

CHAPTER 1

Why Shari‘a in Britain?

IN OCTOBER 2013, BRITISH PRIME MINISTER DAVID CAMERON ANNOUNCED THE launch of an Islamic bond (a *sukuk*) and celebrated his government’s commitment to make London one of the world’s great centers for shari‘a financing. But a few months later, a moral panic swept Britain over claims that state-aided schools in Birmingham were promoting shari‘a and Islamic extremism. BBC programs, the home secretary, and several prominent members of the House of Lords warned of shari‘a councils endangering the rule of law and gender equality throughout Britain.

This study of British Islam highlights issues and practices surrounding shari‘a. Shari‘a is both lauded and denounced more loudly and more often in Britain than anywhere else in the West. Both Prince Charles and then archbishop of Canterbury Rowan Williams have called for drawing on Islamic principles to, respectively, save the environment and resolve conflicts among Muslims. But Britain also has some of the most vehement Islam bashing anywhere, with the *Daily Mail*, the *Sun*, and on occasion the *Telegraph* warning of threats to Britain posed by Islam and particularly by shari‘a. Already in 1997, the chilly climate toward Islam led the Runnymede Trust to issue an influential report denouncing “Islamophobia.”¹

“Shari‘a” (*shari‘a*) can mean both the broad path God set out for Muslims and a particular set of normative teachings.² In both senses it has a particularly high profile in Britain. Why? I try to account for this particularity by looking at British Islam through two lenses. The first is historical: How and why did Muslims create distinctive religious institutions in Britain? How did the pathways they followed shape what sort of Islam they built? The argument is implicitly contrastive: What features of the British experience with Islam differentiate it from the experiences of other European countries?

The second lens is ethnographic and focuses on everyday practices in Britain’s shari‘a councils, tribunals that answer Muslims’ questions and give Islamic divorces. (These divorces have no effect in English law.) I trace the ways the Muslim scholars who sit on these councils apply the resources of Islam to resolve immediate practical issues. I also mention schooling, mosques, finance, and halal certification, but I concentrate on the shari‘a councils for three reasons. First, they represent a prolonged and unique experiment in meeting Islamic needs in a Western country. Second, they highlight and illuminate Britain’s specific relation to Islam. Finally, they have become a

flashpoint in British public debates, drawing the ire and fire of many commentators even as they adapt to the English legal environment.

How *can* this work? How can such a well-developed set of quasi-legal shari'a-based institutions function relatively smoothly in a secular society? And how *does* this work? How do clients approach councils, and how do Islamic scholars from diverse origins make judgments? Do their judgments show up in court? And what does and should the broader public think about how they judge?

COMMUNITIES

The first question—how can this work?—leads us toward the notion, more widely accepted in Britain than most anywhere else in Europe, that values come from communities, mainly religious ones, whether Christian, Jewish, Muslim, or other. Such was the force of then archbishop of Canterbury Rowan Williams's 2008 defense of Muslims who wished to draw on shari'a to run their own affairs. The idea of distinct communities avoids posing difficult and often uncomfortable questions about "British values" or Englishness. It gives (and draws on) an imperial tone: we share the fact that we don't have to share. It also allows one to defend an Anglican, public-school elitism as constituting just another "community."³

But how broadly accepted is this notion of multiple, diverse communities? In 2014, half of the people living in Britain thought that to be "truly British" you had to have British ancestry. One-quarter said you needed to be Christian. No doubt had the question been about "Englishness," the numbers would have been much higher. These responses remind us that many Britons remain suspicious of a Britishness that wanders too far from a shared cultural core of pubs and churches.⁴

Indeed, extending the national welcome to new religious communities has always been problematic. It has involved "tolerating" dissenting Protestants, and then Catholics and Jews, and now Muslims.⁵ The effort is always resisted and always shaky, and gives rise to particular anxieties and challenges, once about Catholics and now about Muslims. Even well-informed commentators draw lines between "conservative" Islam and its "liberal" counterparts, considering the former as dangerously close to the Taliban, and only the latter as truly integrated, particularly when these liberal Muslims dance at nightclubs, offer red wine to guests, and profess their love for the queen.⁶ These cultural preferences are understandable, but they may keep us from attending to the ways even conservative British Muslims can adapt to conditions of life in Britain, including how they have construed and applied shari'a: without the red wine but within the law.

What of Muslims' ideas about Britain? A Gallup poll taken in 2009 in Britain showed that when compared with the population as a whole, Muslims

identified more strongly with Britain (77 percent versus 50 percent) and had more confidence in the judiciary (76 percent versus 55 percent). British Muslims also more strongly identified with both their country and their religion than did French or German Muslims. A 2011 poll of two thousand people taken by the think-tank Demos revealed that Britons differed little by religion in how likely they were to say that they were “proud to be a British citizen”: 88 percent of self-declared Anglicans and Jews, 83 percent of Muslims, and 79 percent of the population as a whole agreed with this statement.⁷

And yet things are not all rosy. A few years earlier, a Pew survey showed that British Muslims were more likely than Muslims in other European countries to see relations between “Muslims” and “Westerners” as generally poor, and more likely to say that there is a conflict between “being a devout Muslim” and “living in a modern society”—indeed, more likely to say both things than were people in Jordan or Pakistan.⁸ So, perhaps British Muslims find British institutions to be fine but modern British society to present problems.

In the popular British press, Muslims appear as self-isolating. In recent years this portrayal has focused on Islamic institutions, including schools and shari'a councils; critics claim that these institutions oppress women, violate human rights, and aim at setting up a parallel society, with its own legal system. “One Law for All” is the slogan of some who rail against this supposed separatism. These criticisms of Muslims could be set aside as instances of “Islamophobia.” Some commentators do so. But those who criticize the direction of British Islam can point to the growth of private Islamic schools that have resisted outside inquiry. They can point to conservative positions on issues of gender and politics taken by some Islamic public actors in Britain. How readily can *these* Muslims be considered as simply one more community within the loosely structured British state?

APPROACH

In what follows, I examine how and why Islamic institutions developed as they did in Britain. I argue that the particular contours of Islam in Britain have much to do with British imperial history and what we may call British applied political philosophy. If French republicanism, applied at home and to some extent abroad, helps explain the shape of Islam in that country, as I have argued in earlier works,⁹ the corresponding case can be made for Britain.

So goes part of this book. But the empirical difference between the two countries means that we must examine different objects in the two cases. If, in earlier works on France, I traced how French Islamic leaders taught and debated Islamic norms in rather unexceptional, even anodyne settings—schools, mosques, and large assemblies—it was because French Muslim public figures were adapting their institutions to the tight legal and cultural constraints of French public life. France does not see itself as multiple communities in

one state but as a collection of citizens ideally subjecting themselves to the dictates of their shared ideas and habits through the medium of the state. French Muslims built institutions that either mirrored their non-Islamic French counterparts (Islamic schools and institutes look like other schools and institutes) or mirrored their already-legitimate Muslim-world equivalents (mosques that resembled those in Fez were fine). Ways of preparing halal foods followed a pattern already made legitimate by Jewish dietary and abattoir practices. French Muslims have made very little institutional innovation, in part because there is low tolerance for such innovation in France, and in part because the relatively low level of doctrinal differences among them meant that there was little impulse for institutional specialization.

In Britain, by contrast, Islam is fractured, divergent, and institutionally creative. The legal pluralism of the Indies administration, the fractious character of North Indian Islam, and the British idea that religious communities nurture social life have, together, contributed to the emergence of a British Islam with multiple institutional forms. Some British schools or councils have sought to highlight continuities with their Asian sources, and often that choice has meant erecting boundaries in their new homeland. Others have emphasized new roots in a British urban neighborhood and have drawn on Asian ties for that new purpose. Still others have constructed new internal pluralisms that play out old divisions in new places.

This varied British topography of Islam has engendered open disagreements and debates. It has also nurtured the continued existence of conservative Islamic traditions that are easy to present in the press as exhibiting insufficient integration into British life—and that contrast sharply with the progressive direction of Islamic thought found in US mosques.¹⁰ The visibility of Asian modes of dress, the continued high rates of transcontinental marriage, and, my focus here, the very public flourishing of shari‘a-oriented bodies all signal to many in Britain a problem with the integration, modernity, or gender relations associated with Islam. But the take-home message of this book is that British Muslims, most of them anyway, are in the long and messy process of creating institutions that make sense in Islamic terms and also in British ones. British Muslims are adapting to British ways of life, as are French and German Muslims to ways of life in those countries.¹¹ This message is rarely heard in Britain—or elsewhere—but it is urgent that we hear it if we are to build new ways of living together.

Understanding the shape of British Islam today demands both history and ethnography: how things developed and how they work. I begin by sketching out the sources and broad contours of British Islamic institutions before focusing on the shari‘a councils. I argue that British Islamic life is not the simple transposition to Britain of Asian practices; it is filtered through new institutions that are both British and Islamic. To understand them, we must look at their specific historical trajectories and their everyday practices.¹²

Studying these shari'a-based institutions requires studying how they adapt to their environment and how their diverse participants adjust to each other. Institutional analysis, as I see it, requires both a genealogy of specific institutional forms and an ethnography of the processes and debates that shape everyday working life—and that may recursively reshape those forms. This last component of the study will lead us to ask how conditions for “performativity” are debated and provisionally realized, and how actors propose multiple and context-specific justifications for their judgments. This dimension of the project brings it into the domain of what I have been calling the anthropology of public reasoning, extended in this work to take on a more thoroughgoing analysis of institutional workings and changes.¹³

Studying reasoning and justification also highlights the ways in which British Muslims draw on pan-Islamic as well as British ways of judging—transnational continuity as well as local fit. British Islamic scholars sitting on shari'a councils see themselves as following in a long lineage of Islamic scholars and judges. In fourteenth-century Morocco or in twenty-first-century Britain, Indonesia, or Egypt, scholars and judges arrive at judgments only after considering the texts and traditions of Islam, the way their society works, the personal situation of a client or litigant, and the many legal and political constraints they face. They do not so much “apply” the law as seek to render a judgment that will be fair, acceptable, and workable. Of course, this is also what British civil court judges do, working from different texts and traditions.¹⁴

EXPOSITION

The book proceeds in four parts. In part 1, “Pathways” (chapters 1 to 3), I examine how Muslims came to Britain, settled, and developed Islamic spaces and boundaries. Chapter 2 traces physical movement. Muslims came to Britain mainly (though not only) from South Asia, and they settled in certain cities and neighborhoods. They encouraged others to join them. Many of these new residents of Britain have sought to maintain their ties to the homeland through marriage and through forms of economic cooperation. These practices befuddle the logic of generations: Can you be of the third generation when your mum was born in Pakistan? They also reinforce ties of shared ethnic and religious community within certain British neighborhoods. Transnational connections and local concentrations reinforce each other.

Chapter 3 follows a second kind of pathway, one concerning ideas and practices of religion and politics. In India, British rule both validated religious governance of family affairs and drove Islamic leaders to carve out their own spaces for teaching, learning, and the administration of Islamic law. In postcolonial Britain, the same logics of religious governance and autonomy

facilitate efforts to transpose Islamic institutions to London or Birmingham. We travel to London, the Midlands, and the North to see how these politico-religious pathways inscribe certain spatial patterns of boundaries and networks on Britain. These patterns inject religious meaning into the demographic processes examined in chapter 2.

In part 2, “Practices” (chapters 4–7), I examine the workings of Britain’s most extensive shari’a council, headquartered in eastern London but with branches across England. Chapter 4 provides the background on women’s divorce and the emergence of the councils and attempts to explain why Islamic divorce has become the focus of shari’a council practices. In chapter 5 I examine the social life of the London council, shaped as it is by the temporalities of moving along files and receiving clients. Chapters 6 and 7 concern two overriding and perennial worries of this and other councils—and, indeed, of state Islamic bodies in the Muslim-majority world. The anxiety of *performativity* asks about the capacity of scholars (or judges) to divorce a couple: Whence that authority? What justifies dissolving marriages at all? On a theoretical plane, this case recalls Jacques Derrida’s critique of J. L. Austin on performativity: namely, that “felicity conditions” are never assumed; they can always be challenged. No foundations exist for the shari’a councils—but do they exist for courts in Muslim countries? The anxiety of *justification* asks about the selection among competing types of argumentation. Is it more important to let a woman get on with her life by accepting her petition for divorce or to uphold Islamic moral principles by refusing to reward improper behavior on her part? Or is there a textual admonition in the Qur’an or hadith that would outweigh either of these two bases for judgments? There is no clear metarule for deciding among these alternative types of justification, hence, a never-ending debate among scholars.

In part 3, “Variants” (chapters 8 and 9), I ask how practices differ when quite different institutions turn to the field of shari’a. Some of the most trenchant criticisms of shari’a councils in Britain (and elsewhere) concern male scholars’ attitudes toward women. Do things differ when women play a major role? We consider the Birmingham Central Mosque’s council, where women take the lead. Chapter 9 asks the corresponding question of a Sufi institution. In previous chapters we are inside a roughly “Deoband/Salafi” world; how can one construct a shari’a-oriented set of institutions within an explicitly and visibly Sufi world? How does it change procedures and outcomes, or does it? These two contrasting cases show that each of the major shari’a councils in Britain is strongly shaped by its local origins and pathways of development—and therefore they should be seen as instances of institutional adaptation.

Finally, in part 4, “Boundaries” (chapters 10–13), I move back out to Britain-wide debates about the proper role of religion in law, schools, and public life. Fears and accusations circulating in England about Islam and shari’a councils

focus on two contentions. The first, examined in chapter 10, is that English law has “recognized” shari'a, a worry given credence by the 2008 remarks of Rowan Williams, then archbishop of Canterbury. Are these fears well founded? Do shari'a councils find their judgments enforced by civil courts? Are there arguments on which shari'a and English law do or can converge? The second accusation, the topic of chapter 11, is that Islamic institutions—shari'a councils but increasingly Islamic schools as well—are keeping Muslims from fully integrating into English, or British, society. Why do some invocations of shari'a—such as David Cameron on shari'a financing—invite applause and others invite moral panic? The issue seems to be not shari'a per se but worries about conservative social and moral forms of religiosity. Chapter 12 explores the broader normative questions raised by these examples. Can conservative Muslims be accepted as “British”? Who gets to set the terms of convergence for people whose starting points are firmly held and strikingly different? I propose that rather than setting up conditions for “translation” (Habermas) from religious to universalistic language, we should explore ways that members of different traditions are able to preserve their starting points and work toward points of practical convergence. I offer examples of successful and failed attempts to do so, and urge that normative political theory attend as much to everyday practices as to highly public statements. In chapter 13 I offer some concluding observations about the specificity of the British context.

A note on terminology: I generally situate the study in “Britain” but sometimes I mention “England.” The relationship between these two entities is not always clear, as the vacuity of recent calls for firming up “British values” suggests. But in general, I distinguish between the British political framework and the laws of England and Wales, for which I use (despite my own Welsh heritage) “England” as a short term of reference. Laws are different in Scotland and, to a lesser extent, Northern Ireland, and here I follow common legal usage. In addition, sometimes I use “English” to stress the perceived ethnic contrast between “Asians” and “English.” Many people refer to themselves or others as “British Asian”; I have never heard anyone say “English Asian.”