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*American Behavioral Scientist* 2011 55: 1601 originally published online 13 June 2011  
DOI: 10.1177/0002764211409920

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# Islamic Adaptations to Western Europe and North America: The Importance of Contrastive Analyses

American Behavioral Scientist  
55(12) 1601–1615

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DOI: 10.1177/0002764211409920

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## Abstract

The article examines the ways Islamic leaders have adapted to conditions in Britain, France, and the United States by taking one problem—how a Muslim woman can obtain a religious divorce—and identifying contrasts across those three countries. It emphasizes two contrasts among the three countries: the degree of residential concentration of Muslims and the social effects such concentration may have, and the legal legitimacy of religion in civil courts. Muslim leaders have crafted institutions accordingly: in Britain, shariah councils emerging from tight-knit communities and regarded by jurists as relatively benign; in France, Islamic leaders constrained to emphasize the Islamic legitimacy of civil institutions; and in the United States, leaders developing contractual instruments in response to relatively favorable judicial reactions.

## Keywords

Islam, Europe, comparative studies, immigration

In this article I argue that we best understand processes of Islamic adaptation in Western Europe and North America by contrasting two or more country cases and then examining the mechanisms that can explain the contrasts. This approach differs from other possible approaches in two ways. First, rather than looking at state-driven policies (as in Laurence, 2011), I look at how Muslims have created new religious institutions and new modes of religious reasoning. Second, I look for explanatory elements that may be shared across countries rather than starting from explicit, often stylized national models (as in Fetzer & Soper, 2005).

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## Axes of European Contrast

It is tempting to think about Western Europe and North America as a kind of laboratory for studying social adaptation. Although the Muslim presence is an old one, particularly in southeastern and southwestern parts of Europe, new streams of Muslim workers and families arrived in Europe during the mid 20th century, earlier in some places, such as France and Britain, later in others, such as Sweden and Spain. Most came from South Asia, North and West Africa, and Turkey, although increasing numbers have arrived more recently from other places (Bowen, 2008; Nielsen, 1999).

Given this relative simultaneity, we ought to be able to formulate and test hypotheses about how Muslim immigrants have adapted to existing ways of life in each of several countries—and indeed such is the long-term project in which this article resides. However, these immigration experiences were not laboratory experiments but real-life historical trajectories. Many things are different between, say, France and Germany. Most French Muslims come from countries once colonized by France, and so they arrive with some degree of familiarity with the French language and the colonial and postcolonial institutions shaped by France; not so in Germany, where Turks arrived as part of circular labor migration policies that sought to minimize any such contact (Schiffauer, 2000; Stowasser, 2002). France has combined universalistic civic principles with racism and postcolonial bitterness; Germany has moved at glacial speed from ethnic notions of national belonging to entertaining the idea that immigrants could become citizens (Brubaker, 1992; Kastoryano, 2002). And this is just part of the complexity; other pairs of countries differ along other dimensions, including the specifics of colonial legal practices, notions of religion's place in public life, and whether immigrants are encouraged to form civic associations. All these host country differences lead to different responses by Muslim immigrants (see Maussen, 2007).

How do we then construct illuminating comparisons? Two axes of contrast (among others) seem important, the detailed analyses of which must be undertaken elsewhere. One regards the social densities of settlement or “concentration effects” (Wilson, 1987). Do people live largely with people like them? And how much like them? In Britain there are streets and neighborhoods of multiple similarities, such as a street in Leicester where everyone is a Sufi-oriented Muslim trader who originated in Pakistan and arrived in Britain by way of East Africa (Lewis, 2002). In France more often we find broad mixtures of North Africans, West Africans, native French, and other Europeans in the large council housing units called HLM or *cités* (Simon, 2001). The contrast arises from very different situations in the countries of origin—much more fine-grained ethnic and religious distinctions in South Asia than in North Africa—and from how migrants arrived—chain migrations of entire villages in South Asia to neighborhoods in British cities versus French policies of recruiting workers from across North Africa (Schönwälder, 2007).

These facts of migration and settlement shape the sense of “community” among migrants in very practical ways. How important is it to learn the language of the host country? Less so if you live surrounded by others speaking Urdu or Bengali in a

neighborhood of Birmingham or East London; more so if you live in a mixed-origins housing area in a French city. How much authority do religious leaders from the “old country” have here? More authority if ties of village and mosque are reproduced in a Bradford neighborhood; less so if Muslims in Paris find themselves sharing only a broad sense of North African identity and obligation to worship (Lewis, 2002; MacMaster, 1997).

A second axis of contrast concerns the openness of legal actors or systems to religious norms and acts: the “legal legitimacy of religion.” Does a judge ever consider it justifiable to treat an Islamic divorce proclaimed by the husband in, say, Morocco as having civil effects in, say, France? Does an Islamic divorce effected in France or Britain have civil consequences there? Should a divorce of two Iranian nationals living in Europe be judged according to Iranian law, with its Islamic elements, or by the law of the host country?

Now, civil judges in various countries of Western Europe and North America are working with similar general principles of international private law, including a policy not to overly disrupt people’s lives by changing their marital status as they traverse national boundaries. They are also working with similar national considerations, such as the desire to not become overly entangled in religious matters and the requirement that interests of *ordre public*, or public policy, be respected. But they can balance these considerations in different ways: German judges are more likely than French judges to decide a case based on foreign law containing religious elements, Britain allows state-supported schools to discriminate on the basis of a religious test, the United States would not do so, and so forth (Basedow & Yassari, 2004; Fulchiron, 2006; Rohe, 2004).

One would expect Muslims to craft their institutions with these considerations in mind, and there are indications that they are doing so.

## How to Divorce in Islam

I have discussed two of the broad axes of contrast that play across “receiving societies” in Western Europe and North America. We would expect that Muslims’ efforts to fashion Islamic institutions in these societies would be refracted through the particular configuration of these and other elements. I propose to illustrate this general “process of refraction” by taking one quite specific challenge facing Muslims and looking at responses in three places: Britain, France, and the United States. But legal actors in host countries are not simply a “context”; they have innovated and ruled as well, so the question really has to do with the ways in which Islamic actors and civil law actors have sought out overlaps and articulations between civil and Islamic law.

The shared challenge is how to get a religious divorce if you are a Muslim woman living in a country without Islamic courts. Women and men have different powers and possibilities in classical Islamic jurisprudence (Hallaq, 2009; Tucker, 2008). A man can divorce his wife by pronouncing the *talaq* divorce utterance; he then must discharge any remaining obligation to pay the gift or dower (*mahr*) due his wife. But a

woman seeking divorce does not have that same power. She may ask her husband to divorce her and, if necessary, agree in exchange to return the mahr he has paid or forgo her rights over unpaid mahr. Or she may ask a judge to dissolve her marriage if the husband is proven to have failed to perform his duties.

But Muslims today do not live governed by classical Islamic jurisprudence. The vast majority of Muslims live in countries with modern legal systems, which are the complex product of colonial impositions and extra- or postcolonial borrowings. The former British colonies apply forms of common law; those of the French and Dutch apply what is a recognizable part of the civil law tradition. Most of these countries include what they call "Islamic law" as part of these legal systems in the form of codes or statutes or jurisprudence.

Among other things, these Islamic codes regulate how a woman gets a divorce. Those codes that grew out of civil law traditions make marriage and divorce part of the system of positive law, as public matters suitable for state regulation. In both Indonesia and Tunisia, for example, the legal codes do not recognize any divorce proclamation outside the court (Welchman, 2004). But the British, thinking in common law fashion, did not enact positive law codes but sought to make explicit the ancient legal traditions of their subjects, including "Anglo-Muhammadan law" for Muslims. These "personal status laws" became symbols of identity and self-determination. In this system, Islam is a kind of common law, but one with a scriptural base and in theory not limited by the actions of the state, such that by the 1930s one saw the emergence of unofficial Islamic tribunals to hear divorce cases (Pearl & Menski, 1998; Redding, 2004).

Since independence, these and other Muslim-majority countries have reformed their laws and moved toward a kind of general "woman's divorce," where a judge dissolves a marriage and disposes of the mahr according to who is thought to be at fault (Tucker, 2008).

## **Shariah Councils in Britain**

South Asians moving to Great Britain took with them the idea that Muslims could develop their own ways of translating Islamic law into juridical practices (Pearl & Menski, 1998). They developed new institutions in an environment marked by two specific features of Muslim communities in Britain: concentration and legitimacy. More than anywhere else in Europe, Muslims living in Britain today tend to live in neighborhoods with other Muslims who came from the same places in Bangladesh, Pakistan, or India; who continue the use of home-country languages; and who follow religious teachings of those places. The Mirpur district of Pakistani Kashmir accounts for many, probably most, of the Pakistanis in Britain today, as does the Sylhet district for Bangladeshis (Gardner, 1995; Shaw, 2000). Parts of Birmingham, Bradford, or Leeds are mainly lived in by people speaking Urdu. Most families who came from South Asia try to arrange marriages between their Britain-born sons or daughters and close relatives back home. A report out of the House of Lords in 2008 even claimed that over half of Pakistani marriages conducted by people of Pakistani descent but

born in the United Kingdom were with cousins, and more than half were with spouses born in Pakistan (“Minister warns,” 2008).

Second, local organizing on the basis of ethnicity or religion is considered to be legitimate in Britain. In the 1970s state aid was given to ethnic-based local organizations that lobbied with local school boards or councils to have halal food and Islamic content for religious curricula. By the late 1980s it was more often mosque-based associations that did so. All this fits into English structures of opportunity. Things get done locally and by community action. Most judges and lawyers largely accept the idea that people arrange most matters on their own, and they generally refrain from issuing orders for things that families might be able to sort on their own. That they might sort things out on a religious base merely adds a new religion to the list of religions that can form state-funded religious schools, be registered to conduct marriages in their places of worship, and form religious associations (Lewis, 2002).

Thus, Muslims in Britain exhibited relatively high spatial “concentration effects” in a society that is relatively willing to grant a legitimate legal role to religious organizations. These two elements favored the emergence of Islamic councils to handle shariah matters among Muslims and, in particular, to grant religious divorces to Muslim women. Emerging in the 1980s in cities with high Muslim concentrations, today they exist in London, Birmingham, Bradford, Manchester, and elsewhere (Bano, 2004).

The largest of these is London’s Islamic Shariah Council (ISC), with offices in a large house on a quiet residential area of Leyton in the eastern London suburbs, next to the local Hindu temple. Most of its work concerns requests for Islamic divorces brought by women. The ISC publishes the procedures to be followed in divorce cases on its website, and it can track the progress of any case on its computer database. Currently, it logs about 600 cases each year (Bowen, 2009a).

A wife may approach a scholar in the Council and ask for her marriage to be dissolved. In many cases, the Council asks the husband if he would sign a talaq certificate (*talaq nama*); if he does so then the Council need take no action. He may have conditions, such as the return of mahr already given to his wife at marriage, and then the Council plays a mediating role. In these cases it is the husband who freely decides to divorce, and who does divorce, and this action is referred to as a *khulla’*, a divorce by the husband at the request of the wife and often with a payment from her to him. This leaves the majority of cases facing the Council as those where the wife has asked for her marriage to be dissolved, and the husband either refuses to take action himself or fails to answer the Council’s letters. In these cases the Council may decide to dissolve the marriage. A dissolution, or *faskh*, may be unconditional, or it may be conditional upon the wife returning mahr given to her at the marriage. The scholars serving on the Council claim legitimacy to take such actions based on the argument that in lands without an Islamic legal system, scholars have a responsibility to provide this service. The scholars currently on the Council come from a variety of countries, have all lived for a long time in Britain, and represent a diversity of points of view on questions of *fiqh*, or Islamic jurisprudence. The Council also invites Muslims to come to the office to pose questions about their personal lives.

Women, then, are the main clients of the Council. They ask for divorce for many reasons. In an 85-case sample, most women mentioned a breakdown in the marriage because of irreconcilable differences, separation, or desertion; many also emphasized violence and abuse, and some claimed the marriage was fraudulent or coerced.<sup>1</sup> Most of the women and the men to come before the Council in the past 4 years were born in Pakistan or Bangladesh or are of South Asian ancestry; Somalia provides the next largest category of petitioners. The women are much more likely to be born in Britain than are their husbands. The “modal” woman to use the Council lives in Britain, is a British citizen of Pakistani or Bangladeshi origin (by birth or by ancestry), and requests divorce from a man who was born abroad and might still live abroad. In a considerable number of these cases, a woman living in the United Kingdom traveled to Pakistan or Bangladesh and there married a local man, whether on her initiative or on that of members of her family.

In most cases where the petitioning wife meets the procedural requirements set by the Council, she receives a divorce. This is especially the case if she has obtained a civil divorce. The main issue, one that sometimes leads to lengthy debates among the councilors, involves the payment or return of the mahr given or promised by the husband to the wife. The mahr can be substantial, as much as several thousand pounds, and in those cases there may be protracted negotiations between the two parties.

How do these procedures intersect with those of civil law? The Council grants an Islamic divorce. It insists that a woman who married overseas or who registered her marriage in Britain obtain a civil divorce as well. Although members of the Council may give advice about Islamic law on a range of matters, they do not pronounce on child custody or on the division of assets, knowing full well that if either party is dissatisfied with what they say they will ask the civil court for an order. From time to time a divorcing wife may ask a civil court to enforce her right to a specified amount of mahr or, more rarely, a husband may ask that wedding gifts be returned. Such cases are few and seldom reported (published), making it difficult to say much about them.

Despite occasional media efforts to raise alarms about these councils, members of the legal community by and large treat their practices as reasonable ways of mediating conflicts. The most visible statement of this position came in early 2008, when the Archbishop of Canterbury, Rowan Williams, argued that the courts needed to “recognize shariah” on grounds that when Muslims resolved matters by drawing on their own norms, and as long as the outcomes did not conflict with prevailing laws, they were only doing what members of other faith communities regularly did. He continued by arguing against an appeal to a single values framework as the basis for a society, claiming instead that “*our social identities are not constituted by one exclusive set of relations or mode of belonging*” (Williams, 2008, emphasis in original) but come from many moral communities.

Judges, for their part, understand that the councils make no civil law claims. Furthermore, judges may accept mediations as providing one among several bases for their rulings. In at least one recent case, the judge took an Islamic divorce pronounced by the ISC as having a legal effect in that it triggered a preexisting agreement to repay

mahr (Bowen, in press). In this and other cases, English judges look for legal implications of agreements and decisions reached on shariah grounds within the limits set by English law: that both parties freely agree to any such outcome, that agreements be fair, and that children's best interests be guaranteed.

The English adaptation ought to be seen as the outcome of specific values along our initially described axes of variation in combination with particular features of the most relevant colonial past. South Asian immigrants settled in ways that produced initially high concentration effects, with people maintaining and indeed reproducing over generations their attachments to particular towns and villages in the subcontinent. Religious leaders could relatively easily create mosques and religious organizations by drawing on those attachments. These leaders brought with them practices of resolving family disputes in local councils. But British colonial policies of granting legal recognition to religious communities, together with postcolonial policies of aiding ethnic and religious associations, also facilitated the emergence of shariah councils. Although far from universally accepted, they fit into the English social and political environment relatively well.

## **The State and Its Institutions in France**

France presents a very different set of historical possibilities. North Africans moving to France took with them ideas and habits about civil law forged in colonial experience and reinforced by postcolonial judicial reform, particularly in Tunisia, from where most major heads of Islamic institutes originate in France. They assumed that marriage and divorce were public things, not contractual, and were matters for statutes and the judiciary. These ideas converged with French expectations because they added up to a shared acknowledgment of the supremacy of state law. "In Tunisia when you are divorced, you are divorced, period," said one leading Islamic actor to me in Paris.

Settlement in France took place in somewhat different ways than in Britain. Most Muslims in France come from North Africa, and they settled in relatively mixed neighborhoods, in part because of the role of the state and of private industries in building housing near factories (MacMaster, 1997). (Turks have settled in ways that more closely resemble the English pattern.)

Moreover, the French political and legal context prevents the development of any Islamic legal or para-legal institutions such as have developed in Britain. French Republicanism is hostile to intervening institutions in general, and the idea of Islamic law taking hold is shocking to anyone in France. At the end of a December 2008 French television program on the dangers posed by increasing religious influence on European politics, the narrator asked: Where will this all lead? The answer was to show footage from the Islamic council in the British community of Leyton, where the music and the long beard on the scholar were chosen to scare the audience: If we go down this path, we will end up like Britain, where imams rule society.

The French historical starting point is of course not community control and private arrangements, but a Republican set of theories and assumptions that state institutions

provide the best way to construct a society (Bowen, 2007). Religion was the main obstacle to the Republic, and over the past century laws were passed to keep religion out of the public sphere. Marriage and divorce are “public things” in the French civil law tradition, not matters of private contract, and thus the idea of contracts constituting part of the marriage makes no French legal sense.

Furthermore, many in France see Islamic marriages as a way of refusing to fully enter into the “common life” that binds citizens together. Marrying people Islamically who have not married at city hall can land an imam in jail (Bowen, 2009b). In 2010, two ministers sought ways to remove the French nationality of a man on grounds that although married legally to only one wife, he had married in Islamic fashion to others. (The man in question replied that if having a mistress means you are thrown out of France, the government will soon be a few ministers short of a Cabinet; “Voile intégral, polygamie,” 2010).

Although from time to time two or more respected Islamic scholars might gather to dissolve a marriage (particularly among immigrants from West Africa), no institutions exist similar to the ISC in Britain. But of course women do find themselves in difficult marriages and do seek advice from scholars. One such scholar, from Tunisia, told me what he then does:

I look into their marriage and try to calm things down, asking the husband to come, and I see him too. If the husband refuses to divorce her or if the wife brings witnesses about abuse, then I say to her: “Go to the civil court and get a divorce, and you will be doing nothing wrong in term of religion.” I just say this on my own behalf; no one has authorized me to pronounce anything; it is psychological, assuring the woman that she is doing nothing wrong. If she asks me to write it down, I do so. I usually refuse such requests—if I accepted all of them I would be doing nothing but that—but a few slip through! Other women either find other imams to do so, or they just go to the courts without troubling themselves further. (D. Meskine, personal communication, June 4, 2008).

French religious scholars and authorities with a public role urge Muslim men and women to use the available civil institutions for marriage and divorce, saying that French courts already do all that Muslims need in this regard. Another prominent scholar from Tunisia was surprised to hear from me that in Britain women wanted to have separate religious divorces, as, for him, a judicial divorce takes care of the matter. Indeed, he argued that Muslims should consider the civil marriage at city hall to be *required* on Islamic terms:

Some people think that having to go to city hall and fill out forms is too much work, and moreover they consider marriage to be a religious matter—and they do so all the more because some Islamic authorities say that marriage is religious. They say that the Prophet, in his time, did not have laws about registering

marriage, so it is not necessary for Muslims to do so. But then you can say—and this may make you laugh but there is something to it—that back then, the society was composed of tribes, and if someone married he never would just leave his spouse because his life would be in danger, everyone knew each other then, so there was no need for these regulations. But now it is different. That is reasoning according to the purposes (maqâsid) of Scripture. (H. El Arafa, personal communication, September 20, 2007)

Marrying in city hall is thus indicated by Scripture, because Scripture's passages on marriage have as their purpose to make marriage a stable contract.

The imam at the main mosque in Lyon explained why he refuses to perform Islamic marriages if couples are not legally married:

It causes problems when they do this if the couple separates and the husband will not give the wife a divorce. She has nowhere to turn to divorce. The state does not recognize the marriage. I have nothing to recommend, because I am not a judge, so I cannot divorce a couple, apply a khula' divorce with payment, which would be the wife's right. I tell them that marriage is for life. (Bowen, 2009b, p. 163)

The imam's account is a pragmatic one: Because France lacks the religious judicial institutions that could apply a religious divorce, a woman should ensure her future ability to free herself from an unsuccessful marriage by marrying in civil fashion. The state not only provides legal force to preserve the marriage but also provides the mechanism to leave the marriage that, in other societies, might be provided by an Islamic judge. But neither do he nor other imams see it as appropriate or necessary to create Islamic tribunals in France. I think that this position is shaped by three factors that make the perceived benefit less and the potential cost higher than is the case in Britain.

First, the issues to be resolved are less critical because high "promised" mahr is less often a feature of marriages among North and West Africans than it is among South Asians. If finances are not at issue, then one element of bargaining and dispute is removed.

Second, the French Muslim leaders come mainly from North Africa; many of the most influential come from Tunisia, where marriage and divorce are handled by a single court system and marriage is considered to be a public matter. The idea of separate civil and religious courts therefore makes little sense to them.

Finally, the potential cost of arguing for the creation of councils is higher than in Britain because of the strong disapprobation of French officials of any intermediate religious institution not under state control. If you risk expulsion for voicing unpopular religious opinions or appearing with your wife in a full covering, you are hardly likely to campaign for creating shariah councils.

## Religion–State Ambiguities in the United States

On the dimensions we have been considering, the United States resembles more closely Britain than France but with sparser Islamic settlement and more cross-ethnic mixing—exceptions being several concentrated pockets of recent Somali immigrants, some urban neighborhoods with many Yemenis (e.g., in Michigan) and Pakistanis (e.g., in Chicago), and the wealthy Iranians in greater Los Angeles (Leonard, 2003). In addition, American courts are somewhat more reticent than are English courts to pronounce on religious matters unless such matters can be translated into nonreligious terms (Quraishi & Syeed-Miller, 2004).

As a result, one finds in the United States a few shariah councils but far less developed and less generally known than in Britain. In northern California, the Islamic Shari'a Council, California was created by a former associate of the founders of the ISC in London. But indicative of their relatively low profile, this and some other shariah councils in the United States follow only one of the four Sunni legal schools, the Hanafi, and for that reason only serve people from South Asian backgrounds, where that school predominates. (By contrast, their English counterparts will draw on the legal school followed by the parties to a dispute and have created their own traditions by drawing from several such schools.) Although the California council carries out its proceedings in English, another, the Chicago-based Shariah Board of America, works entirely in Urdu. Their procedures also were modeled after English councils.

But in most American cities, individual imams or well-educated community leaders are approached in matters of marriage and divorce. Most refuse to dissolve a marriage but try to persuade the husband to deliver a talaq; such is the case for the imam of the Islamic Foundation of Greater St. Louis (M. Minhajuddin, personal communication, October 12, 2008). In other cities some people have taken the step of organizing ad hoc panels to grant divorces to wives, but with some hesitancy and concern about the legitimacy of their actions.

In Columbus, Ohio, Mouhamed Tarazi, trained in medicine in Syria, directs a charter school with entirely Muslim students, most of them Somalis. He is mandated by the state to marry couples, and perhaps once a month he is approached in matters of divorce. He always endeavors to involve the imam from the couple's mosque (there are about 14 mosques in Columbus). Although he tries to reconcile the couple, usually the husband does not live in Columbus or will not attend the mediation session, so he awards a khula'.

Recently, a Somali woman from Kenya came to see me. When still living in Kenya, her father married her to a man from Kenya living in California. She went to California but refused to live with the man; he already had another wife. A year later work attracted her to Columbus, and she came to see me. I got two other men to decide with me, a committee, as I usually do, and gave her the divorce.

JB: What authority do you have to issue the divorces?

MT: If we don't do something we effectively push these women to leave Islam or to find another man, and then they feel that they are going against Islam if they marry him, because they never were divorced Islamically. God gives me the courage to do this, and I hope I will get my reward from Him in heaven. I will get my reward . . . because these men they act as males not men, they don't realize that to be a man, to have dignity, is if the marriage does not work, you let your wife go, that is a "true man." (personal communication, November 3, 2009)

In his words you can hear both his pleading with the husbands to pronounce a divorce and obviate the need for these councils, and his experience of failure in getting local imams to cooperate with him.

The disputes these men hear usually concern assets, and their hope lies in contracts that would be enforceable in civil court and would guarantee the wife her share of the assets and the full payment of the mahr. Tarazi's son happens to be a lawyer and he is at work on a model prenuptial agreement. When Tarazi marries a couple (in civil and religious fashion) he has them sign a letter (what the South Asians would call a "nikah nama") that specifies the amount of mahr.

He does not encourage people to draw up additional contracts because he is unsure if they would be honored in court. He learned about these uncertainties through his own role as an expert witness in a 2008 Ohio case, where the appellate court ruled that to enforce the mahr provision of a marriage contract would be to violate the Establishment clauses of both the United States and the Ohio Constitutions (*Zawahiri v. Alwattar*, 2008).

In the United States, jurisprudence varies from state to state on the question of whether a mahr agreement may be enforced. In a 2002 New Jersey case, for example, judges treated the marriage contract specifying mahr as a contract rather than as a prenuptial agreement (which usually is subject to heightened scrutiny) and approved its enforcement (*Odatalla v. Odatalla*, 2002). Muslims are increasingly focusing on obtaining enforcement of mahr provisions in marriage contracts, according to a recent analysis of Islam-related jurisprudence in the United States (Quraishi & Syeed-Miller, 2004). For multiethnic Muslim communities, such as that in Columbus, no effective informal enforcement mechanisms exist to compel a husband to pay the mahr (or for that matter maintenance). For those groups accustomed to figuring a high "promised" mahr into the marriage contract, the civil courts become critical players in the overall process of regulating marriage and divorce. In the absence of a functional equivalent to the English shariah councils, American imams are trying to refine a legal instrument that courts will enforce.

Muslim immigration to the United States has resulted in weaker, or rather sporadic, concentration effects than in Britain, and the Muslim landscape is more fragmented. Despite the existence of a national organization led by South Asian immigrants, the

Islamic Society of North America, Muslim activities in cities and towns tend to be organized locally. Moreover, South Asians represent a much smaller portion of American Muslims than is the case in Britain (African Americans and Arabs represent the other major groupings). The American legal response to Islam-related court cases suggests a somewhat greater wariness to refer to religion in judgments than one finds in Britain (see also Fournier, 2010). It is hard to imagine an American equivalent of the Archbishop of Canterbury's speech—which was seconded by the highest ranking English judge, Lord Phillips. Thus, we find the development of secular legal instruments—contracts—as a way for courts to intervene.

## **Conclusion**

Islamic ideas of marriage and divorce travel transnationally in that the same basic concepts appear in Britain, France, and the United States. Experiences with judicial systems in countries of origin travel also: South Asians in Britain are used to *khul'a* divorces conducted in private; North Africans in France are used to divorces conducted at the state courts.

But our brief contrastive look at local practices allows us to conclude that (a) Islamic scholars and authorities draw from Islamic texts and traditions with local possibilities in mind and (b) because those local features differ across countries, so do the dominant directions of views and practices (cf. Soysal 1994). How that happens has been adumbrated above and is too complex to resummairize here, but it certainly involves the degree to which Islamic scholars take account of how their counterparts in Islamic countries will assess their decrees (quite a lot in Britain, very little in the United States), how far these leaders can go in creating Islamic social or legal institutions to act alongside civil courts (not at all in France, quite far in Britain), and the issues that surface as most sensitive in public opinion (marriage in France, divorce in Britain, and contractual enforcement in the United States.)

The Islamic scholars operating in Britain, France, and the United States are innovating. More or less explicitly, they recognize that their interpretations and decisions cannot simply reproduce opinions and decisions given in Cairo or Karachi. They also are responding mainly to the concerns of the Muslims around them and not relying on the major regional Islamic organizations in Europe and North America. Their worries are practical more than doctrinal: how to maintain legitimacy with respect to the ordinary Muslims who seek their services and how to shape procedures and decisions that will be effective in social and legal terms.

As we have seen, what "effective" means is quite different across countries. For the ISC scholars in Britain, it means gradually gaining recognition by the legal system, although what "recognition" might mean is far from clear. For their counterparts in France, it means working within the rather more constraining French legal system and under its increasingly assimilationist political pressures. For those in the United States, who are less assured in their roles than are their British cousins, it means trying to

devise contracts for mahar that will be enforceable, leaving only the question of marriage dissolution to be solved in-house.

More broadly, and in the broader context of comparative social and political studies, these three cases suggest we ought to look at two general dimensions of change: pathways of migration and the path dependencies of state institutions. On the one hand, migrants bring past experiences with them as they travel along migration pathways: Experiences in Karachi or Tunis shape how Islamic leaders think and act in Birmingham or Lyon, and they do so more strongly to the extent that communities in origin countries reproduce themselves in host countries (here the concentration effects idea). On the other hand, state legal and political institutions create structures of opportunity for these immigrants, which dictate what can be entertained in law and in public space (here the legal legitimacy of religion idea). The result is complex processes of differentiation. Islam in Britain, France, Germany, or Spain is not going to converge on a “European Islam” any more than the Eurostar has made English fashion blur into French *mode* or turn the pub into a café. There will continue to be work for those of us committed to following the particular as the best way—Blake must be invoked—of trying to grasp the universal.

### **Declaration of Conflicting Interests**

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### **Funding**

The author(s) received no financial support for the research, authorship, and/or publication of this article.

### **Note**

1. Statements about the Council come from fieldwork during January to August 2010. A quantitative analysis of the Council’s case files is under way; statements about frequency or trends are based on analyses of about 200 cases.

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