islam and law in the United Kingdom (in the introductory comments to Griffith-Jones' (2013) edited volume). He writes "a society which has become predominantly secular… has had to face the need to accommodate those whose religious adherence today is as proud and profound as any time in history" (Hockman 2013:1, 2). To the extent that these discussions are focussed on the Shari'a councils, a key argument of the present book has been that the religious motivation of the use of, and existence of Shari'a councils, has been asserted and assumed, rather than discovered and established, and is in need of further consideration.

A second assumption – that the Shari'a councils are necessary for Muslim women to be freed from religious marriages, and that the British state cannot provide the requisite service – is also prevalent. Bowen (2013b) writes: "Muslim men and women have unequal divorce powers: a man can divorce his wife without her consent, whereas a woman needs to either persuade him to do so or to ask a judge *or, in lands without Islamic judges, a Shari'a council,* to end the marriage" (italics mine). Meanwhile a briefing to members of the House of Lords by The British Academy Policy Centre (2012:3) stated: "The liberal state's values demand that space be given for people to express their identity, and religious divorce is an invaluable aspect of religious freedom, *that the state cannot provide*" (italics mine). Several related comments are pertinent here. Firstly, note that the self-referential nature of the literature in the field is in danger of creating important distortions of the empirical evidence. The British Academy Policy Centre briefing references Malik (2012:34) as the source for its comment, who in turn references Douglas et al (2011:48) (whilst the quote from the briefing itself is then taken up and cited by Grillo (2015a:251), and so forth). A closer look at the original comment in Douglas et al, however, apparently the source of the given analysis, raises some important questions. They write that the BSC "provides an important service for those… Muslims… for whom a religious divorce 'in the sight of God' is important from both a spiritual and a religious legal perspective" (2011:48). As Douglas et al (2011) make clear in their report, their research was not an ethnographic study focussed on the motivation of Muslim women, supported by interviews with the clients of the BSC. Rather, their focus was to understand the structure and procedures of the BSC and its interaction with civil law. As a result, their comment must be understood to be the articulation of the BSC as to its role, and not necessarily the articulation of their clients. Nevertheless, Malik (2012:34) presents the sentiment firmly as the position of Muslim women themselves, and makes further explicit that the state is unable to provide the requisite service:

> …there is clear evidence that religious women insist that they want a religious divorce "in the sight of God" that is important from both a spiritual and religious legal perspective (Douglas *et al.*, 2011: 48). For these women, their minority legal order is providing them with an invaluable service that cannot be provided by the national state legal system. (2012:34)

As Douglas et al (2011) do not claim to provide "clear evidence" of this nature, it is unclear what evidence Malik is referring to in her assertion. Furthermore, as has already been noted, Malik (and Bowen's) assumption of this particularly conservative understanding of Shari'a law (that the 'religious' divorce relies on the pronouncements of a Shari'a councils in the event that the husband is reticent to consent to one) is cogently critiqued by others in the field as well as rejected by the (slim) majority of Muslims in Britain (see for example the discussion in the introductory chapter, and the work of Sardar Ali 2013 and Warraich and Balchin 2006). Douglas et al themselves note that the BSC considers the civil divorce to be "conclusive" in that no separate religious divorce is necessary (2011:47, 48). Malik's comments would thus at best apply to the circumstances in which no civil marriage exists, and therefore no civil divorce possible, although it must be understood that even in such a case the primacy of the religious (rather than pragmatic or some other) motivation is assumed rather than established. The discourse of the Shari'a councils is thus repeatedly substituted for the voices of the women themselves.

This book has argued that narratives that formulate the motivations of Muslim women in reference to authority and the freedom of religion are problematic, on the basis that the vast majority of women interviewed in this study did not consider the Shari'a councils to be authoritative (in the terms suggested), or to present a legitimate avenue of governance over the women's own choices or actions. As was noted in Chapter 2, I do not argue that considerations of authority are entirely absent in these interactions. Rather, considerations of authority that are personal to the women (conceiving of the councils as authoritative *for them*, and not just for their husbands or communities) do not, on the whole, play a defining role in the decision-making processes of the women as they approach the councils. Here Dr Williams' (2008:267) assertion that there would need to be a "high degree of community recognition" of the Shari'a councils if they were to be recognised by the state, and in order that claims might be effectively dealt with, inadvertently highlights a further consideration. The findings of this study suggest that community recognition, and the recognition of individual Muslims, stand as two distinct concepts (although this is not in an absolute sense, and the discussion below highlights their interconnectedness).

Many of the women interviewed felt certain that their communities considered the Shari'a councils as authoritative, whilst they themselves did not. This distinction served to reconfigure the freedom that is intrinsic to the authority framework, rather drawing the women into discourses of power within which they felt they must navigate. Furthermore, with regard to this connection to conceptions of freedom, a related finding was that the women did not, on the whole, consider the use of the Shari'a councils as part of the exercise of their religious freedom. To the contrary, many articulated that religion did not play an important part in their lives, or that they were not 'practicing' Muslims (although nearly all identified as 'Muslim' regardless). Again, I do not argue that discussions regarding freedom of religion, religion in the public sphere or of religious identity are irrelevant to the debate around Shari'a councils, but rather that their assumed role in the current literature is in danger of providing a distorted frame of analysis thereby leading us to misunderstand and misrepresent the experiences and motivations of Muslim women (at least in so far as the forty-three women interviewed for this study are concerned). The findings of this study suggest that considerations of authority and freedom of religion, utilised within a modern theoretical framework, need to be approached with caution. It has been a contention of this book that such a framework does not provide an illuminating model through which to understand the complex interactions of power surrounding women's decisions to use the Shari'a councils.

A second claim – the claim that the Shari'a councils safeguard the rights of Muslim women (in recognition of which the women are said to approach the councils) – has been discussed in the preceding chapters and found similarly problematic. As has been noted, there were, in the complexity of the women's interactions with their husbands, their communities, and the Shari'a councils, some senses in which the use of the Shari'a councils proved to be a 'success' in achieving particular outcomes, and it is noted again that the specificities of particular councils had a significant impact on both the outcome of the cases and the manner in which they were achieved. Nevertheless, neither the processes of the Shari'a councils nor the outcomes achieved, were experienced by the women (on the whole) in terms that acknowledged the preservation and restoration of rights. Rather, many of the women articulated their anger, disappointment and frustration at what they felt was a patriarchal system, in which they were bound. Some further commented on discriminatory and abusive practices and obstacles in the context of the Shari'a councils that had augmented their sense of the injustices of the system. As a result, this study has argued that narratives that profess the safeguarding of women's rights in the context of the Shari'a councils do not adequately take into account the reality of the women's experiences and struggles or fully acknowledge the

frameworks of power within which the women's experiences take place. Here a further concern emerges with regards to some of the literature in this field. There has been, in some, a tendency to cast off as naïve, lacking in nuance, or biased, voices that seek to highlight the negative aspects of women's experiences in the context of the Shariʿa councils (see for example Grillo 2015a:113–114, 249). Of course, care needs to be taken to do justice to the work of the Shariʿa councils where there are neutral or, indeed, positive aspects of their interaction with women. Similarly it must be acknowledged that overarching statements are not always helpful where there are, in fact, important differences in the work of the BSC and the ISC for example (and *within* the councils as regards individual judges). Nevertheless, it is clear that some significant abuses against Muslim women do in fact occur, and there is cause for concern specifically with regards to issues surrounding domestic violence, and, in some cases, the custody of children. There is in short a battle for a discourse that refuses totalising judgement of the Shariʿa councils and pays careful attention to the complexity of the Shariʿa council setting, without forgoing the possibility of writing candidly regarding the discrimination and abuses that occur, and indeed of pursuing appropriate channels of action to see the occurrence of such discrimination countered and stopped.

There are theoretical questions as well. This study has argued that the articulations of power, authority, freedom and the self on which the discourse of the Shariʿa councils rely for their political efficacy, do not enable us to appropriately understand the formation and preservation of authority and power in relationship. Nor do they adequately capture the complexity of experiences of freedom, or the formation of the self. As such, they do not present an adequate framework through which to understand the interactions of women with the Shariʿa councils.

Modern considerations of authority and power place these concepts into two distinct categories, with liberal understandings of 'freedom' (conceived of as autonomy) acting as a deciding factor as to which term is in operation in any given context.[3] Furthermore, a 'true' inner self is imagined as transcendental and entirely independent in its formation. In such a framework, to the extent that the self is constrained, influenced, manipulated or otherwise acted upon in ways that divert it from its autonomous choices, it is not free. The power relations involved in these struggles are considered to be zero-sum. On the other hand, to the extent that the self autonomously chooses a

3 Note that the two terms are also considered to be different in scope – with authority cohering in command-obey relationships, whilst power is said to have a broader scope.

course of action – even choosing to be bound by the dictates of another – if this is done as a result of an independent valuation of their legitimacy to command, the self is said to be 'free'.[4] (This is so regardless of the content of the commands given.)

The findings of the previous chapters suggest that such a categorisation of the key terms of this book leads to overly rigid and simplistic analyses. As a result, it can lead to significant distortions and misrepresentations of the complex relationships in which the women are involved and, in particular, of women's agency within them. That power is at work through overt and covert operations through the women's relationships in community, with their husbands, and in the context of the Shari'a councils, is evidenced through the findings of this study and through other studies on Shari'a councils both in Britain and elsewhere (regardless of whether modern or postmodern understandings of power are used). Parts of the (very polarised) political debate and of the tabloid press, implicitly building on the modern framework in their consideration of this power, have had a tendency to caricature the women as lacking in agency and passive in the face of patriarchal systems. Such a configuration misunderstands the women and ignores their own voice as they speak as active agents. It fails to acknowledge the active participation of women in the contexts of which they are part, and their intelligent, tactical, and at times forceful negotiations of that context to use, circumvent, overcome and even to transform the various processes of power which act upon them and of which the women themselves are part. This is not, however, to argue that women in these contexts are therefore 'free'. Indeed, a similarly simplistic narrative exists on the other side of the spectrum, with Malik somewhat overstating: "I want to make it crystal clear that those who assume that Muslim women are being 'forced' into using Shari'a tribunals are wrong. All the research on the topic confirms that Muslim women are voluntary users of Shari'a tribunals – they want these services" (Book Launch 2013, cited in Grillo 2015a:131). It is not clear what research is being referred to. The interviews and testimonials being referenced in the political realm and in the media speak of Muslim women in distress and their own frustrations and concerns about the treatment that they have received in the Shari'a council setting.[5] In the academic literature, only

4 Note that the 'false consciousness' debate adds further possibilities here, questioning whether the self has truly chosen and considered these courses of action autonomously, or whether its very thoughts and beliefs have been acted on by power.

5 I do not suggest that all the interviews, testimonials and 'undercover footage' being presented by those in the media or within political lobby structures present the best of the research available. Nevertheless, the number of such interviews and the consistent concerns of the

two studies to date have focussed on the motivations of Muslim women. I have already critiqued Shah-Kazemi's (2001) approach, but Bano's studies, arguably the most significant in the field at the time of Malik's statement, do not support such a strident conclusion (indeed Bano (2004, 2008, 2012) makes explicit that her respondents, on the whole, did not wish to see Shari'a law formalised in the British context, or the Shari'a councils given recognition).

Meanwhile, Malik goes on to state: "We are not going to get to the heart of the problem unless we acknowledge that British Muslim women, living in conditions of freedom in liberal democracies rather than Iran or Afghanistan, are freely choosing to be governed by Islamic religious, social and legal norms." Such statements fail to appropriately problematize what a 'free' choice might consist of and suggest a lack of understanding of the complexity of the (patriarchal) frameworks Muslim women navigate as they make strategic choices to approach the Shari'a councils. Malik is not alone in such over-pronouncements. For example, in analysing the actions and status of Muslim women in historical settings, the very option of resorting to Shari'a courts in order to secure the women's own objectives has led some to interpret the actions of women who pursued such an avenue as indicative of their agency and ability to assert their own desires (see for example Tucker 1991, Zilfi 1997[6]). Vatuk (2008) however cautions against this approach, noting the importance of "look[ing] behind the scenes at the motivations of or the circumstances under which the women… were operating".[7] Vatuk goes on to argue that "Although for many women the act of attempting to secure a *khul'* divorce may indeed represent a form of 'assertion of self', for many others it represents a last resort in a situation where

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Muslim women they represent suggest we ought not to be too hasty in dismissing their usefulness or veracity in highlighting some of the prevalent issues faced by Muslim women in the context of the Shari'a councils.

6 Note that Tucker (1991) and Zilfi (1997) discuss women's pursuit of a *khul'* divorce through Shari'a courts in 18th and 19th Century Nablus, and in the Ottoman Empire of the 18th Century respectively. Thus important distinctions of context (in time and place) exist. Nevertheless, as previously noted, interesting similarities emerge in themes that continue to hold resonance for our present discussions, and both authors are referenced in Vatuk (2008) with similar intention.

7 It must be noted that Vatuk (2008) perhaps overstates Zilfi's position as Zilfi (1997:277) herself comments, in referring to a particular divorce case, that "we can only speculate about exactly how freely – with what other options and opportunities available to them – the women came to their decision." Thus, although she notes the possibility of the *khul'* divorce redressing the balance of power of women vis-à-vis men, she writes: "The question of whether the operation of *hul* in this period… signified women's 'empowerment' or assertion of self is another matter" (Zilfi 1997:277).

other alternatives are lacking" (2008:231)[8] (or indeed, where the decision itself has been greatly pressurised by the woman's family, or her husband).

The analysis of this present study follows Vatuk's approach in attempting to engage with a more complex paradigm. Indeed, Grillo (2015a:280) is right to note: "This is a complex story (perhaps complexity *is* the story)". Narratives that present Muslim women using the Shari'a councils as either 'forced' or 'free' rely on a theoretical framework that is unable to account for the complexity of the real, thereby inevitably caricaturing the lives of Muslim women. This book is thus in agreement with works such as Bano (2010) and Hirsch (1998) who cogently critique the theoretical assumptions that present the women in such a light, and who draw instead on postmodern understandings of power that enable a more relevant analysis of the present context (see also Fournier 2014). Hirsch (1998) for example, in her study of Islamic courts in Kenya, acknowledges that culture and law structure particular gendered positions around which individuals must navigate. Nevertheless, her focus has been the agency of Muslim women in these contexts in negotiating, and indeed transforming the discursive field of which they are part. Bano similarly, in her prolific writing, discusses both the structural and other constraints that make up the framework of possible action for Muslim women, whilst at the same time making clear the women's agency in navigating these structures. Redressing the designation of Muslim women as forced victims in the process of their interactions with the Shari'a councils, she writes instead of their "dynamism… and in particular their capacity to shift, change and develop in response to new needs and situations" (2012:277).

There is much that provides the basis of a common ground between the postmodern premises that inform both Bano's and Hirsch's work and the present study. This book, however, ultimately presents a slight but important divergence from this previous literature in its positioning, and one that suggests a greater focus on some of the social justice implications of this field may be appropriate. I turn to this positioning shortly but first present again the key strands of the argument that has been presented thus far.

The previous chapters have argued that women do not turn to the Shari'a councils primarily motivated by the desire to practice their religion or by an understanding of the councils as forming an authority for the women themselves. Furthermore, claims that the Shari'a councils safeguard the rights of women were not (as a whole) substantiated by the observations of fieldwork, and in fact, many of the women interviewed raised complaints on this front.

8 See also McFarlane (2011).

Despite these findings, however, and as was noted in the introductory chapter, it can be estimated that hundreds of Muslim women in Britain still choose to use the councils (even where the English legal system could be accessed instead) in dealing with their marital disputes. Why is this the case?

I have argued that the women who use the Shari'a councils find themselves caught up in specific "diagrammes" of power that work to greatly constrain the field of possible action before them. These diagrammes are informed by the discourses that emanate from the women's communities; from the Shari'a councils; from the tenets of Islamic law variously interpreted and applied; by traditions, customs, and cultures. These discourses present the women with limited options as they seek to obtain a divorce. Specifically, they point to the Shari'a councils as the only forum that would be considered (by the women's communities) to present a legitimate means through which an Islamic divorce that lacks the husband's consent can be obtained. The women in this study, for the most part, did not internalise these discourses, bestowing them with a sense of legitimacy and thereby considering them authoritative. Rather they considered themselves, pragmatically speaking, bound by their dictates. Thus I have argued that women "strategize within a set of concrete constraints" (Kandiyoti 1991:27), making patriarchal bargains.

This sense of being bound was predicated on the women's desire to maintain relationship with their communities. Thus, whilst 'culture' and 'religion' provided much of the overarching discourse in reference to which particular relations of power were navigated, the findings of this study suggest that they retained their power to construct the possibilities inscribed within the women's social field only to the extent that the communities of the women took on these discourses for themselves. The discourse emanating from the women's communities, rather than from the Shari'a councils or from some overarching concept of 'law' or 'culture', thus played the greatest role in shaping the field of possibilities for the women (although of course, these discourses were highly interconnected).

It must be understood, in presenting such an analysis, that the women do not stand distinct from the framework of power in which they live their lives, and neither do they exist as its passive victims. Thus where I have talked of the power of communities in relation to the women, this is not to say that the women are entirely distinct from the discourses that emanate from their communities. Rather, they themselves, through their own choices, work to construct, challenge, reinforce and subvert community norms in turn. By going to the Shari'a councils, the women in this study used the very discourses of power that limited their choices in innovative ways that refashioned the intentions of that discourse. This tactic was, however, a double-edged sword.

Whilst short-term gains were obtained for some of the women, this was done at the expense of reinforcing the overarching framework of power, so that the patriarchal regime remained intact. The space for manoeuvre that was gained in such tactical choices was thus only able to be appropriated *within* the framework of power, rather than working to its overthrow. Thus an interesting observation of fieldwork was the extent to which the women's decisions to use the Shari'a councils, and the language they take on in such a context, as well as outside of it (for example, presenting the Shari'a councils as the only way through which an Islamic divorce can be obtained), works to reinforce the dominant discourses of their communities.

Against such a backdrop, I argue that women turn to the Shari'a councils not only out of an understanding of a lack of viable alternatives, but in response to a specific rationale, and in the pursuit of a specific, overarching objective. With regards to rationale, although I have argued that the women in this study did not (on the whole) consider the Shari'a councils authoritative, I argue that considerations of authority *did* play a key role in the decisions and actions of the women involved. The women used the Shari'a councils with an understanding of the councils as forming an authority (or, failing that, a power) in the eyes of their communities and/or husbands. Following the work of Scott (1990), I have argued that women attempted to use the "language of the dominant class" against itself – an attempt to utilise the *mechanisms of power* that exist within their communities, for their own (counter-hegemonic) ends. Thus the use of the Shari'a councils presented a tactic of power, and of resistance, on behalf of the women – an attempt both to govern the responses of their communities and husbands, and to obtain for themselves outcomes contrary to community norms.

With regards to objective, it has been noted that this tactic was ultimately used in pursuit of *freedom*. As was briefly noted in Chapter 4 however, the women did not conceive of this freedom in terms of liberal ideals of autonomy. Rather, the women articulated concerns more in line with communitarian conceptualisations of the importance of community as a good for the individual (see Taylor 1992, 1994). The women in this study valued the input and support of their relational networks, and did not wish to lose the interconnectedness of their lives with those of other members in their communities. Concerns regarding freedom, then, were rather phrased with regards to a wish for reform and for change *within* communities. Thus this book agrees with Shachar (2001) that women do not want to be faced with dichotomies that do not adequately account for their multiple identities and relational ties. However, Shachar's given dichotomy – "either your culture or your rights" (2001:5) – as the choice being put before Muslim women in Western liberal contexts, is misplaced in our current one. Such a dichotomy assumes too much regarding the women's

views on culture. A more relevant dichotomy appeared to be "either your community or your rights". As has already been noted, the women's responses regarding levels of religiosity were somewhat ambivalent. Far clearer however, were the articulations of culture throughout the interviews. An almost unanimous theme was that the women in this study spoke very strongly against the culture of their communities, which they saw as perpetuating inequalities between men and women. Many of the women voiced the wish that their communities would reform (revising both cultural and religious mores), and adapt to more egalitarian principles. One woman, when there had been a moment of silence in the course of an emotional interview, suddenly offered this insight into the tension of her desires for relationship, for freedom and for her rights, together with the struggle between power and agency. Speaking in the context of a discussion regarding her interaction with her community and with the Shari'a councils, she stated the following profound words:

> I feel suppressed, oppressed… by community, by man. I feel man has too many rights and the statement "It's a man's world" is definitely true… I feel to an extent that there is control over me – although whether or not I accept it is a different thing – but I feel like people try to control me, which then further encourages me to seclude myself. And then if I seclude myself I become a bit of an outcast and lonely. So it's a vicious circle. Because the [more] heavily involved you are in the extended family, expect everyone to be heavily involved in your life. And if you don't want that [if you don't want to have others become involved in your life in such a manner] you then have to move yourself away from that [from those relationships].

Her comments highlight the multifaceted nature of power and its tension with desires for relationship, for freedom, and for particular rights. Despite this complexity, however, and as has been noted in the previous chapters, an overarching concern emerged throughout the interviews with the women in this study: the desire for freedom. It is the focus on this desire that leads us to look again at Foucault's theorisation of the relationship between power and freedom. I have previously argued that a Foucauldian understanding of the key terms of this study provides us with the most insightful framework through which to assess the interactions surrounding, and within, the Shari'a councils. Here I return to the postmodern framework to offer some final remarks that accentuate the contribution, and the positioning, of this present study.

Foucault's immensely influential considerations of power argue that power is not inimical to freedom, but rather that the two coexist, in complex interplay and constant tension. There is no zero-sum struggle between the two. Power

is not evadable, but neither is freedom illusory. Rather, power works to structure the field of possible action, governing our behaviour for good or for ill. Furthermore, all are equally implicated in frameworks of power that act both to fashion and to govern individual subjects. It is the contention of this book, however, that this theoretical framework, and the multiple avenues for agency and resistance it helps highlight even within restrictive frameworks of power, has led to a potential over-emphasis on the agency of Muslim women in the context of Shari'a councils within certain studies. In short, theoretical possibilities of agency have led to a distortion of empirical reality.

Of course, constraints on action do not necessarily negate the agency of the individuals involved, and the use of the Shari'a councils is indeed indicative of the women's agency in so far as it demonstrates their active engagement with certain structures of power, traversing and negotiating them for their own ends. Bano (2010:184) is therefore not wrong in writing of Muslim women in Britain who choose to use the Shari'a councils: "These women present a very contrary profile to the one suggested by contemporary multicultural discourse: far from submitting passively to patriarchal systems of law, they actively draw upon it as agents." However, more needs to be said about *why* they do this, and what happens when they do. This book is in agreement with Vatuk (2008) that studies that equate the use of certain modes of power with agency have not paid adequate attention to the limits of the choices available.

A number of women in the interview process commented on this complex juxtapositioning of the availability of certain choices, and yet the felt sense of constraint, unprompted. One Bangladeshi woman in her late twenties told me of her pain at her husband abandoning her and their three little children in order to marry another woman, and how he had given her two options: either to accept the second wife, or to go ahead and file for divorce (he refused to give her the divorce himself). She had eventually chosen the latter course, but told me that she felt she had no choice in it at all, but that her husband had been impervious to her pleading, or to the admonishments of family members. Another woman spoke of the abuse she had suffered in her marriage, and how every avenue of reconciliation had been attempted but to no avail. She said with some bitterness: "My children – the older one's just over two and the younger one's nine months – come on – this is what I'm saying to the panel: 'Do you honestly think I'm doing this out of choice?'"

As a result of these and many other similar articulations by the women interviewed in this study, this book has sought to expound and to better understand the limits and the boundaries of the freedom of the women interviewed and the constraints within which they operate. In doing so, it diverges from the work of Hirsch (1998) and Bano (2010) who rather focus on the

potentialities of agency. Bano's (2010:202) remark, for example, that all but one of the women she had interviewed had contacted the Shari'a council "voluntarily" appears to miss the mark or requires at least some further definition. Particularly as she herself notes the often abusive dynamics of the relationship of these women with their husbands, and the great pressure exerted on them as carriers of family 'honour', which she confirms "can limit the decision-making abilities of women within the home and family" (Bano 2010:196–199). Bano's insightful studies have rightly resisted the simplistic and erroneous binary of 'social coercion' or 'false-consciousness' as an explanatory framework for the decisions of the women involved to use the councils (see for example Bano 2010:184). Similarly, this study concurs with Hirsch (1998), Bano (2010) and others that binaries of 'forced' and 'free', and discussions of Muslim women's lives that present them as silent and passive in the face of male-oriented laws and oppression, do not adequately account for the realities of the experiences of Muslim women. Neither, however, do studies that emphasise the potential avenues of action for women (Hirsch (1998:11) writes of her aim to "emphasize the transformative possibilities" of gendered subject positions within the Kenyan Islamic courts), in ways that exaggerate their agency in the face of prevailing practice. Such analyses fail to give adequate weight to the social forces at play and the discourses of power that constrain and fashion the actions of these women in turn, presenting them with limited room for manoeuvre.

The findings of this study suggest that women are creative and determined in their efforts to pursue their own objectives even within structures of power that assign them subordinate positions. They do so by using the provisions of various interpretations of Islamic law, or negotiating the rules of one system against another (drawing on the provisions of English law if they see fit), or simply bargaining with whatever possible factor in the relationship that might confer on them an upper hand. They do not passively acquiesce to the decrees and decisions of others, but attempt to challenge and negotiate and push their way through. It is a stretch too far, however, to equate this fighting spirit in some, with women as being in a position (within the framework of power of which they are part) to exercise power to the extent that is available to men, or to govern the trajectory of their own lives in the face of persistent opposition and of systems of power that are stacked unequally against them. As was already noted, the promises of the patriarchal bargain have "proved to be illusory" (Kandiyoti 1991:37), and the women were consistently disappointed in their efforts. Thus even as they "draw upon [the law] as agents" (Bano 2010:184) this study found that the objectives of the women were often thwarted: by the limits of particular interpretations of (Islamic) law and culture; by judges who privileged the position of men even within provisions of law which are

intended to safeguard the rights of women; and by men who simultaneously negotiated their own desired outcomes and actively combated the women's attempts to secure their position. Furthermore, the women's own repeated assertions regarding their pursuit of freedom and their felt sense of constraint, together with the many comments regarding the inequalities and injustices of the system, mark out the interactions surrounding the Shariʿa councils as a constant field of struggle, tension, power, and resistance.

As a result, this study has sought to draw its analysis against the backdrop of the constant tension between freedom and power. I have, in the preceding discussions, highlighted the ways in which women engage with the framework of power of which they are part, actively drawing on it, negotiating its boundaries, constructing and deconstructing it in turn. However, I have done so whilst attempting to be true to the concerns of the women in this study, whose desire for and pursuit of freedom was an overarching reality against frameworks of power that presented themselves on the sliding scale towards increasingly dominative power relations. Such an analysis seeks to take seriously both the women's agency (their articulations of their tactics; their negotiations of the frameworks of power in which they are part; and the observations of the women themselves as contributing to as well as subverting these very frameworks) and, ultimately, their felt sense of constraint and desire for freedom. As such it presents the difficult ground we must retain as we consider these important themes.

This book argues that the voices of the women themselves should not be ignored in the extensive theoretical considerations that have dominated not just the academic conceptualisations of these contexts, but the political formulations that have accompanied them. Calls for the recognition of Shariʿa councils in Britain framed in reference to conceptions of authority and the freedom of religion, should be viewed with caution, as must the narrative that suggests that such councils are necessary to "safeguard the rights of Muslim women" (or, indeed, necessary for the obtaining of a 'religious' divorce). The reality, as we have seen, is far more complex. Much more remains to be considered regarding the theoretical and political implications of the findings of this study, but these considerations lie beyond the scope of the present work. The primary objective of this book has been to provide an understanding of the motivations of Muslim women as they approach the Shariʿa councils, as their motivations are pivotal to the broader debates. It is my hope that through its pages the voices of the women themselves have been heard.

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