The American University in Cairo

School of Global Affairs & Public Policy

ON THE DEMAND TO INCORPORATE SHARI’A LAW INTO UK LAW

A Thesis Submitted to

The Department of Law

in partial fulfillment of the requirements for
the degree of Master of Arts

by Mayada Serageldin

June 2013
ON THE DEMAND TO INCORPORATE SHARI'A INTO UK LAW

A Thesis Submitted by

Mayada Serageldin

Submitted to the Department of Law

June 2013

In partial fulfillment of the requirements for
The degree of Master of Arts
in International Human Rights Law has been approved by

Professor Jason Beckett _______________________________
Thesis Supervisor
The American University in Cairo
Date ____________________

Professor Nesrine Badawi _______________________________
Thesis first Reader
The American University in Cairo
Date ____________________

Professor Thomas Skouteris _______________________________
Thesis Second Reader
The American University in Cairo
Date ____________________

Professor Thomas Skouteris _______________________________
Department Chair
The American University in Cairo
Date ____________________

Ambassador Nabil Fahmy _______________________________
Dean of GAPP
The American University in Cairo
Date ____________________
ACKNOWLEDGEMENTS

My heartfelt gratitude goes to Dr. Jason Beckett, whose attention, integrity, and skepticism pushed me to ask for more out of the topic.

My endless gratefulness to my mother, my father and my sister; I am forever in your debt for all your faith, love and support.

Many thanks to Maha & Nihal, for all the study session that brought us here.
The origin of this thesis lay in the emergence of a minority group of ‘religious’ activists in London, England. The purpose of this group was to establish “Shari’a Zones” in pockets of Waltham Forest and Tower Hamlets, wherein certain acts would be prohibited and Shari’a law would be enforced. This led to an examination of the theological and religious beliefs of this small and much marginalized section of the British Muslim community. What became apparent is that this group prescribed to a view of Islam, and shariah law in particular, which is incongruent with the provisions of human rights law. In complete contrast, as this thesis will explain, there are other interpretations of Shari’a law that are more complimentary to the tenets of human rights and civil liberties on which British society is based. This assertion should underscore how the principles of equality and justice are intrinsic to the Islamic faith. Having identified the above divergence in the representation of Islam by this sub-strata of British Muslims, this thesis will consider the British system within which this group and other Muslims operate. This is primarily done to get a general idea about how British Muslims are allowed and tolerated, by the system, to be as such. The conclusion reached is that these particular Muslims are not just portraying in inaccurate image of British Muslims, but they may well be practicing their religion wrongly. Thus, their conduct is counter-productive and their purpose is self-defeating.
# TABLE OF CONTENTS

I. INTRODUCTION: .......................................................... 1

II. THE HISTORY ......................................................... 2

III. THE CALIPHATE IDEAL ........................................... 8

IV. ON CONGRUENCY ................................................ 11

V. INVALIDATING THOUGHTS .......................................... 16

VI. THE AMALGAMATION ............................................... 20

VII. THE INDIVISIBLE RIGHTS ....................................... 24

VIII. THE UK SYSTEM .................................................. 31

   A. LEGAL SYSTEM .................................................. 32

   B. CIVIL-POLITICAL SYSTEM & THE SOCIETY ............... 36

   C. ECONOMIC EQUALIZATION .................................. 38

   D. SOCIALLY SPEAKING ......................................... 39

   E. CULTURAL ASPECT ........................................... 40

   F. FINALLY ......................................................... 40

IX. THE DEMAND ....................................................... 41

X. THE COMPROMISE .................................................. 46

XI. THE MULTICULTURAL FIX ....................................... 49

XII. AN ASSERTION .......................................................... 51

XIII. CONCLUSION .......................................................... 53
I. Introduction:

What it is:

Come late July 2011, residents of the London boroughs of Waltham Forest, Tower Hamlets and Newham started noticing yellow posters around the neighborhood announcing the Shari'a law enforcement zones.¹ The posters read as follows:

You are now entering a Shari'a Controlled Zone | Islamic Rules Enforced: No Alcohol, No Gambling, No Music or Concerts, No Porn or Prostitution, No Drugs or Smoking | "Shariah" A Better Society.²

Members of one British Islamic group had perimetered certain neighborhoods in London with posters marking Shari'a-controlled zones: where certain acts and behaviors were declared intolerable by Muslim residents, and punishable by Islamic Law.³ At the end of the stretch, the project is designed as a building block towards an Islamic Caliphate; historically seen as the ideal representation of unity in Islam.⁴ In its details, however, it stands at a fascinating contrast with the surrounding society and governing system. Furthermore, the project is designed to prove how Shari'a can provide and safeguard for a better society in attempt to push for its incorporation in UK law.⁵

The main question to be discussed in the course of this paper is the viability of the demand to incorporate Shari'a law in the British legal system; from the lens of both international human rights law and Shari'a law. Such viability can be determined after an understanding of the perceptions of good in confrontation: the British society (protected by UK law), the provided interpretation of Shari'a, and its compatibility with international human rights law (highlighted in the five indivisible rights). The compatibility between Shari'a and human rights is empirical to the evaluation of the demand for several reasons. For one, UK law and human rights law have gone hand-in-hand for decades, seeing as the UK is a forefather of IHRL. Two, Shari'a has been subject to numerous interpretations that present radically differing perceptions of the good (ultimately, all leading to heaven but via different lifestyles). It is essential to

¹ Stephen Brown, 'Shari'a-Controlled Zones' Sweep UK, FrontPage Mag, July 29, 2011.
² Exhibit A
understand the perception put forth by the Islamic group, even more so to contrast it with another, to get a full grip of the possible outcome of the amalgamation of the legal systems or lack thereof. Three, in the off chance of its incompatibility, it is equally important to understand how the application of such an interpretation would affect the enjoyment (or not) of human rights. As such, the viability of both the demand and the interpretation can be determined.

This paper will take a brief look at the history of this Islamic group, the ideological origins behind their project, and the possible manifestations and/or repercussions of its outcome. Part I of this paper will serve to strengthen the notion of an interconnection between the rights; as premises for the discussion of consequences later on. Part II will serve as a brief introduction of the group: their historical origins in UK and the ideological offensive at play within the society for the past decade. The following parts will contain an elaboration of two contrasting, and almost equally perfectionist, perceptions of the good: the Islamic Caliphate, projected by the non-secularist group, vis-à-vis the Secular state, promoted by secularist intellectuals and furthered by the UK government. The final part of this paper will entertain the hypothetical outcomes of this project, and their consequences; specifically in relation to the individual enjoyment of one’s rights as governed by international human rights law.

II. The History

_Al-Muhajiroun_ (“The Emigrants”) movement was founded in 1996.⁶ Omar Bakri Muahmmad, its Syrian founder, global figurehead and _Ameer_ (“Prince”) until 2003, is an infamous Muslim cleric, author of many publications such as _The Road to Jannah_ [Heaven], and _The Duty of Jihad between Mind and Text_.⁷ Recruitment for the group centered around university campuses, where students presented fertile soil for new ideas,⁸ and reportedly because they would be subject to identity crisis over not integrating well with British society.⁹ Between the years 2004 and 2006, the group suffered intellectual cracks that eventually broke it into two. Muhammed, followed by Anjem Choudary,¹⁰ carried on with the UK-based Da’waa Network (“The Calling”),

---


⁹ _Id._, 18 and 22. Recruits notably targeted social outcasts, usually from conservative backgrounds that made it difficult to embrace adventurous college life.

¹⁰ Anjem Choudary is a British citizen of Pakistani descent, and now leder of the organization.
as Al-Ghurabaa (“The Strangers”) whilst other more involved parties took on overseas activities as part of the Jihad Network (“The Struggle”), as Savior (a.k.a. Savior Sect). By end of 2006, both groups were proscribed by the Home Office, under the 2000 Terrorism Act for “glorifying terrorism.” Shortly after the July 7 bombings of 2007, Muhammad fled to Beirut, and was sought as a suspect for the attacks; leaving Anjem Choudary to resurrect the platform of the disbanded group.

According to several of his interviews, the platforms of Al-Muhajiroun, Al-Ghurabaa and Islam4UK (the reincarnation) are more or less the same. The group aims at the non-violent overthrowing of the UK government, its replacement with an Islamic state, from where they intend to continue with the Islamic domination of the world. The members reject “standard liberal democratic ideals such as equality and free speech,” and believe that their disbandment only serves to highlight the irony of the illusion of free speech proclaimed by hegemonious states like the UK. They portray the situation in the UK to be “limited, deficient [and] even dangerous,” as a direct result of the application of a man-made secular system of government. For them, Islam and Shari’a law are the solution to all society’s problems. Hence, the yellow posters end with “Shari’a | For a Better Society.”

Evidently to Michael Whine’s commentary on the 2006 ban, which had encompassed multiple organizations, a mere ban will not be effective. Whine highlighted the need for the consistent, universal and effective application of legal means, in order to ultimately put an end to the resurrection of different names. By 2010, Islam4UK got proscribed as well, Home Security then Alan Johnson expressed concerns of alleged support to terrorism and terrorist attacks. Surely enough, the members resurfaced in the news months later, under the name of Muslims Against

---

11 Id.
15 Id., at 11.
16 Id.
17 Id., at 17.
19 Michael Whine is the Government and International Affairs Director at the Community Security Trust, and Defence and Group Relations Director at the Board of Deputies of British Jews.
20 Id.
21 RAYMOND, Supra note 14, at 21.
It was through this platform that the Islamic Prevent strategy and the Shari’a Zones were introduced to the British society, both as strong ideological retorting to the government’s own strategies. With the erection of the zones, and the announcement of an anti-Armistice day protest, current Home Secretary, Theresa May, approved the proscription of MAC. Months later, members of the groups resurfaced in the news as United Ummah (“united nation”).

The Ideological Offensive

With the continuing rise in levels of terrorism threats that accompanied the new millennium, major states, such as the United Kingdom, actively seek to protect its territory, citizens and overseas interests. As part of the new counter-terrorism strategy (CONTEST), the United Kingdom's government launched a particular strategy in 2007, the Prevent Strategy, as a precautionary policy to stop people from joining or supporting terrorism.

Having categorized the likelihood of a terrorist attack as "Severe", CONTEST identified four factors that enable the growth of 'terrorist' groups: conflict and instability, aspects of modern technology, pervasive ideology, and radicalization. In response to these identified factors, the UK government formulated a quadrupled approach to counter the affect of their spreading. CONTEST seeks to Pursue and stop terrorist attacks, Prevent and stop people from "becoming terrorist or supporting terrorism", Protect and strengthen its "protection against terrorist attacks", and Prepare to mitigate "the impact of a terrorist attack." Prevent promised a more comprehensive approach towards dealing with threats of terrorism: including working closely with a wide range of institutions, prisons, schools and even

---

24 Casciani, Supra note 22.
27 PREVENT, Supra note 8.
28 CONTEST, Supra note 26, at 5.
29 Id., at 4
30 Id., at 6
charities to address radicalization. Prevent further classified drivers of radicalization, to offer a more in-depth understanding of the characteristics of 'radicalized' people, their support pathways and participation forms.

Prevent was met with much concern from some United Kingdom Muslims; it was seen as a “fishy” project that held more evil than good, especially when it comes to the potential intervention into Islamic practice. This was particularly associated with the touch points between Pursue and Prevent, which involved data collection from the police with regards to potentially radicalized individuals. Not so long after, the new United Kingdom government did find flaws within the first draft of Prevent, thus, a reviewed version was announced in 2011. Officials indicated the inherited programme confused two government policies: they sought to clarify in the new version that there is one policy to promote social integration, and a separate other to prevent terrorism and tackle extremist ideology. In the published review of the policy, it was admitted that the "previous Prevent work has sometimes given the misleading impression that Muslim communicates as a whole are more 'vulnerable' to radicalization than other faith or ethnic groups." Additionally declared in the review, was the non-establishment of Prevent as a "means for covert spying on people or communities." Second drafts aside, Prevent was perceived as an ideological offensive the government was launching against the Muslim populace. It was often interpreted as a sinister situation to force Muslims to “sell out” to Western societies and conform to the state’s preferable understanding or accepted version of Islam. Consequently,

32 PREVENT, *Supra* note 8, at 17. Radicalized people are often in search for identity; hence they embrace "terrorism" as a value system that appeals against their disadvantaged socially discriminated status. Their support pathways are social networks and/or movements that promote group bonding, indoctrination, and may include peer pressure.
33 Barclay, *Supra* note 31.
36 Id.
37 Id., at 43
38 Id., at 32.
40 Barclay, *Supra* note 31.
Choudary authored a 28-page pamphlet a few days before the announcement of the new and revised Prevent, explaining how it is a state tool to monitor its citizens and intervene in their cultural affairs, among other things. Through the Islamic Prevent strategy, the group expressed strong contempt towards the secular state; because it was, in fact, secular, which goes against their fundamental belief regarding systems of governance.

Choudary initiated the strategy by consolidating a Muslim's identity solely to Islam: "A Muslim cannot have any other identity that that of Al-Islam. He is a Muslim first and last." By restricting the identity, Choudary effectively denounces all affiliation to the state. Affiliating with the state also risks abiding by man-made law; as opposed to Islamic law, which is also forbidden, as there is no substitute for the dictates of God via Islamic verses of Qur'an. Therefore, notions of "secularism" and "democracy" are to be absolutely rejected as untrue and "against the basic tenets of Islam." Understandably then, Muslims are to avoid taking part in the legislative authority: which issues man-made laws for the secular non-Muslim society. Accordingly, Muslims are not allowed to join the British army or the police forces: since they are not affiliated with the state, they should not take part in its security forces or defend territory other than the "Muslim Land". In keeping with the booklet, the possibility of fighting Muslims while on the army side of the conflict is an act of apostasy.

One provision continues to prohibit the existence of any bond between two other than Islam. Thus, this perception effectively denounces all social ties with non-Muslims as well. This latter premise is further supported later on in provisions that prohibit the engagement with non-Muslims and the celebration of their secular/religious festivities, all of which are alien to the Islamic community. Muslims are to reject interfaith and benefit only the Muslim community. In the event that some Muslims had been integrated with the non-Muslim community that they behave in a manner different than instigated by the booklet (namely by Shari'a),

---

41 IZHARUDEEN, Supra note 7. ISLAMIC PREVENT, Supra note 23.
42 ISLAMIC PREVENT, Supra note 23.
43 Id.
44 Id., at 18-23.
45 Id.
46 Id., at 26.
47 Id., at 16.
48 Id., at 8.
49 Id., at 10.
50 Id., at 24-25.
51 Id., at 24.
they are to be rehabilitated into proper conduct, as there is no "freedom for a Muslim to behave as they please."\textsuperscript{52}

Towards the end of the pamphlet, Muslims are encouraged to promote these provisions set forth by the Islamist group, abide by it themselves and never dare to oppose its promulgation or execution.\textsuperscript{53} To an extent, it introduces a shift from right to duty of being a Muslim, where it is part of one's Islam to promote the religion and the application of Islamic Shari'a law.\textsuperscript{54}

Evidently, members of MAC called on Muslims to boycott the non-Muslim society, to “stick to their own” in the hopes of creating a Muslim Emirate and self-govern.\textsuperscript{55} Hence, lectures were held, speeches were given after Friday prayers; pamphlets were spread around town, all for the purpose of “exposing” the government’s true intention behind Prevent.\textsuperscript{56} In order to consolidate Islamic thought and avoid exposure to the westernized model, numerous UK Muslims confined themselves to certain neighborhoods, marked the neighborhood perimeter and announced the enforcement of Shari’a law within said boundaries.\textsuperscript{57} Evidently, such area became ones where “The Muslim community will not tolerate drugs, alcohol, pornography, gambling, usury, free mixing between the sexes; the fruits, if you like, of Western civilization,” as Choudhary told the Daily Star.\textsuperscript{58} Since then, there has been strong demand for the application of Shari’a law as the governing law for the UK: explained as a necessity to achieve a uniform civil code, as well as a healthy, sin-free environment, where threats to national security are dealt with in a more effective manner.\textsuperscript{59}

\textsuperscript{52} Id., at 27.
\textsuperscript{53} Id., at 26-28.
\textsuperscript{54} Id., at 29.
\textsuperscript{55} IZHARUDEEN, Supra note 2
\textsuperscript{57} Brown, Supra note 1.
\textsuperscript{59} Venky Vembu, Let the Mullah rant on Sharia: We need a uniform civil code, FIRSTSPOT (Feb 2012), http://www.firstpost.com/politics/let-the-mullah-rant-on-sharia-we-need-a-uniform-civil-code-224839.html
III. The Caliphate Ideal

What Dominic Gover described as "Muslim vigilantes battling to rid London of "evil" drunks and prostitutes",⁶⁰ should be further understood with their 'radicalized' ideal in mind. The 'value system' in such an ideal goes beyond the mere failure of the police to deal with prostitution and drunkenness, as Gover reported off Choudary.⁶¹ It presents a perception of the good, while profoundly distinct from that of the "secular" state, is entrenched in ancient Islamic tradition.

In its origins, the project was designed to serve the Prophetic end of an Islamic world dominion.⁶² Given the literal interpretation of Anjem Choudhary, and before him Omar Bakri Mohammed, the world shall be ruled by Islamic governance.⁶³ Thus, they self-portray as one tool that would catalyze the process of this prophecy. By creating the Shari'a zones, they seek to initiate miniscule governorates adhering to rules of Islamic law, that would spread wide enough to join perimeters and create an Islamic Caliphate.⁶⁴ These emirates are envisioned to grow into full-fledged states that would come to unite the world under Islamic rule.

In its execution, the project is explained more in layman terms and a status quo requiring them to take on such a considerable stance. It was primarily devised as such to protect the rising numbers of Muslims in the UK (a significant 5% of the population) from the "satanic values of the British government."⁶⁵ Having to live in a society as diverse as the UK, under the auspices of a secular democracy had contained much hardship for these particular Muslims. In a diverse society, answering to a secular government with no Islamic reference, these Islamists lived in fear of losing their identity as devout Muslims. For them, like many others regardless of variations, Islam is a lifestyle; it is a rulebook to life and to one's affairs with God, himself, his family, and even with strangers.

This attitude is a direct application of Sayyid Qutb's research and interpretation of Islamic law and Shari'a. Where other Islamic thinkers will be

---

⁶¹ Id.
⁶³ Id.
⁶⁴ Soeren Kern, Britain's "Islamic Emirates Project", GATESTONE INSTITUTION, July 21, 2011.
⁶⁵ Id.
involved in this discussion, Qutb\textsuperscript{66} (d. 1966) will remain a pillar in the understanding of this group's platform, means and end result, simply because of the strong impact his philosophy had on their project; which will be emphasized as the discussion continues. Islamic thinkers included in this discussion had contributed to the debate on Islam and state, and/or had (likewise to Qutb) critiqued contemporary Islamic schools of thought.

The Islamic Caliphate is the "ideal representation of unity in Islam.\textsuperscript{67} The implementation of the Caliphate combines both theology and jurisprudence for the foundation of Islamic basis.\textsuperscript{68} Qutb wrote elaborately on \textit{al-wahdah al-kubra} ("the great unity"), what he coined as the ultimate goal for Muslims; to unite in solidarity under Islamic law as it effectively deals with law and provisions for worship, from which social relations are derived.\textsuperscript{69}

A Caliph, the ruler, is seen as the supreme political power that governs and guides people through all aspects of life in all Islamic territories, as instigated by Shari'a -Islamic law.\textsuperscript{70} Islamic thinker Ali Abd al-Raziq\textsuperscript{71} (d. 1966) wrote on the existence of government in Islam, highlighting Islam as a religion and state.\textsuperscript{72} In response to many critiques, Abd el-Raziq explained:

What I do believe and what I have suggested in my book is that Islam is a legislative religion (\textit{din tashri'i}), and the Shari'a impacts on all spheres of life… if the Muslims agreed that their government should be a Caliphate and viewed the Caliphate as the foremost system for their common welfare, then the Caliphate is a lawful Islamic government (\textit{hukumah shar'iyyah}) and the people must be loyal to it.\textsuperscript{73}

Where Abd el-Raziq conditioned the Caliphate to conclude the 'agreement' of Muslims, Qutb propagated a more strict interpretation of the Islamic state. In his book, \textit{Ma'alim Fi al-Tariq} (Milestones), Qutb makes a clear distinction between

\begin{footnotes}
\item Sayyid Qutb was one of the most important figures in the development of the \textit{Jihadi Salafi} ideology. Despite his humble origins, Qutb enjoyed both Western and Islamic education. Qutb's writings critiqued notions of reconciling Western ideas and Islamic ideals.
\item \textit{Id.}
\item \textit{Id.}
\item Ali Abdel Raziq was an Egyptian scholar and a religious judge. His writings were seen as controversial for the methodology he applied in debating the role of religion and Islamic history with government and politics.
\item Khattab, \textit{Supra} note 69, at 2.
\item \textit{Id.}., at 9-10.
\end{footnotes}
hakimiyyah and jahiliyya.\textsuperscript{74} The first is derived of the word \textit{hukm}, coined by Qutb to express authority and command; thus hakimiyyah expresses government.\textsuperscript{75} Qutb saw the entire universe as issued by God, the Creator, hence it is regulated by his rule, and that is 'visible' in the texts and the derived Shari'a.\textsuperscript{76} As Sayed Khattab explained, hakimiyyah is the ordinance of a man's life, regardless of any gradual alterations and developments in man's life, it cannot change his "nature to another being".\textsuperscript{77} Going back to the provisions set forth in the \textit{Islamic Prevent}, Choudary insisted that a Muslim's only identity is Islam; where he cannot support nationalism, tribalism, or even "Britishness".\textsuperscript{78}

\textit{Hakimiyyah} for Qutb stands as the crossroads between Islam and Jahiliyya; a term he used to describe any form of government that is non-Islamic, such as socialism, democracy and capitalism.\textsuperscript{79} It was also used to describe the attitude of Muslims who transgress against the rule of Shari'a and the establishment of an Islamic state.\textsuperscript{80} In fact, Qutb, along with other Islamic thinkers, promoted the strife against those Muslims.\textsuperscript{81} This divisionary attitude is promulgated by \textit{Islamic Prevent}, which calls for the rehabilitation of Muslims "who have been affected by the western way of life."\textsuperscript{82}

While strongly so, Qutb was far from being the only Islamic thinker with this view in mind; Gad El-Haq\textsuperscript{83} (d. 1996) had also propagated the wrongfulness in separating the religion and the state.\textsuperscript{84} In his writings, he urged Muslims to follow Islamic law, or what Mohamed al-Nawawi\textsuperscript{85} described as \textit{Dustur} ("constitution"),\textsuperscript{86} and to detach from the western example; where "English churchmen allowed for their own overpowerment."\textsuperscript{87} Al-Nawawi (d. 1278) and Al-Qurtubi\textsuperscript{88} (d. 1230) had agreed with the succession of \textit{Al-Imamah} or \textit{Al-Khilafah} to prophethood.\textsuperscript{89} Both believed in

\begin{itemize}
  \item \textsuperscript{74} \textit{Id.}
  \item \textsuperscript{75} \textit{Id.}, at 17.
  \item \textsuperscript{76} \textit{Id.}, at 100.
  \item \textsuperscript{77} \textit{Id.}, at 22.
  \item \textsuperscript{78} \textit{Islamic Prevent}, \textit{Supra} note 23, at 3-4.
  \item \textsuperscript{79} \textit{Khattab}, \textit{Supra} note 69, at 146-8.
  \item \textsuperscript{80} \textit{Id.}, at 161.
  \item \textsuperscript{81} \textit{Id.}, at 13 and 15.
  \item \textsuperscript{82} \textit{Islamic Prevent}, \textit{Supra} note 23, at 26.
  \item \textsuperscript{83} Gad El-Haq was an Egyptian jurist, Grand Mufti of Egypt in 1978, and Grand Imam of Al-Azhar from 1982-1996.
  \item \textsuperscript{84} \textit{Khattab}, \textit{Supra} note 69, at 15.
  \item \textsuperscript{85} Imam Nawawi was a scholar of \textit{Fiqh} and \textit{Hadiths} ("Prophet's sayings"). During his 45 years, he wrote many books on Islamic studies, collected and sourced 42 \textit{hadiths}.
  \item \textsuperscript{86} \textit{Khattab}, \textit{Supra} note 69, at 13.
  \item \textsuperscript{87} \textit{Id.}
  \item \textsuperscript{88} Imam Abu Abdullah Al-Qurtubi was a \textit{Fiqh} scholar. Notably, his most prominent works was \textit{Tafsir Al-Qurtubi}, an exclusive commentary of the Qur'an.
  \item \textsuperscript{89} \textit{Khattab}, \textit{Supra} note 69, at 13.
\end{itemize}
the natural order of a God-instigated law, to be adhered and furthered, and monitored, by one *imam* or *khalifa* ("caliph").\(^{90}\) Thus the western example portrays the decentralization of authority into several elements, as opposed to being consolidated in one knowledgeable man, all of which are operating within a framework set by other mere "men". In the debate on man-made law and God-instigated provisions, Qutb presents a rather discernible argument:

If it be despicable for one to say, for instance, that the sun is an ancient reactionary (raja'i) creature and must be replaced by anew developed star! Or to say, man is an ancient reactionary creature and should be exchanged for another progressive creature capable to develop the earth! If these and others are despicable, it would be more despicable to say the same sayings in respect of God's law conveyed in the Qur'an, the final message of God to mankind.\(^{91}\)

For Choudary, and the proponents of *Islamic Prevent*, Muslims should only abide by the Shari'a, they are not allowed to adhere to a system operating by man-made law.\(^{92}\) Seeing the strong impact Sayyid Qutb and other Islamic thinkers have on the restrictive interpretation of Islamic law by this group of Muslims, the outcome is seemingly incongruent with human rights law. Evidently, the provisions of *Islamic Prevent* stand at the other end of civil, political, economic, social and cultural rights as provided for by international law. The next chapter will offer other interpretations that are more compatible with universal human rights.

IV. **On Congruency**

This other perception of the good portrays Islam to be in congruency with human rights, such that it identifies with many features of democracy and steers away from the Islamization of constitutions. The first perception focuses entirely on the institution of the Caliphate, where the application of God's laws applies to all features of life, individual and political; aided by state tools centralized in the Caliph - seen as both a political and spiritual leader. Thus, religion and state are eternally intertwined. Contrastingly, this perception softly breaks down such ideology through a different interpretation of Shari'a and the objective of divine messages.

The discussion in the following paragraphs borrows from certain jurists from different times in Islamic history. The works of these jurists reflected significant

---

\(^{90}\) *Id.*

\(^{91}\) *Id.*, at 22.

\(^{92}\) *ISLAMIC PREVENT*, *Supra* note 23, at 10-11.
contribution to certain Islamic theories and shaping Islamic rulings through independent reasoning; all which are more harmonious with the understanding and application of human rights law.

In an interview on BBC radio, Rachid Ghanouchi\(^93\) explained that "a state is more Islamic, the more it has justice in it."\(^94\) In justifying his residency in the UK for 20 years evading political prosecution in pre-revolution Tunisia, Ghanouchi explained, "I was going to a country ruled by a queen where people are not oppressed and where justice prevails."\(^95\) As the head of the ruling political party, elected in post-revolution Tunisia, Ghanouchi believes the prevalence of justice to be the essential key to the true application of values in the Qur'an, as opposed to the literal reading of it as disseminated by other Islamists.\(^96\)

The conceptualization of justice as a key value in Islam dates back to Rifa'a Al-Tahtawi\(^97\) (d. 1873), a renowned scholar and reformist during the Abbasid Caliphate in Egypt,\(^98\) who identified the then-illness of the Muslim *Umma* to be the *lack of freedom*. After a five-year mission to Paris, Tahtawi returned to Egypt with a newfound appreciation for equity and justice.\(^99\)

The stipulation of the equality of all French citizens before the law "has great power in establishing justice, in helping the wronged and satisfying the poor by convincing them that they are great as far as legal proceedings are concerned," he commented in one manuscript.\(^100\) In another publication, Tahtawi categorized *freedom* as fivefold: natural, behavioral, religious, civil and political.\(^101\) Where natural freedom originated with mankind (the right to have access to food and drink without overstepping that which belongs to others), behavioral freedom defines "commendable conduct and noble morals," which reflect individual integrity.\(^102\) Religious freedom lies in that of opinion and doctrine, conditioned to adhere to the principles of religion, the respect of which leads to *civil* freedom, as "the rights of a

---

\(^93\) Sheikh Rachid Ghanouchi is a Tunisian leading and Islamist ideologue who sought refuge in Britain for 20 years as a result of political prosecution. Come the Arab Spring with the Tunisian Revolution in late 2010, Ghanouchi returned months later to revamp Ennahda movement—banned by Ben Ali.


\(^95\) Id.

\(^96\) Id.

\(^97\) Rifa'a Al-Tahtawi was a teacher and a scholar of Islamic law. Al-Tahtawi was the first Egyptian to grapple with the question of adjusting the Arab model with the Western one, while still providing Islamic legal answers to pending issues.


\(^99\) Id., at 32.

\(^100\) Id.

\(^101\) Id., at 37.

\(^102\) Id.
city's residents and communities toward each other.103 All these categories must be engaged in legitimate transactions, safeguarded by the state as the citizens' political freedom.104

For Tahtawi, the foundation of these freedoms, through just and sound laws, creates a counterbalance between the two rights, that of the state and of the individual.105 The restriction of people's freedoms, without legitimate reason, is considered "a denial of their recognized right of happiness."106 On the premise that all humans were created with two eyes and two hands, Tahtawi's conclusion attributed their freedoms to their equality, and that was associated with justice and benevolence.107 The absence of this justice and the freedom of each individual, he believed, was the illness that took over the Caliphate at the time, "when rulers reigned by whim, doing what they pleased, and the people had no way to oppose their rulers or defend the rulings of Shari'a."108

Going back to Sayyid Qutb's distinction between hakimiyya and jahiliyya, the objective of the rulings of Shari'a, he perceived, to regulate the universe with all its ordinances. However, there is a strong counter movement to this school of thought. Al-Shatibi (d.1388) and Ibn Ashur (d. 1973),109 for instance, agreed that the highest objective of all divine messages is to establish justice and realize peoples' interest, to guide reason and promote the values of religion.110 Furthering their concept of separation between religion and politics, Ghanouchi highlighted a distinction between two systems: Mu'amalat ("Dealings") and Ibadat ("Worship").111 The latter is concerned with creed and values, which represent the more constant features of life,112 where the primary orbit of religion is understood not to be the state apparatus, rather

103 _Id._
104 _Id._, at 32-33.
105 _Id._, at 38.
106 _Id._
107 _Id._, at 38-39.
108 _Id._, at 34.
109 Abu Ishaq Al-Shatibi, a.k.a. Ibn Al-Shatibi was an Andalusian Sunni Islamic legal scholar. Ibn Al-Shatibi researched extensively on Usul al-fiqh and wrote mammoth books on the higher objectives of Islamic law and religious innovations. Muhammad Al-Tahir Ibn Ashur, a.k.a. Ibn Ashur was an eminent figure in both the Islamic reform movement and the institution of the Tunisian Ulama. Ibn Ashur contributed many rich publications the fields of Islamic scholarship and Arabic literature.
111 _Id._
112 _Id._
In this sense, Islamic jurisprudence provides for answers to the big theological questions; and includes a guideline as to how acts of worship are performed. The former domain revolves around the general interest of the public, i.e. maslaha. According to Ghanouchi, this domain is by no means constant, on the contrary, it is ever evolving and adapting to new developments.

Given Tahtawi's emphasis on equality of opinions, among other things, and his understanding of how Shari'a should be defended against 'whimsical' leaders, it is important to understand how the 'people', i.e. the Umma, have a say in matters. Asifa Quraishi explained Shari'a to be God's Law, "The ideal of how people should be in the world." Where she stipulates the inability of the original texts to provide for answers to "every single life and legal question," she explained the evolution of fiqh ("Islamic Jurisprudence") as a set of linguistic canons of construction, consensus and reasoning; developed by jurists to attempt to provide for some of the legal matters. Evidently, fiqh is not manifest in every aspect of life, and jurists cannot claim the absolute correctness of their reasoning as they concede to the possibility of their own fallibility. Thus, fiqh presents guidelines for worship and "commendable conduct" among people.

Islamic law is derived from two major sources: the divine revelation, Shari'a (commandment set forth by divine texts, or wahy), and fiqh (the product of human reasoning). Shari'a provides for general directives, whereas fiqh is the tool through which legal answers to unprecedented issues are explored. Therefore, fiqh stands to be a "rational endeavor… a product of speculative reasoning, which does not command the same authority as Shari'a."

Jurists developed other tools to embrace societal and legal changes; one of which is Ijma' ("consensus") of the Muslim Umma. For Wael Hallaq, ijma' is the ultimate sanctioning authority which guaranteed the infallibility of positive legal

---

113 Id.
114 Id.
115 Id.
116 Asifa Quraishi-Landes is an esteemed professor of U.S. Constitutional and Islamic Law at the Wisconsin University Law School. She is a 2009 Carnegie Scolar and 2012 Guggenheim Fellow.
118 Id., at 164.
119 Id., at 165.
121 Id.
122 Id.
123 Wael B. Hallaq is a scholar of Islamic law and Islamic intellectual history. His teaching and research deal with the problematic epistemic ruptures generated by the onset of modernity.
Jurists found evidence in both Qur'an and Sunna in support of the authoritativeness of *ijma*'. Many jurists found evidence to support the Prophet's seeking of his companions' advice, their *shura* ("consultation"), provided his acknowledgement of the fallibility of his own reasoned opinions. Hence, *ijma*, as a source of Islamic law, mitigated the interruption of revelation with the Prophet's death; allowing for the formation of new solutions to arising problems.

Tahtawi and Ghanouchi both believed that neither *fiqh* nor *ijma* can, however, guide farmers on progressive technology, or assist with exchange of commodities between merchants, which compromises some of the features of Ghanouchi's second domain, *Mu'amalat*. They can provide for the behavioral guideline and values of Islam. As for civilizational matters, Tahtawi had stressed the highest form of freedom to be that of agriculture, industry and trade. For those are the key operatives to public benefit and the civilizing factor for great nations.

Tahtawi was the first to call for a foreign-inspired political concept to be applied in a Muslim state; the multiparty system. Founded on the equality of all citizens, and their right to be represented in the political arena, Tahtawi believed it be the remedy to the failing Caliphate system. Obligating people with religious practice, Ghanouchi as leading to the promotion of *Munafiqin* ("Pretenders"), where people seemed to adhere to the Caliph's (usually religious) instructions, regardless of their own personal conviction. The Islamizing of the constitution of a Caliphate meant the adoption of one school of thought, which would later reflect that Islam before the world, and "pluralism in this context [the multitude of Islamic thought schools] goes to the side, becoming a mere commentary." Quraishi feared the repetition of such a module; for it would once again change the way people regard Islam and Islamic law.

Ghanouchi followed in Tahtawi's steps and offered the borrowing of one method of *Mu'amalat* from the west, in addition to the multiparty system; the electoral

---

125 Id.
126 Ghanouchi, Supra note 100.
128 Ghanouchi, Supra note 94. Sourcebook, Supra note 98, at 38.
129 Sourcebook, Supra note 98, at 9.
130 Id.
131 Azzam Tamimi, Islam and Democracy from Tahtawi to Ghanouchi (2007), http://tcs.sagepub.com/content/24/2/39
132 Sourcebook, Supra note 98.
133 Ghanouchi, Supra note 100.
134 Quraishi, Supra note 117, at 176.
135 Id., at 177.
system.\textsuperscript{136} Justified as the means to highlight the occurrence of \textit{ijma}' and a successful way of representing the peoples' say in political and legislative matters.\textsuperscript{137} An electoral system becomes a procedure that allows the multitude of citizens to show their consensus. Evidently, the state would be a neutral element, where its scope is limited to the \textit{public domain}.\textsuperscript{138}

A true and efficient separation of religion and state is heavily based on the provision of both institutions to fulfill its purpose. The state is an actor, created out of a societal need for order and protection of its individuals; while religion is a divine message sent by the Creator to His potential followers to introduce them to the modes of worship. This perception of the good is meant to offer an alternative interpretation for those who wish to learn the difference between \textit{Islam} and \textit{Islamism}. Both perceptions were entertained to highlight, two examples of, the radically differing interpretations of Shari'a law. The Qutbian model represents a restrictive application of Shari'a; where adherents are more conservative in their own lifestyle and less merciful to and tolerable of others. Contrastingly, the Ghannouchi-Tahtawi approach to understanding Shari'a promotes equality among adherents, thus more tolerance. It does not restrain freedom or impose practice upon people. Nonetheless, both models are far from being exclusive defaults of 'good' and 'bad' interpretations; Shari'a has never ceased as subject of interpretation.

In the coming discussion, apostasy will serve as a brief examination of the widely differing approaches to legal questions via Shari'a. Furthermore, it will provide insight on policies instigated by states that have chosen to centralize their authority in the one ruler; more so, it will highlight certain underlying political goals that 'influence' the Islamic legal approach rulers undertake in dealing with apostasy. More often than not, their rulings are not without prejudice.

V. Invalidating Thoughts

Al-Ghazali defined apostasy (\textit{ridda}) as the open declaration of an individual refuting their belief in God, and (despite attempts to subdue) persisting in disbelief.\textsuperscript{139} The offender announces he is a non-believer after having been a Muslim, and in some cases, can urge others to follow suit; and as such, he denounces his relationship to the

\textsuperscript{136}GHANNOUCHI, \textit{Supra} note 100.
\textsuperscript{137}Id.
\textsuperscript{138}Id.
Muslim community. Apostasy is applicable only to Muslims; if non-Muslims convert to other faiths, they are said to have ‘changed religions’.  

Islam was one of the earliest democracies constituted on earth, given the historical inclusion of Ahl el-ra’i (opinion leaders) through the practice of shoura with respective leaders of the Muslim world. While shoura is slightly different from democracy, in that it does not entail the rule of people by the people, it is coined as the “freedom to express views, exercised by the opinion leader only insofar as this does not affect any of the components of the religious doctrine or the cult.” Subsequently, this limitation prevents rising tension between Muslims, in and among themselves, or with non-Muslims; namely because Islam prohibits offense to others, and moderation in response to offense from others. As such, the classification of offenders was identified.

On one side, some jurists asserted that Islam did not provide an earthly punishment for every violation believers commit. Of the justifications, is the assertion of how people were created as mere witnesses of each other’s doing in this life. Going back to the original texts and classical Islamic jurisprudence, there exists evidence to denote the permission of expression and more importantly, the repeated assurance of an afterlife punishment for kufr (“disbelief”), not an earthly one.

In classical Islamic jurisprudence, apostasy was punishable by death. However, upon re-examination of the policy invoked by scholarly lawyers, who argued that apostasy was not a hadd (“restrictive ordinance”), a more lenient punishment was devised. More modern schools of thought believed, when a Muslim is suspected then proven to have apostatized (i.e. denounced the oneness, or even the existence of God), they are declared as such before the public; and in most cases, a domestic court announces their ‘civil death’. In other words, they are legally and socially announced as non-Muslims, and, therefore, all their relations to other Muslims are disconnected. For one, they are separated from their spouses by

141 Bassem Tibi, Islam and Modern Ideologies, 18 INT J MIDDEN E STUD 15-29 (1986)
142 Id.
143 Griffel, Supra note 139.
146 Id.
147 Rudolph Peters & Gert J.J. De Vries, Apostasy in Islam, 1 Die Welt des Islams 1-25 (1977)
148 Id.
149 Berger supra note 123.
force of law; and they are prohibited from entering into new marriages, even with a non-Muslim. Furthermore, their blood ties with their children are considered non-existent, to and from whom they are prohibited from passing or receiving inheritance, or to and from any Muslim relative. Apostates are considered malicious influence hence they are excommunicated.

It is the Shafi’ite belief that apostasy is derived from the same legal positioning of hypocrisy (nifaq). A hypocrite, contextually, is one who ‘pretends’ to be Muslim, to have faith in God and believe in all three messengers, as part of refuge in the Muslim community and protection from its wrath; such as the wars following the prophet’s death. On the basis of their secret disbelief and, hence, secret practice of non-Islamic rites, Al-Shafi’i deduced a definition and punishment for apostates. Where an unbeliever is one who had lost faith after being a Muslim, and has publicly declared this revelation, an apostate goes further to conclude omission or failure to repent (istitaba). Therefore, it is pillared on the staging of faith where in fact, the heart conceals otherwise, since Islam puts great weight on the intention of a believer.

In sharp contrast, legal scholars, such as Cherif Bassiouni, argue that since intention is a significant, private and concealed notion, there is no determining whether a non-believer has actually repented or not. In essence, they should be left to their own devices, in the hope that they will find their ‘path to God’ once more. Moreover, Bassiouni believes that putting a deadline on their istitaba may convince them into nifaq just to get away from capital or civil punishment. A suspect of ‘apostasy’ should not be penalized for exercising his freedom of religion and belief. On this thought, another Islamic school comes into the debate, the Postponers (Murji’a).

As a low-key jurisprudential school, the Murji’a were marginalized during the Ummayyad dynasty for questioning the rules of God. They believed in the postponement of a Muslim’s punishment or reward (on their degree of faith) till the
Day of Judgment. For one, they believed that “it was not possible for human beings to pass judgment over the status of another human being’s faith.” Secondly, they resorted to Qur’anic verses that warned sinners of grave punishment at the end of God’s decision.

Qutb's great unity and Tahtawi's freedoms come into play when whimsical leaders enjoy centralized authority, so much so that Shari'a becomes a political tool to dissolve the 'united' community. One significant evidential issue would be the imposition on the right to freedom of expression when it comes to literary works that addressed the existence of God or Islam, or offered “too-liberal interpretations of the word of God.” This censorship was justified as: socially, a restriction on liberal thinking prevented individual autonomy from climaxing into a loss of faith. Sociopolitically speaking, censorship was invoked to prevent heresy leading to the dissolution of the Muslim

When Shari’a failed to provide legitimate grounds for the criminalization and the punishment of apostasy, a third solution was to resort to foreign laws and incorporate them into domestic legal codes. The adoption of Public Policy is a relatively new concept in the legal systems of Muslim countries; Egypt, for one, only adopted it in the beginning of the 19th century. This policy incorporates the “legal principles that are considered fundamental to a society, and which may not be contradicted, altered, or violated by any rules or laws of that same society.” Basically, it is the legal tool through which state legislatives identify a crime and punishment – a crime that cannot be identified by means of another legal system, namely, Shari’a. This policy goes along with the underlying understanding of Article 10(2) of the European Convention on Human Rights; which subjects freedoms of expression (expressed in article 10(1)) to:

Formalities, conditions, restrictions or penalties as are prescribed by law… in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of

162 Id.
163 Id.
165 Berger, supra note 140.
167 Berger supra note 140.
168 Id.
others… for maintaining the authority and impartiality of the judiciary.169

Under this policy, and the legitimized and, already, rationalized control over public opinion, several Muslim authors were apostatized during the 19th century.170 Therefore, it appears that rulers are more concerned with carefully constructing legal webs to trap authors who promulgate intellectual ideas of which they do not approve. When Islamic law could be used to make that happen, Islamic law was applied. When its provisions could not punitively provide for the crime, public policy became more convenient.

Such differing interpretations offer a better understanding of the potential political use of Shari'a and Islamic legal codes to benefit some over others. More so, they offer a profound understanding of how radically different interpretations have become, and how strict and restrictive these interpretations can be. At the more radical end, some Muslims assume authority to execute punishment over others; and at the other, Muslims conceding to their humility as equal before God and their incapacity to judge others. One model offers justice and equality, whereas the other involves judgment and superiority. One involves decision made by one centralized figures, often adhering to single school of Islamic thought, that cannot be countered by 'the people', and another model more involving and tolerant of the plurality of interpretations of Islamic jurisprudence.

VI. The Amalgamation

The Islam propagated by adamant adherents to a restrictive interpretation disseminates a conception of Islam that reduces audience to pro-Islam and anti-Islam. Such non-accommodation of other varieties in fiqh sends out a clear message that Islam is a restrictive concept, unyielding and intolerant to any changes in the surrounding society, political era or intellectual movement. The discourse in the previous chapter was dedicated to support the separationist notion in Islam; that a state is Islamic where certain foundations are safeguarded by the state (justice and equality); not in its punitive and restrictive application of Shari'a. The following discourse will offer a more expansive understanding of Shari'a to explain the necessity of finding common grounds between the different schools of Islamic thought. Furthermore, this understanding will serve to find common grounds between

Islamic law and international human rights law, and evidently, UK law. This particular perspective will become the bar against which the three scenarios will be evaluated.

Because classical *fiqh* was based on medieval societal settings, and because it only provides legal answer for legal issues, disparities arose between *Ulama* ("Islamic scholars") as they struggled to contextualize society in accordance with Islamic rule, or use the scientific jurisprudential rule of Islamic law as reference in dealing with the constantly changing surrounding society.¹⁷¹ With the arising differences in interpretation, and consequential lifestyles that Muslims from different schools led, some *Ulama* feared the loss of the common grounds that united the Muslim *Umma* under Islamic law and Shari'a.¹⁷² Al-Ghazali (d. 1111), followed by Ibn Al-Shatibi (1388), made a profound contribution to Islamic law by terming and specifying its main objectives and purpose, *Al-Maqsad* ("Goals").¹⁷³

*Maqasid Al-Shari'a* (sing. *maqsid*), simply explained, are the ultimate goals and main objectives or purposes of Islamic law.¹⁷⁴ Historically, the strongest critique of philosophers, theologians and jurists' observed arrival at partial and superficial knowledge, albeit using jurisprudential tools, was Imam Al-Ghazali¹⁷⁵; he believed the provided answers did not reach the "precinct of the heart and the soul."¹⁷⁶ Al-Ghazali perceived the highest form of wisdom and religious knowledge to go beyond the confines of this material world and embrace more the ultimate aim of Islam, which promises eternity in heaven.¹⁷⁷ The challenge he posed to intellectuals merely served to emphasize his argument against strict legal interpretation and reasoning of the original texts. For Al-Ghazali ratiocination applied to mathematically deduced rules and regulations failed to provide for the non-legal features of life on Earth, and what is to come in the afterlife.¹⁷⁸

Al-Ghazali's academic and legal writings are said to have contributed to the "cause of reason", evidently, he left behind a "neatly structured rational system of

---


¹⁷² Id., at 27.

¹⁷³ Id.


¹⁷⁵ Abu Hamid Al-Ghazali was a jurist and a theologian, and a scholar of Islamic jurisprudence. Through Sufism, Al-Ghazali contributed to the philosophization of Islamic theology; starting with the non-certainty of knowledge and revelatory truth.

¹⁷⁶ Hamid Algar, Imam Abu Abu Hamid Ghazali: An Exponent of Islam in its Totality, 41 Islamic Studies 537, 538 (2002).

¹⁷⁷ Id.

¹⁷⁸ Id., at 539.
"meta-jurisprudence," where he introduced a new paradigmatic shift in the understanding of the objectives of Shari’a.\textsuperscript{179} The part of concern of Al-Ghazali’s meta-jurisprudence is his identification of five main objectives that are to be protected as "absolute priorities": faith, life, intellect, lineage and property.\textsuperscript{180} Al-Ghazali wrote passionately on the concern of the \textit{maqasid} discourse in relation to the "the values and realities of concern to the individual and the society."\textsuperscript{181} Years later, some jurists, such as Yusuf Al-Qaradawi added \textit{freedom} and \textit{human dignity} to Al-Ghazali’s five.\textsuperscript{182} These five objectives will serve as the building block for the establishment of common grounds between Shari’a and human rights law in later paragraphs.

The aforementioned five main objectives were described as the ultimate goals that Shari’a seeks to protect and guide followers to achieve.\textsuperscript{183} Al-Ghazali validated \textit{Jihad} ("Sacred Struggle") to protect one’s \textit{faith}.\textsuperscript{184} \textit{Jihad} simply denotes the protective measures Muslims are allowed to take to protect their religion; however, the range of interpretation concerning the "protective" measure varies from one school to another.\textsuperscript{185} A moderate view of \textit{jihad} simply promotes the peaceful and non-aggressive protection of Islam through \textit{da'wa}; in essence, fulfilling the Muslim’s mission of justice.\textsuperscript{186} A more fundamental interpretation of \textit{jihad} entails a strong, solid and forceful protection.\textsuperscript{187} \textit{Qisas} ("Equal Retaliation") was emphasized by Al-Ghazali to establish the value of \textit{life}; irrespective of religion or ethnicity.\textsuperscript{188} Theft, adultery and alcohol-consumption are "punishable offences as they pose a threat to the immunity of private \textit{property}, the well-being of a \textit{family} and the integrity of the human \textit{intellect}, respectively."\textsuperscript{189} Not only so, but Shari’a, as Al-Ghazali wrote, promotes work and trade so individuals can earn their living; it provides for detailed family laws to protect, strengthen and safeguard the unity of the family.\textsuperscript{190} These essential \textit{maqasid} encompass the all-pervasive and central theme of Shari’a; hence all its laws are related to protect these benefits.\textsuperscript{191}

On his part, Imam Ibn Al-Shatibi believed it was not enough for people to learn the \textit{hukm} ("Injunction") of a legal issue; rather, it was all the more essential for

\begin{acks}
\textsuperscript{179} Id., at 538.
\textsuperscript{181} Id.
\textsuperscript{182} KAMALI, \textit{Supra} note 171, at 45.
\textsuperscript{183} Mohammad Hashim Kamali, \textit{Maqasid Al-Shari’a Made Simple}, 13 IIIT 1-26, 15 (2008)
\textsuperscript{184} Id.
\textsuperscript{185} GUIDÈRE, \textit{Supra} note 4, at 186.
\textsuperscript{186} Id.
\textsuperscript{187} Id.
\textsuperscript{188} KAMALI, \textit{Supra} note 182, at 171.
\textsuperscript{189} Id.
\textsuperscript{190} Id.
\textsuperscript{191} Id.
\end{acks}
them to understand the *hikma* ("Wisdom and Purpose") behind it.\(^{192}\) Al-Shatibi believed it was the profound understanding of *hikma* was what allowed the Prophet's companions to rule remote provinces during the Islamic empire; they met the needs of the people because they fully grasped the purpose of Shari'a: equality and justice.\(^{193}\) In his greatest publication, Al-*Muwafaqat* ("The Agreements"), *The Book of Higher Objectives*, was one volume of it, dedicated to explain the objectives of the law (both as briefly attempted by previous scholars, and expressly based on his research), presenting them as "a visible and recognizable entity; no longer could they be disregarded, forgotten or belittled."\(^{194}\)

For his fear over the dissolution of the Muslim *Umma*, Al-Shatibi had two goals to accomplish. He believed the concept of *Maqasid* would help keep the *Umma* intact through the establishment of a unified *corpus juris* of Shari'a, one that would integrate the varying visions and goals of the different interpretations by scholars and jurists.\(^{195}\) In modern terms, this integrated code can be understood as a legal top-down approach to embrace the changes in the surrounding society and embrace the variations in interpretations, bearing in mind Quraishy's previous assertion regarding the fallibility of jurists. Al-Shatibi had another purpose, where he aimed to sensitize individual Muslims to the meaning of Shari'a, so that they can become "willing carriers of its values'.\(^{196}\) He believed that the "higher objectives of the Lawgiver can only be fulfilled by correcting the objectives of those answerable to the Law."\(^{197}\) This presents a more bottom-up approach, where Muslims represent their religion (and way of life) with understanding and high awareness of the reasoning behind their actions, which would reflect upon their 'interfacing' and their relationship with the law of the land.

The contributions both imams, among others, have made to the Islamic jurisprudential system can be collated in Ahmed Al-Raysuni's words:

> This is an entirely new step for the field of usul al-fiqh and its related writings; for while the higher objectives of the law were once no more than a specific point which might be mentioned or referred to on this or that occasion in the context of usual-related discussions, [Al-Shatibi] caused them to become a spirit which flows through most aspects of this discipline. This same spirit likewise flows with clarity

\(^{192}\) KAMALI, *Supra* note 182, at 24.  
\(^{193}\) *Id*, at 25.  
\(^{195}\) KAMALI, *Supra* 182 note, at 26.  
\(^{196}\) *Id*, at 27  
\(^{197}\) AL-RAYSUNI, *Supra* note 174, at 314.
and force through the discipline and world of jurisprudence by virtue of the fact that the objectives of the law have now been introduced into the realm of fiqh-related independent reasoning, whether for the purpose of understanding and interpreting a text and deriving rulings therefore, or for the purpose of arriving at a ruling on a situation about which no specific text exists.\textsuperscript{198}

The following part will examine a potential amalgamation between human rights law and Islamic jurisprudence. An essential part of this paper is concerned with finding an Islamic jurisprudential approach that is compatible with human rights. For one, it would answer the question of whether there exists one (or several) interpretation(s) of Shari'a that can go hand-in-hand with human rights law, and evidently with UK law. Secondly, and of more significant to main question, is whether the compatible approach mirrors the ideologies with which the Islamic group introduces the Shari'a zones project and their demand to incorporate Shari'a law. Consequently, the conclusion arrived at through the latter venture will conclude the viability of their demand. In the coming paragraphs, a brief and relevant background on human rights follow will precede its amalgamation between one perception of the good promulgated by Islamic jurists.

\textbf{VII. The Indivisible Rights}

After the end of the Cold War, several positive measures were taken in remedying the ideological barriers drawn out by the global political polarization; all to highlight the indivisibility of the two generations of rights. The most vital measure of which was the \textit{Vienna Declaration and Programme of Action in 1993}, where Article 5 declared all human rights to be "universal, indivisible and interdependent and interrelated… [to be treated by communities] in a \textit{fair} and \textit{equal} manner, on the same footing, and with the same emphasis."\textsuperscript{199} Article 5 also designated states as responsible to "promote and protect all human rights and fundamental freedoms,"\textsuperscript{200} \textit{regardless} of their political, cultural and economic systems. In 1998, the UN Commission on Human Rights adopted several resolutions reaffirming "the universality, indivisibility, interdependence and interrelationship of all human rights… promoting and protecting one category of rights should therefore never

\textsuperscript{198} \textit{AL-RAYSUNI}, \textit{Supra} note 174, at 26.
\textsuperscript{199} UN General Assembly, Vienna Declaration and Programme of Action art. 5, Jul. 12, 1993, A/CONF.157/23.
\textsuperscript{200} \textit{Id.}
exempt or excuse states from the promotion and protection of other rights.” The conceptual association becomes more emphatic: CPR & ESCR are to be thought of as interchangeably indivisible, interdependent, interrelated and universal. Moreover, human rights are to have prima facie priority over the "interests and desires of society and state.”

From a more on-the-ground consideration, the Peru's Truth and Reconciliation Committee (TRC) had pioneered an investigation that went beyond the mere listing of the "violations" and into the contextual reasons for their happening. Based on the TRC final report, the status quo allowing for the violations included social exclusion, racial and class lines, high death/killing rates in the poorest areas, unequal distribution of political and symbolic power, corrupt judicial mechanisms and disappearance from rural highlands. It was the conclusion of the TRC that the Peruvian government showed "profound lack of appreciation for the less privileged." An entire chapter was dedicated to report on the psychosocial, sociopolitical and socioeconomic harms at both personal and community levels.

The legal system of international human rights law seeks to protect the individual, sustain and develop their equal and inalienable right to a "good life": featured by equality, justice, enjoyment of rights and protection against violation or coercion. It is a rational and goal-oriented system that pursues a wide-scale level of conformity among citizens and states. Much of the same can be said about Shari'a; it too is a rational and goal-oriented system that promotes widespread conformity. And both contain restrictions against causal harm. The following paragraphs hold a comparison between Shari'a and human rights law. This paper relies on a limited number of Islamic jurists and scholars, simply because they were the most influential in the development of the following discourse. This does not go to say that they were the only ones supporting the strong correlation between both concepts.

With particular regard to this chapter and the last, several words comprise the main objectives, perhaps the maqasid, of both Shari’a and human rights law: justice,

204 Id., at 154
equality, freedom and public interest. The sequential ordering of those words, in and of itself, bears significance to the reasoning behind their establishment and protection.

The preambles of both ICCPR & ICESCR can be equated with the definition of *maqasid*; they set out the core aim of the conventions, which in itself represents a general and ultimate objective. The preambles start with an assertion of justice, among other things, as one of the fundamental achievements in the world along with freedom and peace. Justice is the primary requirement of an Islamic state, as Ghanouchi and Ibn Ashour had stipulated. It stands as the building block of a society where all individuals are on equal footing in terms of their relationship with the law. Al-Tahtawi was particularly impressed with the strong emphasis on justice in the French constitution of 1814:

Consider the first article: it has great power in establishing justice, in helping the wronged and satisfying the poor by convincing them that they are great as far as legal proceedings are concerned... What they [the French] hold dear and call liberty is what we [Arabs] call equity and justice, for to rule according to liberty means to establish equality through judgments and laws, so the ruler cannot wrong anybody, the law being the reference and the guide.

Establishing justice, therefore, in the prescription of both Shari'a and human rights law, means the right of all citizens to fair treatment, and to the enjoyment of equal rights; in addition to the application of just laws upon wrongdoers without prejudice.

This equal setting denotes equal *rights*, the stipulation of the "inherent dignity of all the members of the human family," and the equal protection of both; all of which is sought and promoted by both conventions and Shari'a. The equality of those rights is portrayed in the preambles as the foundation for justice. It was strongly highlighted by Al-Tahtawi's argument of equal setting since creation (two eyes/ears/hands for everyone), and the understanding of it was described by Ibn Al-Shatibi to be essential in meeting people's needs. Thus far, justice and equality in Shari'a correlate with civil and political human rights. An equal footing for all in voting, for example, reflects a civil freedom in their equality of choice, and political

---

206 Preamble: Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.
207 SOURCEBOOK, Supra note 98.
208 Covenants, Supra note 205.
209 Id.
freedom for self-determination as stipulated in ICCPR: the people choose their representatives and share aloud their political choice.

The realization of people's needs through promoting their equal and inalienable rights evidently means, adhering to Al-Tahtawi's model, the realization and non-restriction of their right to happiness without probable cause. Thus, their freedom is not restrained. Although the conventions do not detail the term freedom, Al-Tahtawi's fivefold definition presents a perception that is harmonious with human rights law. Al-Tahtawi's natural freedom relates to the basic human rights as enshrined in the Universal Declaration: food, water & shelter; it entails the right to live. Protecting this natural freedom can very well fall under the maqsid of life: states, Muslim states and/or ratifying to the conventions, are obligated to protect the people's lives and provide for their survival and safety through a supportive welfare system for example.

His idea of behavioral freedom promoting commendable conduct can be associated with cultural rights; since both are manifestations of a particular set of beliefs that individuals act upon and are intimately related to their sense of identity i.e. his intellect. These three features are to be safeguarded by the state pursuant to observe and promote both maqasid and/or human rights law. Al-Tahtawi's civil freedom relates more so to social rights than civil rights. He explained civil freedom as if "the social community formed… joining together to honor each other's rights." Provided a state where justice and equality are well-established, and the people's freedoms are unrestrained. However, private enterprises exercise their freedom to the extent of arbitrary employment and termination. The state has to safeguard the equal opportunity of every citizen, and protect their identities against discrimination through regulations promoting the mutual respect of each party's rights, culture, social background and intellect.

Religion, faith, the freedom of doctrine: all understandably refer to one pivotal right to be preserved, promoted and protected by the state; under both Shari'a rule and human rights law. A just state where citizens enjoy equal rights, they are free to choose their religion and faith, they should be protected by the state without prejudice, and should have a mutual understanding and respect with those of different faiths. In this case, any acts of intolerance taken by the state are most likely to reflect upon and affect the existing mutual respect. A state could refuse to recognize a certain religion and deprive the people of enjoying their right to faith.

211 SOURCEBOOK, Supra note 98, at 8
Al-Tahtawi coined the term *political freedom* to refer to the state tools through which people are assured of their legitimate and recognized *property*; i.e. citizens engaging in legitimate transactions concerning their personal property are guaranteed its protection by the state. This understanding is different from the contemporary understanding of *political freedom*. For one, it draws upon the nature of the relationship between state and citizen then and there; 19th century Arab world - political participation took a different form, *shura*. This consultation mirrored a small-scale form of political participation where the Prophet sought *reasonable* advice from his companions when revelations did not provide for specific instructions. Therefore, *shura* as a principle, at the time, reflect an appreciation of individuals and their intellect and opinion; both of which the contributors held ownership to and expressed freely.

Noteworthy to highlight the mention of *property* in both conventions; article 2(1) for instance:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\(^{212}\)

In this and other references throughout the conventions, property is presented as a potential basis for discrimination; not as a right, or *maqsid*, that should be protected by the state. Contrastingly, it is distinguished in Shari'a, whether in Al-Tahtawi's model\(^ {213}\), or Al-Ghazali's coining of *maqasid*, as an entity that states are obligated to protect in the pursuit of people's right to happiness, and the state's own fulfillment of political freedom. Evidently, property, as a *maqsid*, becomes the *hikma* behind banning consumption of alcohol (perceived as toxic material causing unreasonable behavior) and stealing - i.e. threats to it.

Freedom of *trade* was prioritized as having the greatest public benefit. Al-Tahtawi saw as an "art of governmental administration... [where] the greatest difficulty for the person who appreciates the benefits of these arts is to see these spheres restricted."\(^ {214}\) He believed a successful trade system, one that truly advances

\(^{212}\) COVENANTS, Supra note 205.
\(^{213}\) SOURCEBOOK, Supra note 98, at 8.
\(^{214}\) SOURCEBOOK, Supra note 98, at 9.
civilizations, is based on progressive civil education.\textsuperscript{215} Education thus becomes the tool for expanding agricultural, trade and industrial spheres, impressing upon rulers the capability and qualifications of the people so they do not consider restraining their trade freedom.\textsuperscript{216} This understanding parallels that of economic rights: in the free disposition of natural wealth as a right to all people and the equal opportunity for all to be employed. The ICESCR, assuredly, contains more specific and contemporary guidelines that parallel the economic era.

In view of the above correlation, it becomes important to remind of a passing remark made earlier about Imam Yusuf Al-Qaradawi's initiative to add human dignity and freedom to al-Ghazali's fivefold maqasid of Shari'a.\textsuperscript{217} Al-Tahtawi's model and Al-Qaradawi's conclusion serve to support the correlation between the notion of freedom prescribed by both Islamic Shari'a, in its modern interpretation, and human rights law.

Where foundations of equality and justice are prevalent in a state's legal code, the people are regarded as equal, and their enjoyment of all rights are safeguarded and promoted. When the people are allowed to be free, as per the aforementioned fivefold conception, their needs are realized. In Shari'a, the needs of the people, their welfare and benefit is coined as maslaha ("benefit").\textsuperscript{218} Al-Ghazali impressed maslaha further as God's objective, His own maqsid in revealing Shari'a; precisely in the preservation of the fivefold maqasid. The concept of maslaha was developed by Al-Ghazali to arising and new cases that the scriptural sources do not address.\textsuperscript{219} From then on, maslaha was researched as a notion to bring about legal reform: jurists researched the constitution of legally valid masalih and the tools to realize the people's needs and benefits.\textsuperscript{220} Jurist Ubayd Allah Sindhi (d.1944), identified with maslaha as tool for reform of law which is not eternal, and where maqasid and hikma advance the progression of fiqh that is more embrace of people's needs.\textsuperscript{221} In essence, Shari'a and human rights agree on the course of realizing people's rights through tools that safeguard the public interest.

Shari'a and human rights law mirror not just the other's positive perceptions for the advancement of people's interest and the achievement of justice, equality and freedom. They also align on the restrictions inherent in both philosophies for the very

\textsuperscript{215} Id.
\textsuperscript{216} Id.
\textsuperscript{217} Kamali, Supra 171 note, at 26.
\textsuperscript{218} Felicitas Opwis, \textit{Maslaha in Contemporary Islamic Legal Theory}, 12 ISLAMIC LAW AND SOCIETY 182, 183 (2005)
\textsuperscript{219} Id., at 191.
\textsuperscript{220} Id.
\textsuperscript{221} Kamali, Supra note 171, at 25-26.
same objectives. Shari'a carriers and human rights law proponents share a call of awareness, the former willingly chooses to portray the principles of Shari'a for others to see; while the latter spread awareness and knowledge of the laws so people would embrace their underlying principles and promote their abidance. In essence, both parties willingly embrace the mission of *da'wa* and inviting people to learn more about the philosophy they promulgate. Similarly, this *da'wa* stops at being a calling; for neither philosophy encourage the use of coercion as a means to an end. Human rights law warns against coercion as it directly impairs any individual's freedom. Rachid Ghanoushi had explained the adherence risk of coercion - the consequence of *pretenders*, whose personal conviction and *intellect* are sheathed by a façade of pretense that proves to be harmful for individual, society and faith.

The apostasy case evidenced Islam's strong emphasis on equality of all parties before each other, where no one is designated superior to others in a way to allow them to pass judgments on them. Islam provides no validation for inferiority in *mu'amalat* among adherents. The above has proved justice, equality and freedom in Islam to be global concepts that apply to all. This global application of the codes of Islamic law was the main derive behind Ibn Al-Shatibi's initiative to establish a unified code; so that it does not become arbitrary or stray away from the core objective and *hikma* behind it. In the same way, these concepts represent the foundation of *universal* human rights law that discriminate against no one culture, religion, sex, language, ethnicity, color, race or gender.

An examination of the correlation between Shari'a and human rights law is a pivotal stop towards the advancement of rights and the founding of justice, equality and freedom, and the realization of people's needs. A steer away from radical interpretations of Shari'a serves to understand the true and original *maqasid* and objectives Islam has to offer and its adherents should seek to achieve.

The next chapter will thoroughly examine the British system within which Muslims operate in order to contextualize the application of human rights in the state where certain Muslims call for the application of Shari'a in its most restrictive interpretation. An understanding of the extent to which UK law allows for the realization of their rights and needs as a religious minority will serve the evaluation of the scenarios to follow.

---

222 COVENANTS, *Supra* note 209.
223 GHANNOUCHI, *Supra* note 94.
224 *Id.*
225 *Id.*
VIII. The UK System

To arrive at a fair (but somewhat personal) justification, or lack thereof, on the incorporation of Shari'a law into British law, it is necessary to take a passing look at the context: the legal and political systems and, evidently, the society. This enables us to have somewhat of an appreciation of the status of Muslims in the UK and the degree to which their co-existence is tolerated. Of course, this cannot be done without consideration of other religious minorities, or groups, within the same society. In terms of the bigger picture, this will help to determine the level of their achievement of their civil, political, economic, social and cultural rights.

Throughout its history, the English system went through several stages of development: among which are; the separation between the Church and the Prince's Magistrate in late 17th Century\(^{226}\), then Toleration in mid 18th Century\(^{227}\), followed by numerous Acts that reflect the ratification of international treaties and human rights law, especially in the past century. Family matters went from the jurisdiction of Ecclesiastical courts to becoming civil law.\(^{228}\) With the surge in religious groups and minorities, religious courts became authorized to focus on family affairs of marriages and divorces.

The past century has witnessed the most changes in the toleration phase of religious groups. One brief example would be the introduction of the Racial and Religious Hatred Act of 2006. In 1998, the London borough of Merton sought prosecution of a British National Party (BNP) member for anti-Muslim incitement, for campaigning against what he called "the Muslim problem". However, the prosecution request was "rejected on the grounds that Muslims were not covered by the Public Order Act."\(^{229}\) For several years, UK Muslims launched legislation campaigns for religious incitement.\(^{230}\) In mainstream media debates, this was considered a move to curb others' freedom of speech. However, the Muslims' side was significantly tipped

\(^{226}\) John Locke, A LETTER CONCERNING TOLERATION, (Wildside Press LLC 2012) (1689). John Locke provided arguments why the Magistrate should not try to absorb too much of the Church's responsibilities for fear of misapplication or a negative Domino Effect on believers and non-believers equally.


\(^{228}\) Hon. Justice McFarlane, 'AM I BOTHERED?': THE RELEVANCE OF RELIGIOUS COURTS TO A CIVIL JUDGE, (May 18, 2011), http://www.law.cf.ac.uk/clr/Hon.%20Mr%20Justice%20McFarlane_%20The%20Relevance%20of%20Religious%20Courts%20to%20a%20Civil%20Judge.pdf

\(^{229}\) Nasar Meer and Tariq Modood, Islam and British multiculturalism 9 GLOBAL DIALOGUE (2007). The Public Order Act is a parliamentary act that reduces rights and introduces punishment for anti-social behaviors.

\(^{230}\) Covenants, Supra note 205, at art. 21-22.
when other minorities, such as Sikhs, were mocked for passing as Arab-looking; in terms of appearance. Consequently, incitement to religious hatred was added as a criminal offence via the Racial and Religious Act of 2006.\(^{231}\)

A. Legal System

In its present status, English law encompasses several overlapping laws that recognize and regulate religious groups and individuals; where the laws of the Church of England, originally the most ancient and prevalent, are part of the general legal system, i.e. the law of the land.\(^{232}\) The following overview will help to determine whether the legal framework of the UK provides for equality of all members of the community and the prevalence of justice among them.

In recognition, all religious groups are allowed to practice their religion the same as the Church of England.\(^ {233}\) With the understanding that certain religions (such as Judaism & Islam) hold more significant guidelines on the conducting of family affairs, such as marriage and divorce, the state has created a contractual bond to give religious groups some legal standing to enforce "discipline[s] within their body which will be binding on those who, expressly or by implicating, have assented to them."\(^ {234}\) This has come to be known as the doctrine of Consensual Compact.\(^ {235}\) With this understanding, the rights granted by the Arbitration Act of 1996\(^ {236}\) are applied to create religious courts; where Parties to a dispute should be "free to agree how their disputes are resolved."\(^ {237}\) This act allows the parties to "make their own arrangements by agreement but provide rules which apply in the absence of such agreement… [where] it is immaterial whether or not the law applicable to the parties' agreement is the law of England and Wales."\(^ {238}\) As a result of this act, religious groups, such as Orthodox Jews and Muslims, established religious courts to oversee and perform marriages, and rule on the validity of divorces.

The decisions of these courts are recognized and enforced by English courts;\(^ {239}\) they are not subject to judicial review such as is the case for decisions by

\(^{231}\) Id., at 2. MEER, Supra note 229, at 6.

\(^{232}\) DOUGLAS ET AL., Supra note 227, at 7.

\(^{233}\) COVENANTS, Supra note 205, at art.18.


\(^{235}\) Id., at 72. “Religion in the United Kingdom is organized on a private basis: in short, the legal status of religious groups is similar to that of a sports club.”

\(^{236}\) “An Act to restate and improve the law relating to arbitration pursuant to an arbitration agreement.” Intro, 17th June 1996.


\(^{238}\) Id., art. 3 and 4.

\(^{239}\) DOUGLAS ET AL., Supra note 227, at 18.
the Church of England. Judges of the English courts have demonstrated several times their status towards decisions of the religious courts. Eady J held that "such disputes as arise between the followers of any given religious faith are often likely to involve doctrines or beliefs which do not readily lend themselves to the sort of resolution which is the normal function of a judicial tribunal." Lord Hope pressed how "it has been long understood that it is not the business of the courts to intervene in matters of religion," Munby J interpreted the recognition of religious courts to mean that "the starting point of the law is an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity." Simon Brown J was presented with a case where the claimant requested the court to perform a judicial review of a Chief Rabbi’s decision, Brown refused the matter on the basis that "there was no governmental interest in the decision-making power in question… the Chief Rabbi’s functions are essentially to initiate spiritual and religious functions which the government could not and would not seek to discharge in his place were he to abdicate his regulatory responsibility.”

In regulation, certain mechanisms have been instigated by the state so that such courts and institutions register to acquire a legal status. The simple regulations are prescribed in acts that determine the courts be registered as a place of worship. The registered places are to be dedicated to certain functions, namely the solemnization of marriages and issuance of religious divorce. They could also be registered as a Charity for the purpose of the advancement of religion.

The more complex regulations are dual purpose; the first being the restriction of the courts' role to religious divorce. Seeing as both marriages and divorces must be registered at state civil institutions- alongside the religious rituals, divorce diverges to more legal consequences that are primarily dealt with by civil courts; such as child custody. Thus, religious courts, depending on their ritual, coordinate their divorce procedural along with the state's regulation: for Muslims, Shari'a courts require documentation of civil divorce to show for the parties' intention and certainty to seek

---

240 Id., at 15.
241 Id., at 9.
244 Sulaiman v Juffali [2002] 2 FCR 427
249 DOUGLAS ET AL., Supra note 227, at 16.
divorce in order to grant it; with Jews, the procedure set by the Beth Din courts goes the other way around.\footnote{250}

While civil courts are not authorized to perform judicial reviews to decisions by religious courts, the courts cannot enforce any decisions where there is "public policy which requires the court not to."\footnote{251} Like any contract, agreements to arbitrate necessarily have to show a genuine agreement to arbitrate by the parties.\footnote{252} Therefore, agreements obtained under duress or contracted with minors cannot be enforced under the British civil law.\footnote{253} In some cultures, men will seek to marry young girls under the British legal age for marriage. Such marriage contracts are nullified by the state for the incapacity of the girl to be a party in the agreement.\footnote{254} This can be seen as both a regulatory precaution and a limitation of the scope of the religious courts. Either way, these restrictions seem rightfully based on principles international human rights law.

The handling of divorces by civil courts is also an extension of the necessity of accordance with public policy. When acquiring a divorce, there are more considerations than just the ending of a relationship between two parties of a marriage. Ancillary matters relating to dowries, and more importantly, child custody are on the line. Despite the fact that certain religions provide guidelines on how to resolve such dilemmas, English courts are still the designated authority responsible to dissolve marriage and all existing legal ties in accordance with British law. Judge McFarlane was faced with one case where Muslim divorcing parents needed to settle custody of their child.\footnote{255} Despite the consideration for religious laws, and that of expert statements, the Judge ruled to grant custody of the child to the parent who has provided the primary care for the son: in that case, the mother.\footnote{256}

In the English legal system, any dispute outside performance of marriage and divorce is one between the Crown and the Defendant, not between the parties. Disputes of domestic disturbance, or commercial nature that involve sanctions on either parties, even if ruled over by a religious court, will be invalidated by civil courts.\footnote{257} One example is a case of two Iranian Jewish merchants who export Persian carpets.\footnote{258} Where this case involved a breach of Iranian law, the Court of Appeal recognized the arbitration award but refused to enforce the contract on the grounds of

\addcontentsline{toc}{section}{References}
its illegality.\textsuperscript{259} One party was in breach of a commercial contract, thus sanctions were to be pursued for his actions, thus the Beth Din court was recognized to have jurisdiction, but its decision remained invalid.\textsuperscript{260} Any court that attempts to enforce any physical punishment stands to be legally liable under English law.\textsuperscript{261}

Neither Muslim nor Jewish communities have a preset hierarchy of tribunals within their court system.\textsuperscript{262} As such, there is no appeal process. However, and with specificity to Shari'a courts, the autonomous status each separate court enjoys, like many other institutions of arbitral nature, can sometimes be seen as giving much leeway for forum shopping.\textsuperscript{263} Parties can seek the opinion of a second Shari'a court if they disagree with the decision of the first one they sought. Moreover, the notion that Shari'a courts do not, separately, apply a specific school of thought (theoretically of the four main ones), can sometimes be seen as a shortcoming of the courts.\textsuperscript{264} However, all these of critiques can be generally applied to any arbitral institution as it does not possess the rigidity of legal courts, and tribunals are subject to apply the case law of the parties' choice.\textsuperscript{265}

While some look at the Christian origins of the UK and maneuver that fact to reflect upon the intolerance of the state and its citizens, the aforementioned description, however brief, of the English legal system provides for the contrary. Furthermore, as political theory explains, the law of the land is a reflection of its society, and the society is but a reflection of its legal system. Parliamentary acts tend to produce legislation, which reflects the attitudes and wishes of the electing majority.\textsuperscript{266} And, although the UK is originally Christian, that does not mean that toleration is a concept that is alien to it. As Locke explained in his defense of the independence of the Church of England, "the business of true religion is quite another thing. It is not instituted in order to the erecting of an external pomp, nor to the obtaining of ecclesiastical dominion, nor to the exercising of compulsive force, but to

\textsuperscript{259} Id.
\textsuperscript{260} Id.
\textsuperscript{261} DOUGLAS ET AL., Supra note 227, at 18.
\textsuperscript{262} Id.
\textsuperscript{263} Id.
\textsuperscript{264} Id.
\textsuperscript{265} Id.
\textsuperscript{266} LORD PHILLIPS, EQUALITY BEFORE THE LAW 3 (Jul. 13, 2008) http://www.eastlondonmosque.org.uk/uploadedImage/pdf/LMC%20Lord%20Chief%20Justice%20booklet.pdf. In later pages, we will discuss the "majority" wishes; Also, a far off example would be the segregation, and desegregation, phases of American history. When it was state policy to promote segregation, legal enforcements were inductive to social segregation of African Americans from the other races. Evidently, it was witnessed in housing, education, employment, transportation, and so on. One cumulative civil rights movement after another eventually turned public opinion against segregation and in time the state adapted, and came to assert desegregation through another set of legal changes that put an end to the social and institutional behavior resulting from previous legal settings.
the regulating of men's lives, according to the rules of virtue and piety. Based on which, he continued in later pages to explain how Christianity promotes toleration, "As for other practical opinions, though not absolutely free of all error, if they do not tend to establish a domination over others, or civil impunity to the Church… there can be no reason why they should not be tolerated.

Lord Phillip's words seem most convenient to put the legal discussion in a nutshell, 'British law has, comparatively recently, reached a stage of development in which a high premium is placed not merely on liberty, but on equality of all who live in this country. That law is secular. It does not attempt to enforce the standards of behavior that the Christian religion or any other religion expects. It is perhaps founded on one ethical principle that the Christian religion shares with most, if not all, other religions and that is that one should love one's neighbour. And so the law sets out to prevent behavior that harms others... A sin is not necessarily a crime.'

Even though Christian at heart and in origin, the legal system does not appear to discriminate against religious minorities or promote intolerance towards them. Quite the contrary, legislators have attempted to meet the needs of existing religious minorities because they are different; so that each group can better apply and abide by their religious rules and regulations; such as Orthodox Jews and Muslims, in matrimonial matters.

B. Civil-Political System & the Society

On the socio-political domain, which will pave the way for the civil, economic and cultural domains, it is important to keep in mind that law is a reflection of society, and that it is the framework through which the state induces changes in the society. On one angle, John Locke asserted that a government's legitimacy relies on the people's consensual agreement on its protection of their -basics- life, property and liberty. On the second angle, deep-rooted in British law are the provisions of International Human Rights Law, such as the Universal Declaration of Human Rights to begin with, where article 3 asserts everyone's right to life, liberty and security. On the third angle, Al-Ghazali interpreted Maqasid Al-Shari'a, the purpose and philosophy behind Islamic law, to be life, faith, intellect, lineage & property. In more modern studies, Youssef Al-Qaradwi, the Egyptian Islamic theologian, added freedom and human dignity. In the space between this triangular operation of law and

267 LOCKE, Supra note 226, at 3.
268 Id., at 36.
269 PHILLIPS, Supra note 262, at 7.
270 LOCKE, Supra note 226.
271 KAMALI, Supra note 171, at 25-26.
philosophy, lie the Islamist groups of the United Kingdom seeking to execute the Shari'a project.

Each system provides support for the freedom of faith and religion. Each system seeks for the protection of intellect and belief. Consequentially, each system values the individual for what they are and what they believe in, and their right to their life, as a right of birth. It does not become so far-out-of-reach to perceive all individuals as equal; in terms of their right to lead a life, follow their own belief system and receive protection from the state. Furthermore, it does not stand so erroneous as to perceive the systems themselves as equally influential on the individuals that adhere to them.

The incident against religious incitement mentioned before, signifies a certain level of intolerance that Muslims, and possibly other minorities, faced at a certain point in time as citizens (or immigrants) in the UK. One of the reasons why Muslims focused on rallies and movements was because they were not represented through mainstream media. This case was fairly recent, it took place in 1998, and the Religious Hatred Act was adjusted in 2006, it took effect in January 2007. One has to wonder why it took so long, and it consumed as much time as it took citizens to accept foreigners. For years, immigration was presented more as a concern than a plus. Ben Page placed the UK on a multicultural spectrum between France and the USA: France having ignored cultural differences, and the USA having been built on the idea of immigration. Perceivably, the UK is working its way away from France and closer to the USA; seeing as how US citizens are more comfortable with their differences. On its way to embracing cultural differences, the citizens were 'taken aback' by the high numbers of foreigners entering the country, and the media hub and its coverage of asylum migration waves in 2004. Between the years of 1999 to 2007, surveys showed increasing percentages of citizens concerns towards immigration. Contrastingly, the same surveys indicated the citizens' perception of the benefits of immigration and multiculturalism: opening up Britain to new cultures. Despite the London bombings of 2005, surveys showed consistency with

272 COVENANTS, Supra note 205, at art. 6
273 MEER, Supra note 229, at 3.
274 Id., at 6.
275 Managing Director of Ipsos MORI Public Affairs and Chairman of its Social Research Institute.
277 Id., at 4.
278 Id., at 3. In a survey conducted by Ipsos MORI, several subjects expressed how they felt "swamped" for the increasing numbers of foreigners in the streets.
279 Id., at 7.
280 Id., at 1.
281 Id., at 14.
regards to concerns and benefits. However, a new comment was provided, that foreign-born must earn their citizenship. The concept of earning citizenship will be further dwelled upon during the evaluation of the demand to incorporate Shari'a law since it will serve then to look at the members of society promulgating this demand.

Another important parliamentary act worth mentioning is the Equality Act of 2010, which requires "public bodies and others carrying out public functions to consider in their day-to-day work the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations." This sets the legal, thus the political and civil, footing for equality of all citizens before the law, and consequently, before state institutions and acting bodies.

C. Economic Equalization

The elevation in legal status, served to induce an equal, yet slower elevation in the economic and social status. On one side, Islamic banking has been taking strong leaps of growth in the past five years. The main feature of Islamic finance is the non-existence of profit, which is an unacceptable concept in most readings of Shari'a. In order to better accommodate and facilitate the lives of Muslims, the government provided for the establishment of Islamic banks.

Moreover, the UK, being a "leading international financial centre", saw a spur in popularity of the Islamic banking system and came to appreciate its principles of fairness, social justice, individual economic well-being, collective profit-sharing and loss-bearing, and economic prosperity. The Islamic financial system meshed well with the London market's flexibility to embrace and adapt. As a result of English enterprises branching out in the Middle East, using the Islamic Window concept to promote its banking services, served to resonate in the English streets.

---

282 Id., at 21. To be discussed in further detail later.
283 COVENANTS, Supra note 205, at art 25.
284 Id., at 21. For the conditions for integration, see supra note 205, art 25.
285 Id., at art 3.
286 Id., at art 3.
287 COVENANTS, Supra note 205, at art 2.
288 Id., at 4.
289 Id. COVENANTS, Supra note 205, at art 2 and 4.
290 Id.
291 Id., at 9.
292 Id., at 21. To be discussed in further detail later.
From 2001 to 2007, the Financial Services Authority (FSA)\textsuperscript{292} had worked to authorize Islamic financial institutions (three banks) and helped simplify the differences between the many banking systems in the UK.\textsuperscript{293} By 2005 and 2006, the Finance Act was introduced, and it placed the Islamic banking on the same tax footing of other, more global, banking systems.\textsuperscript{294} The government's framework for taxes and legislation has been paving the way for the introduction of new Islamic products such as insurance, bonds and mortgages.\textsuperscript{295}

D. Socially Speaking

Among the cultural differences that Islam introduced to the UK, are polygamous marriages. English law stands firmly and persistently against bigamy and polygamy, Section 11(d) of the Matrimonial Causes Act of 1973 definitively voids marriage of such nature.\textsuperscript{296} Nonetheless, to embrace the social and cultural trends associated with Muslims, the state recognized polygamous marriages, if and when performed outside of the UK, in a state that allows for the occurrence of polygamous marriages, and where the wife applying for immigration seeks it in a capacity other than her being a spouse.\textsuperscript{297} It is worth mentioning that, up to 2007, the state has recognized over a 1000 polygamous marriage.\textsuperscript{298}

Once spouses have become citizens of the state, and provided certain regulations concerning payments of insurance, they can apply to receive state pensions. As Chris Grayling explained,

For income-replacement benefits such as income support, income-based jobseeker's allowance and income-related employment and support allowance, the husband and the first wife claim as a couple. Subsequent wives receive an additional sum, which is less than the single person rate.\textsuperscript{299}

\textsuperscript{292} Established in 1997, introduced as the single financial regulator. It is a quasi-judicial institution responsible for the regulation of the industry of financial services in UK.

\textsuperscript{293} AINLEY ET AL., Supra note 281.

\textsuperscript{294} Id., at 10.

\textsuperscript{295} Id., at 30.


\textsuperscript{297} CATHERINE FAIRBAIRNE, POLYGAMY (Jul. 19, 2012), http://www.parliament.uk/briefing-papers/sn05051

\textsuperscript{298} Id., at 13.

\textsuperscript{299} Id., at 6.
It is also worth mentioning that, unlike other European countries, Muslim girls and women in the UK are at liberty to wear, or not, headscarves, or full-length *niqab*.  

E. Cultural Aspect

Appreciation of religious groups can be seen on the cultural level. A simple yet powerful example would be the slaughtering of animals. In 1995, the Welfare of Animals Regulations were introduced in embracement of religious groups, namely Jews and Muslims, whose religions require certain procedure for the killing of animals for the purpose of feeding. This would explain the *Halal* signs displayed by certain shops in the streets of London, signifying that all meats served were slaughtered in the merciful manner required by both religions.

In the month of *Ramadan*, MP Jon Ashworth decided to fast for one day in order to have a deeper appreciation for the fasting he witnessed over 3000 Muslim athletes observe well during the Olympics of 2012. At the end of his experience he had this to say about it: "Islam is a religion, sadly often much misunderstood in the west and although my own experience was just for one day, I saw a religion which took pride in extending kindness, peace and understanding to those within the religion and those from outside."

On a bigger scale, in 2011, the parliament enacted the Localism Act, which now provides legal powers for all major local authorities to consider prayers as part of formal business meetings, seeing as faith plays a vital part in the nation's culture and heritage.

F. Finally

All of the previous examples reflect the economic socio-cultural appreciations that the former Archbishop of Canterbury, followed by Lord Phillips, had attempted to understand and raise awareness on through two profound lectures promoting the understanding of Shari'a. In the turns of multiculturalism, Dr. Rowan Williams had attempted to dispel a few myths about Shari'a. He expressed concerns for Muslims.

---

300 PAGE, Supra note 276.
302 DOUGLAS ET AL., Supra note 227, at 11.
303 Holy month in Muslims' lunar calendar, when Muslims fast from all foods, drinks and sins from dusk to dawn.
304 Jon Ashworth, Why I Spent A Day Fasting This Ramadan and What I Learnt, HUFF POST, Aug. 20, 2012.
305 Id.
307 COMMUNITIES, Supra note 279, at 13.
within the society who might face difficulty with social integration. After thorough study of the religious system, Williams concluded that individuals can lead a life as abiding believers of the Shari'a without being in conflict with their rights, as guaranteed by English laws.

Given the wider context of the British system, it appears that Sir John Donaldson words are highly accurate, that "the starting point of our domestic law is that every citizen has a right to do what he likes, unless restrained by the common law or by statute." The law has gone through many changes along the years and it arrived to a successful point where "Muslim men and Muslim women are entitled to be treated in exactly the same way as all other men and women in the country." The law did develop and reformulate to focus not just on liberty, but also, on equality. While it seeks to prevent anti-social behavior, and actions that cause harm onto others, it regards all its citizens as equal.

Going back to Dr. Williams conclusion on Muslim citizens leading harmonious lives, and bearing in the back of our minds that the religion of this paper is international human rights, not Shari'a or British law, it seems clear that the legal pretext strongly provides for the achievement and satisfaction of Muslims’ civil, political, economic, social and cultural rights as UK citizens.

IX. The Demand

Before evaluating the validity of the Demand, an understanding of the why behind it is in order. The discussion will then move towards the hypothesizing of possible three different scenarios in response to the demand of incorporating Shari'a law into British law. Notwithstanding, this is not a critique of the religion; it is a critique of the Demand and the possible advancements and/or consequences of each scenario in light of the amalgamation between human rights law and Shari'a. The status quo discussion entertained in the previous chapter was aimed at providing a grand picture of the society, to inform of how religious minorities are regarded in the eyes of the law, and how much freedom of religion and practice does the UK enjoy.

---

308 Rowan Williams, Civil and Religions Law in England: A Religious Perspective (Feb 2008), available at, [http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/](http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/). Dr. Williams hypothesized the possibility of having to live a dual-identity: one where the "Muslim" lives under guidelines that are all-encompassing, vis-à-vis the citizen where the secular state monopolizes public and political identity.

309 Id.

310 Id., at art. 2.

311 Id., at 3. PHILLIPS, Supra note 263, at 2.

312 In light of justice, equality, freedom and public interest asserted as correlations between human rights law and maqasid of Shari'a.
government safeguard as a forefather/founding state of international human rights law. Based on which, the scenarios will be evaluated.

On the left side of the spectrum, Islam is interpreted as the operative framework for a patriarchal system, explained as the default and natural division of social roles assigned by God.\(^{313}\) Perceived as a superior religion, in every aspect of life, leftists believe it cannot be surpassed by any other religion or ideology.\(^{314}\) Thus the implementation of Shari'a, both civil and criminal codes, is not just the core of this school, it is the default. The evaluation of the principles and provisions called for is based on their portrayal in the Islamic Prevent booklet distributed starting May 2011, in protest of the previously discussed Prevent Strategy launched by the UK government.

This Demand was first brought about in 2009, when a group of Islamists introduced the Shari'a Zones project.\(^ {315}\) This group is not representative of the entire UK Muslim community;\(^ {316}\) however, they have declared it is their duty to awaken Muslims from the slumber and false peace brought about by western ideology.\(^ {317}\)

According to one leader behind this Demand, there are four ways to achieve implementation of Islamic law: either via a collective Muslim rise in favor of it; or a strong Muslim lobby on foreign policy towards its implementation; collective choosing of a Shari'a-based system via elections; when all else fails, Muslims necessarily seek its implementation via conflict.\(^ {318}\) In the course of this paradigm,
democracy and freedom are an anathema to Islam and Shari'a, they are alienable concepts perceived as the fruits of Western ideological hegemony that tempt Muslims to relinquish their religion and cede their government to secularism, which is a form of corrupt man-made system incomparable with divine laws.

Through the Shari'a Zones project, the Islamists group seeks to establish safe neighborhoods where vigilante forces implement the rules set forth by their interpretation of Islamic law for many reasons. Firstly, they seek to prove to the rest of society that Islamic rules maintain safety and prevent unorthodox behavior associated with western practices such as gambling, prostitution and consumption of alcohol that bring about moral destruction of society, and cause man to drift away from the divine paved roads to heaven. Secondly, the zones are a tool through which Islam can be welcomed and spread around the UK. In doing so, the group believes that the zones will expand the more people welcome and join Islam, and would seep into one another to create autonomous Islamic Emirates. By the same logic, these emirates will grow to devour the -then would be- smaller remaining areas. Evidently, Islam will be the leading religion of the country. That will also accomplish the establishment of the Islamic Caliphate system.

Essentially, implementing both civil and criminal codes of Shari'a would be a step towards realizing the Islamization of the UK. Life within the Shari'a Zones could help provide a picture of a society under one such application of Shari'a. To allow the surpassing of one religion over all others is not just to grant favor to that particular religion, it is also to concede to its dictates regarding the status of other religious minorities. Nonetheless, this discussion will entertain the advancements and/or repercussions foretold in this scenario, in light of international human rights law; i.e. as applied by the state, not the group. However, in this context, the supporters of this demand both spoken for and unannounced until the outcome is clearer; have to be distinguished from the general Muslim community.

319 Id.
320 Id. PREVENT, Supra note 8, at 16.
321 Same leadership, same members, under different names; as a consequence of consecutive banning: Islam4UK, Muslims Against Crusades, United Ummah.
322 Exhibit A. Kern, Supra note 3.
323 Klein Interview, Supra note 317.
324 Kern, Supra note
325 Id.
326 Id.
327 Id. By the same derives and implementation, Islam4UK has encouraged the creation of Islam4America, Islam4Hind (India), Hizb ut-Tahrir (Party of Liberation) in Australia.
In several declarations by members of the group, non-Muslims were referred to as *kuffar*.\(^{328}\) In Arabic, *kufr* refers to the pitch-blackness of the night, and is used to refer to those of *no* religion; in English, it translates to *infidel*.\(^{329}\) When translated into "state attitude", there will be a clear-cut distinction between Muslims and non-Muslims. What is falsely attributed to *Islamic tolerance* is in fact, non-Islamic and intolerant. At the time of the Prophet -over 1400 years ago- Non-Muslims governed by Islamic rule were "allowed relatively tolerable conditions... Jews under the Ottoman Turks were often better off than Jews who lived under the European Christians... Christians, too, sometimes fled to Islam for religious tolerance."\(^{330}\) Then, they were referred to as *Dhimmis*;\(^{331}\) they were asked to pay taxes, *jizya*, in return for state protection over life and property.\(^{332}\) As such, non-Muslims were allowed to practice their religion; enjoy security provided for by the state; and conduct personal matters under the auspices of respective private laws, through churches, temples and so on.\(^{333}\) At the time, Jews were independent from the Shari'a law and sought legal/religious aid from *Halakha* courts.\(^{334}\) For all other religious affairs that involved restoring churches or building new ones, they had to acquire state approval;\(^{335}\) much like the aforementioned regulations set forth by English legal system. However, these Islamists have referred to non-Muslims as *kuffar*, equating them with people who disbelief the existence of a God; who are still granted their freedom of belief in Islam.\(^{336}\)

Furthermore, through the booklet, UK Muslims are *instructed* to boycott non-Muslims as part of their *overdue* rejection of *interfaith*: they should not have non-Muslim friends,\(^{337}\) or integrate in a non-Muslim society;\(^{338}\) including and not limited


\(^{330}\) David B. Kopel, *Dhimmitude and Disarmament*, 18 CRLJ 305 (October 18, 2007).

\(^{331}\) People of Dhimma means people of the holy books; Christians and Jews, and other monotheists. This was the status granted to non-Muslims residing in Islamic states. It was developed as a sociolegal status during the expansion of Islam in different parts of the world.


\(^{336}\) Interviews, *Supra* note 309. Helbawi provided proof for the freedom of faith, using support from the text, as one example for Islam's instruction to let disbelievers be: "The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve." (18:29)

\(^{337}\) PREVENT, *Supra* note 8, at art. 7.

\(^{338}\) Id., at art. 12.
to the celebration of Christmas and Easter. Evidently, any Muslim who have falsely fell under the spell of Western tricks about democracy, social cohesion, nationalism and unity, should be rehabilitated and remedied from this social and moral decline.

In campaigning for the Shari'a Zones, and, again, their interpretation, of Islamic law, members of the group paint a futuristic picture of a purely patriarchal society, as drawn by God himself, where women are mothers and housewives. One member's website sought to provide "evidence to prove a woman is for cooking and cleaning". In this picture, women are additionally required to have husband's permission to leave the house, refrain from using cosmetics, tabarujj, and have a male companion in order to leave the country, mehrem.

This scenario represents one perception of the good based on a restrictive application derived by jurists such as Sayyid Qutb, Mohammed Al-Nawawi and Gad El-Haq. It is a model where features of Western culture are viewed as "satanic values", and socially integrated Muslims are to be rehabilitated. In addition to this model's reflection of significant intolerance of the "other", it reflects the non-belief in behavioral freedom. The apparent dislike of Western practices has translated into their classification into Qutb's jahiliyya so much so that they will be tolerated. As such, Al-Tahtawi's behavioural freedom, along with cultural rights, will not be strong features, if at all, in the application of this scenario.

The demand to boycott non-Muslims is a hostile act that drives intolerance to inequality, which results in injustice. This inequality, however, will not apply to non-Muslims alone. After a thorough read of Anjem Choudary's vision of a new 'social system', it becomes clear that non-males will be regarded with inferiority as well; i.e. women. The description of women's role in this model represents a poor understanding of equality, and a strong approval of a social paradigmatic shift towards patriachism.

The non-integration with non-Muslims encourages adherents of such interpretation to become carriers of discriminatory ideologies that will ultimately, and

---

339 Id., at art. 11.
340 Id., at art. 15.
341 Id., at art. 12.
342 Id., at art. 1.
343 Id., at art. 16.
344 Choudary, Supra note 313.
345 Id.
346 Id.
347 Kern, Supra note 3. PREVENT, Supra note 8, at art. 16.
immediately, develop a strong negative impact on the social rights of non-Muslims. Unbeknownst to them, these carriers will initiate the achievement of a *mafsad* ("harm"), which is the exact opposite of Shari'a's *maqasid*:\textsuperscript{348} when state has failed to safeguard the individual's *faith*.

This restrictive interpretation presupposes a certain perception of good that does not necessarily await Abdel Raziq's notion of *agreement* of the Muslim community, certainly not the inferiorized non-Muslim community. Consequently, the ruler, possibly the *caliph* in this situation will rule as he sees fit. This has to remind of Al-Tahtawi's impression of rulers who ruled by *whim*, the lack of freedom that overwhelmed Egypt in the 19\textsuperscript{th} century, versus the justice and equity he witnessed in France at the time. Such a development will cause the deterioration of political and civil freedoms, the people will not be restricted in their political participation; and their rights as citizens will be diminished.

Seeing that rulers and caliphs of such states are tools who guide the masses to apply the will of God, invested in the Shari'a, and protect them from corrupt man-made laws, it becomes difficult, almost naïve, to expect this state to adhere by the universal provision of international human rights; which are essentially man-made laws.

This model promotes the imposition of restrictions on individual freedoms and the equal enjoyment of rights, along with the stripping of equal standing before the law and the subjective optimization of a religion to dominate others. In accordance with the amalgamation tailored in the previous chapter, the aforementioned model, if materialized, will introduce a new status quo where justice, equality, freedom and public interest will become alien principles.

X. The Compromise

Sparked by the intellectual and grounded suggestion of Dr. Rowan Williams in the 2008 lecture, the incorporation of the Shari'a *civil* code is the second scenario to be entertained. Although what Williams justified with evidence and a sense of liberal realism was widely unaccepted and critiqued by many, it still resonated with others who made the effort to emphasize and break down. One such attempt was a subsequent lecture by Lord Phillips. This scenario is an entertainment of both suggestions and concerns inspired by both lecturers' contribution to the debate on English legal tolerance of religious minorities; particularly Islam. While Williams

\textsuperscript{348} Opwis, *Supra* note 218, at188.
focused his lecture on the role of Shari'a in relation to British law in order to arrive at a midway position between being a citizen and a Muslim, Phillips questioned whether the law treats everyone equally to conclude that English law is pridefully secular, thus it would be difficult for Shari'a to be embraced further.

Dr. Williams started his lecture addressing the concerns and growing fears evoked by the challenges of the dominance of Shari'a. He explained how the universal principles of Shari'a are actualized, as understood by intellectuals and Islamic theologians, and not ready-made. What is actualized for him and others is that these principles are non-negotiable and that they assume the "voluntary consent or submission of the believer." In arguing for that conviction, Williams exclaimed the possibility of *ijtihad*, as opposed to the collation of traditional judgments. However, the actualizations do differ from one school to the other. The imposition of Shari'a on everyone and the persistence on the lack of harmony between Islamic law and IHRL is the understanding of some. Evidently, many Arab countries promote the belonging to a Muslim community along with belonging to political community; Williams himself spoke of Jordan and Morocco, and even the Pakistani state under Jinnah as evidence that memberships in both are not necessarily coterminous.

The call for the domination of Islam touches upon the debate regarding secularism v. religious rule. If both concepts are not coterminous, then it begs the ultimatum of choice. Where a conceptualization based on citizenship entails political hegemony, an Islamic-based one designates the divine covenant to be stand-alone. Based on the previous scenario, the latter choice is inapplicable for its infringements on entitlements; which are all provoked according to the actualization of some. Thus, Williams explained the importance to finding a "just and constructive relationship between Islamic law and the statutory law of the United Kingdom," especially for the sake of the common good. While the former choice may seem more appealing to religious minorities and other ethnic groups, it is vital to bear in mind that the laws instigated by this system will reflect the predisposition of legislators; whether they are tolerant, welcoming to diversity or discriminatory by nature.

In compromise of the two mutually exclusive monopolies, Williams touched upon the legitimization of Islamic principles; such as family law, matrimonial affairs

---

349 Williams, *Supra* note 308, at 1.
350 *Id.*
351 *Id.*
352 *Id.*
353 *Id.*
354 *Id.*
355 *Id.*
356 *Id.*
and financial relations. He also promoted transformative accommodation, which allows an individual to choose his or her own means of jurisdiction and mediation as well. This accommodation, he justified, combats social alienation such as ghettoism that might cause the disenfranchising of minorities.

While plausible suggestions, Lord Phillips found implications that beg reconsideration, both on the grounds of sufficient existing toleration, and legal enforceability. Overall, there are 30 parliamentary acts addressing discrimination alone in English law. Evidently, Muslims are recognized by religion, rather than race. The regulations concerning payment of mortgages have been modified twice so as not to offend Islamic principles; which regards to paying ribba ("interest"). Shari'a courts are allowed to mediate conflicts as a peaceful mean of settling disputes. Therefore, Lord Phillips believes that the UK government has already gone a long way to embrace its Muslim community and tailor to its needs.

On the legal side, Phillips points out implications regarding the failure to comply with suggested adjustments to English law. When judges dismiss the religious workings on society in the course of cases with a religious element, not only do they affect -in their rulings- the citizen's entitlements of rights, but also, fail to reinforce the position envisioned by the lawmakers. The injunction of Islamic law can be refuted on the merits that complying with some of its implications would create a divide between rights for citizens and rights for Muslims. Phillips provides the example of apostasy, for which the punishment can range from excommunication to death; depending on the definition and the applied school of thought. As such, penalties provided for in Shari'a cannot be enacted through English courts, and the sanctions befalling the failure to comply should rest within the hands of independent

357 Id.
358 Id., at 3.
359 Id.
360 PHILLIPS, Supra note 266, at 3.
361 Id., at 5.
362 Id., at 7.
363 Id.
364 Id., at 9.
365 Id., at 1-2.
366 Griffel, Supra note 145, at 401-2. Berger, Supra note 140, at 25. MAJID KHADDURI, THE ISLAMIC CONCEPTION OF JUSTICE 238-240 (John Hopkins University Press 2002) (1848) Apostates are considered malicious influence hence they are excommunicated. they are legally and socially announced as non-Muslims, and therefore, all their relations to other Muslims are disconnected. For one, they are separated from their spouses by force of law; and they are prohibited from entering into new marriages, even with a non-Muslim. Furthermore, their blood ties with their children are considered non-existent, to and from whom they are prohibited from passing or receiving inheritance – or to and from any Muslim relative.
367 Death was the choice of authorities succeeding the Prophet's death in response to those who went back on Islam as their religion.
judges. One simple answer would be to designate the governing laws of any contracts upon their establishment.\textsuperscript{368} At the core of it, Phillips refutes the application of the rules of one religion over others seeing that the law already safeguards tolerance and mutual respect among different people.\textsuperscript{369}

In essence, to arrive at a just and constructive relationship between both legal systems, it serves to consider providing judges with appropriate legal tools in order to decide on cases with a religious element. The doctrine of supplemental jurisdiction is one method to be considered in trying to reach a compromise for the demand of Shari'a incorporation. If instigated by the state, this doctrine would allow for the temporary extension of one court's jurisdiction over all other matters and claims related to the case before it.\textsuperscript{370} In this scenario, it plays to extend an English court's jurisdiction to Shari'a courts so as to have a bigger picture of a dispute before it. Moreover, religious know-how would be accessible to lawyers and judges. Instigating this doctrine would apply to all religious courts, hence, no scales would be tipped in favor of one minority over another.

XI. The Multicultural Fix

The current status quo in UK presents significant resistance to the demand. Muslims compromise only 4.7\% of the population,\textsuperscript{371} a significant mainstream of which appreciate the multifaith and multicultural nature of the British society, and do not support the Islamist call for Islamic dominion. Additionally, the interpretation offered by Islamists, as touched upon in the first scenario, has provoked numerous human rights activists to counter-demand the government, and rally the people, not subdue to such fundamentalist assertions.

Through reflections by representatives of the Muslim Council of Britain (MCB)\textsuperscript{372}, both emphasized the minute percentage of the Islamists behind such a demand.\textsuperscript{373} With a 1.6 Million Muslim residing in the UK,\textsuperscript{374} some concentrations are said to behave as Shari'a Zones, one example would be the Tower Hamlets area with a

\textsuperscript{368} PHILLIPS, Supra note 266, at 7.
\textsuperscript{369} Id.
\textsuperscript{370} Id.
\textsuperscript{371} Interviews, Supra note 316.
\textsuperscript{372} The Muslim Council of Britain (MSB) is a national representative Muslim umbrella body with over 500 affiliated national, regional and local organizations, mosques, charities and schools.
\textsuperscript{373} Interviews, Supra note 316.
71,000 Muslim residents. According to Helbawi, who assumed that all these residents approve of the Zones' project, they would compromise an insignificant 0.12% of the total population. While both acknowledge individual rights and entitlements, as Murad clarified, the demand called for is not a concern for the greater Muslim British majority.

While the board of the MCB did refrained from responding to the rallies and protests by members of the Islamist group, other Muslims took up a more pro-active response and counter-rallied. In response to Islam4UK, a group of Muslim youth sought to campaign against the imposition of a one interpretation of Shari'a, and also to promote UK multiculturalism. Mr. Inayat Bunglawala, founder of Muslims4UK, contributed a long list of writings to promote social cohesion and condemn the fundamentalist hands attempting to dissolve it. Furthermore, Muslims4UK have launched several counter-rallies to promote UK multicultural and multifaith society.

Of the most active humanitarian groups is the One Law for All campaign. Comprised of mostly feminist activists, the campaign contributes in whichever way they can to raise awareness on the human rights hazards and violations if Shari'a law was ever implemented. Spokesperson Ann-Marie Waters described:

"Our campaign is against the use of religious laws in family or criminal matters - we believe these areas fundamentally affect people's basic human rights and therefore should be conducted under a single, secular and democratically mandated legal system. This legal system should apply to all people - no distinctions or exceptions for religion or culture. If Muslims are to live their private lives in accordance with Shari'a, that is their right. However, as soon as they begin to impose Shari'a onto another person, it ceases to be a private matter and becomes a matter for public law.

With this significant counter movement, the current status quo seems approved of and promoted, not just by the Muslim community in the UK, but also by many factions and ideological organizations as well. On this side of the debate, the UK is perceived as a "world-leader in democracy and human rights… a citizen has a

---

375 Id.
376 Interviews, Supra note 316.
377 Id.
380 Email Correspondence with Ann Marie Waters, Spokesperson for One Law for All (March 8, 2012).
right to live their lives in accordance with their religion. They do not have a right to demand that a state impose that religion - or a specific interpretation of that religion - onto others. There seems to be strong appreciation of the diversity, justice, equality and freedom safeguarded and promoted by the state.

XII. An Assertion

Britain's first Muslim counter-extremism think-tank was co-founded by Ed Husain; a former Islamic fundamentalist who came to reject extremism after five years of being an operative and a recruiter. In a book titled, *The Islamist*, Husain narrated his own journey from a theatre-loving boy to an Islamic fundamentalist, then to a rejecter of such fundamentalism. The turning point at which Husain consciously rejected the belief system of five years, his observations and personal reflections will serve to help have a better understanding the psyche of the people promoting this demand. More so, they will help assert their misguided aim and their non-relevance to the true higher objectives of Islam.

Ed Husain was an active operative; he was recruited by the Young Muslim Organization, then moved to *Hizb ut-Tahrir* ("liberation party"). The moment Husain's strong belief in Islamic fundamentalism shook to its core was when an innocent's life was wasted: a Christian boy, a colleague of Husain's, lost his life at the hands of Islamists youths after a row over pool tables. The realization of the atmosphere he had helped create, where the value of life of a non-Muslim had become "of little consequence in attaining Muslim dominance." Husain believed the murder was "the direct result of *Hizb ut-Tahrir*’s ideas." Moreover, Husain blamed Omar Bakri Muahmmad for the poisonous *hizb* atmosphere created. The insignificant value of life reflected in this story was only supported by Husain's description of a discussion with a college professor who compared the Nazi ideology of a superior race with that of Islamic fundamentalism. At which point, Husain confessed in his book how Islamic fundamentalists (minimally, the ones he encountered) did not look

---

381 *Id.*
384 Young Muslim Organization was incepted in 1978, since then it has been working with Muslim youth to engage them socially and educationally and develop them into conscious committed Muslims. YMO UK aims to develop young people that are confident in their Deen ("religion") and active in their communities.
385 *Hizb ut-Tahrir* is a political party, belonging to an international Wahhabi Islamic political organization.
386 *Id.*, at 154.
387 *Id.*, at 153.
388 *Id.*, at 154.
389 *Id.*, at 54-5.
back the Holocaust as an atrocity. This notable sense of intellectual superiority, Husain described, was rooted in the message propagated by such Islamists: true Muslims are superior to all others faiths; including and not limited to partial Islamism (defined as ones accepting to abide by man-made laws and integrating with the non-Muslim society). In the teachings of those fundamentalists, Husain quoted, parents who did not believe in the goal of the organization were obstacles in achieving 'God's work'; with which ties should be severed.

In that context, non-Muslims are referred to as kuffar against which hatred was repeatedly incited. Husain reported being trained to connect local issues with global issues to promulgate a universal hatred towards Muslims and necessitate their unity and struggle against the hostile non-Muslim societies in the world:

"They slaughter us in Bosnia, expel us from our homes in Palestine, and refuse us the basic right to pray in Britain." I would say to students in the corridors. Again, just as the hizb had trained us, management [at college] was increasingly perceived as anti-Muslim and racist. At the same time we opened a second front to our confrontation, this time with Sikhs and Hindus.

On the inside, Husain shared two very notable observations. The first being the hypocrisy on segregation of the sexes: where a constitutional draft (prepared by a hizb) leader strictly forbade the mixing of the sexes in any context. Whereas, he reported the non-issue of this prescription in then-current hizb meetings; to the extent he questioned the prescription of behavior for Muslims that the hizb itself was not adhering to.

The other, and final, observation Husain made was his comparison between his identification to God, with Faye's (his love interest). Coming from the same social, cultural and education background as his family's, Faye was also a devout Muslim, untainted by 'Islamic' associations. Towards the end of his fifth year, Husain noted the difference in their perception of God: Faye's God was "close, loving, caring, facilitating, forgiving and merciful." Whereas Husain's God was "full of

390 Id.
391 Id., at 36. In this context, non-Muslims are referred to as kuffar.
392 Id., at 41. Husain quoted a YMO member.
393 Id., at 141.
394 Id., at 133.
395 Id.
396 Id., at 149.
397 Id.
XIII. Conclusion

Such enlightening experience included significant details that prelude to the mental and intellectual birth of an Islamic fundamentalist. The psyche of whom perceives Islam as a religion with no justice or equality, with no relevance to the value of life, with rationalized severance of lineage ties, with no space for freedom; all through a more rationalized sense of superiority and authority to others. All of which effectively falls short of the true understanding of Islam and of human rights.

Husain's experience is highlighted to serve as the concluding remarks to be put forth. Had the group promulgated a perception of 'good' that entailed more justice, tolerance, equality or mercy, their project would have been truly of Islamic nature. The problem lies in their misguided use of what is an essentially spiritual relationship, as a tool for political domination. This research had illustrated to different perceptions of Islam, one that adheres to justice and equality of all, and another employed to fill intellects and hearts with an artificial of superiority. A person who seeks to pollute others' perceptions with hatred, anger and presumed suffering, is not a Muslim; but a con artist.

At the core, the preliminary demand is far from viable. The last scenario, presumably, would be called for by entirely secularist counter movements such as One Law for All; understandably driven by concern over the repercussions of allowing such a rigid interpretation of Shari'a to apply -with particular emphasis to women and children. Of the three scenarios, the incorporation of both civil and criminal branches of Shari'a stands as highly unlikely seeing the small momentum behind the project. The examination of the British system, in terms of both law and society, has highlighted the progression towards the Compromise; i.e. the adoption the civil provisions of Shari'a: growing Islamic financial system and recognition of Sharia' courts.
Exhibit A