

Sanctity and shariah: Two Islamic modes of resolving disputes in today's England

John R Bowen

Amid the din of tabloid accusations that Britain now enforces “shariah law” has been lost the variety of ways in which British Muslim scholars have combined religious legitimacy, quasi-judicial procedures, and social outreach to create new kinds of Islamic institutions. I set out two such institutions here to give a sense of that variety. Together they illustrate the complex ways in which British Islamic institutions can and do articulate positions on registers of spirituality and legalism.

Muslim trajectories to England

Alone among countries in Western Europe, England has a wide range of highly-organized institutions that mediate or arbitrate conflicts among Muslims (Bano 2004; Bowen 2011). Only one of them, the Muslim Arbitration Tribunal, headquartered at the Hijaz College north of London, arbitrates in commercial or, less often, family conflicts.¹ Other institutions offer various forms of non-binding mediation, where the documents produced are not enforceable in civil court. Some of these institutions are quite informal, in that a relative or local imam may be called upon to resolve a dispute. But in many cases involving family issues, the parties may seek the aid of a Shariah Council. Muslims can easily find such Councils in London, Birmingham, Bradford, Manchester, and elsewhere. They provide downloadable forms on their web sites, charge set fees for service, and meet on scheduled days of the month.

These tribunals bring to England modes of resolving disputes that had been established in South Asia. That they were able to emerge and develop successfully in England is due in part to the concentrated nature of Muslim settlement in English cities and in part to the relative English receptivity to the formation of local religious associations. Most British Muslims come from South Asia, and in particular from the Mirpur district of Pakistani Kashmir and the Sylhet district of Bangladesh (Gardner 1995; Shaw 2000; Werbner 1990); these concentrations reproduce the use of home-country languages. Practices of cross-cousin marriage lead many families to arrange marriages between their Britain-born sons or daughters and close relatives back home. Religious tribunals fit relatively well with English political convictions as well,

insofar as religious norms are seen as legitimate sources for resolving community disputes, whether among Anglicans, Jews, or Muslims.

By the 1980s some Muslims began to see Islam-based mediation as a way of keeping things in the community and as a way of proclaiming allegiance to an increasingly beleaguered faith (Lewis 2002). I consider here two of the many Islamic creative experiments in institution-building in England. The first is a web of Sufi educational and social institutions with headquarters in the Midlands, which has gradually broadened its range of activities into legal and administrative domains. The second is a shariah council that draws on an England-wide network of scholars but is centered in London, and which has narrowed its writ to accomplishing a set of procedures designed to award religious divorces. The first seeks to array a wide range of activities under the umbrella of a Sufi saint's spirituality; the second seeks to justify a narrow set of procedures based on fair procedures and knowledge of Islamic jurisprudence.

The Hijaz umbrella of sanctity

Centered at the rural Hijaz College Islamic University at Nuneaton, in England's Midlands, the Hijaz Community encompasses a wide range of activities, including the school, an outreach program to Midlands-area troubled youth, the Muslim Insurance Company, and the Muslim Arbitration Tribunal (MAT). At the head of the Community is Shaykh Faiz al-Aqtab Siddiqi, acknowledged as *pir* and spiritual successor to his father, Muhammad Abdul Wahhab Siddiqi. The father's tomb and shrine (his *mazar* in Sufi terms) lies on the College grounds, and, to his followers, bathes the grounds in a blessed aura. When I attended the Hijaz annual Sufi gathering, the Blessed Summit, in July 2010, one man explained to me that I could follow events equally well anywhere on the 84 acres, "because when you enter the grounds you are in his domain," pointing to the mausoleum. "He looks after you."

The spiritual line focused on the shrine is a branch of the Naqshbandiya order (*tariqa*) that for generations lived in the village of Ghosuhr near Lahore (Geaves 2000 :125-31) and that traces its spiritual lineage through Shaykh Ahmad Sirhindi (d.1624). In 1972, Muhammad Abdul Wahhab Siddiqi moved to Britain and established a mosque in Coventry. He retained his base in the Midlands but traveled throughout Europe, where he developed followings of *murids*. He was particularly successful in the Netherlands, and I have met Dutch Sufis who have traveled to the Blessed Seat, as adepts call the Hijaz center, in order to seek consultation with the current

Shaykh, Faiz al-Siddiqi. Unlike other British Sufis, however, Muhammad Abdul Wahhab Siddiqi focused on promoting education along two tacks: the classical Islamic curriculum (the Dars al-Nizami) and British professional training. He was the first British Sufi to establish a religious school, in Coventry in 1982 (Geaves 2000:127), and sent his four sons into law and medicine. Three of them today cooperate in the Hijaz Community venture.

So committed was he to establishing what he saw as the moderate mainstream of Islam, the Ahl al-Sunna wal-Jamaah, in Britain that he asked that he be buried there rather than being returned to Pakistan. When he died, in 1994, his body was maintained at Coventry until a mausoleum could be built on the new land purchased in Nuneaton for the new College; this site seems to be still the only Sufi tomb shrine in Britain and it may be the only one in western Europe or North America (Geaves 2000: 129).

Today the College takes boys from 11 years onward, and offers GCSEs and A-levels in sciences and humanities alongside of a religious studies curriculum. It also offers a three-year BA in Islamic Law and Theology, and a four-year LLB course in Law, which prepares students for careers as Barristers or Solicitors (and which is recognized by the respective accreditation bodies), for which they take their examinations in London. Faiz al-Siddiqi is himself a barrister, and made English legal training the special brand of the College. One brother-in-law, Tauqir Ishaq, runs the College; his brothers Noor Siddiqi and Zain Siddiqi play leading roles in the broader network of activities; another brother-in-law, Maulana Arif, and several others serve as solicitors; and several law students play important roles. A number of other men and women live and work at the Hijaz site.

Although Shaykh Siddiqi has been asked to mediate in family conflicts for a long time, and continues to do so, it was in 2004-2005 that he and the other Hijaz leaders decided to create the Muslim Arbitration Tribunal to be able to resolve conflicts among Muslims in ways that would be contractually binding. These do not involve divorce, which cannot be arbitrated following the Arbitration Act provisions, but vary from disputes between rival mosque groups over leadership to conflicts within a small business. The presence of lawyers at Hijaz also means that the same person might mediate a family conflict, propose a religious divorce, and act as solicitor for a civil divorce. Although Shaykh Siddiqi insists that “we do not want to do the work of the Islamic shariah councils” and take on religious divorce work in a systematic way, the Hijaz site does

become a kind of full-service religion and law center for some young women, as in the first case discussed below.

Shaykh Siddiqi receives people on days when he is 'at home' in his spacious Hijaz office; he makes formal appointments to resolve disputes; and he travels to cities in the Midlands and North of England to hold similar sessions, whenever warranted by the volume of requests. These sessions are mainly consultations and requests for advice about general questions and sometimes business or legal affairs; formal arbitrations involve a small portion of his time. Nonetheless, on the basis of his movements the British tabloid press and several ill-informed think tanks claim that there are already dozens of MATs in England.

On a number of occasions, the Shaykh and his assistant, Zeenat Aslam, have arranged to have me interview those of these visitors who wished to speak with me after their consultation, as well as to set up interviews with parties to arbitrations. The two cases below give some idea of the tone of these processes, in which it is Sufi legitimacy more than any quasi-legal dimension that is on offer.

Dissolving Meena's marriage

On May 9, 2010, I interviewed Meena on the Hijaz campus, where she now lives. She was 24 years old. She grew up in Yorkshire, in the relatively small community of people with a Pakistani background. Her parents had arrived in England in the 1980s; "my mum is very stuck in Pakistani values". As with many young people born into these communities, Meena first spoke Punjabi and learned English only after she entered school. As she was growing up she saw that other girls had relationships with boys but she knew she would not be allowed to do so. She went on to university, reading law in Manchester.

Meena knew from when she was very little that she would marry one of her first cousins, because that was what girls around her had done. "I could figure it out and see that this one boy would be him." He had had no education and lived in Pakistan, near Jhelum; he was her mother's brother's son, and her mother wanted to help him; "she would send remittances; it is hard over there when you are here in England and she could repay favors this way". Meena's sister had managed to refuse all proffered spouses and married someone she had chosen. "Somehow she got away with it." In 2008, Meena was married off to the Pakistani cousin. They had only met once, three years prior to the marriage; since then they had chatted over the telephone, and she

tried unsuccessfully to find points in common. After the religious ceremony (*nikah*), held in Pakistan, they did not take the usual next step that completes the marriage process, of going to his house to eat and consummate the marriage (the *rukhsati*), but left for a three-day holiday in Dubai without the groom and continued on to England. The parents arranged for the cousin to get a visa to join Meena in England.

She continued to speak with her new husband by telephone. Although her family is very close knit, studying away from home allowed her to withstand the ensuing family pressure to make the marriage work. Two or three months after the *nikah*, she concluded that she and her cousin could not succeed as a couple. Her sister, who had already married “for love”, said that Meena could get divorced and that they could cancel the visa. In Manchester she met a woman who knew Shaykh Siddiqi and who brought her to Nuneaton to meet him. She quickly felt confidence in him; she could no longer trust her family, so whom could she now trust? Her sister had been her confident but now sided with her elder brother, and both insisted that she give the marriage a go and wait until the cousin did something wrong before divorcing. “But why should I wait if I know I cannot live with him?” Syaikh Siddiqi said she should move to London from Manchester to further escape pressure. He said that he could easily give her a religious divorce (*khulla*) because the marriage had not been consummated. The Hijaz solicitor Maulana Arif told her to cancel the cousin’s visa, and after some difficulty she was able to do so.

Meena did move to London and stayed there for three months but “life is too fast-paced there and I came from the North”. At that point she was invited to move to Nuneaton and live at Hijaz. MAT lawyers arranged to have their marriage dissolved in England and have a *khulla* divorce declared by the courts in Pakistan. For awhile she traveled regularly to London for law courses, but by 2012 she had abandoned the law studies and worked at MAT. She had, however, met and conducted a *nikâh* with another man. She decided not to register the new marriage as an English civil marriage, “because, why do that? We can always register it later if we wish; registering just complicates things.” She thinks it is better to marry someone in England; “people from abroad are just not compatible with us here.” Her cousin was illiterate, a farmer, and there is the problem of male pride: “for me, Islam is a box, it is not culture; he would have brought in Pakistani culture with its male dominance. They use rituals adopted from Hindus there.”

Cases such as Meena’s occur frequently in England, where a large proportion of young British Asians marry spouses still living in Pakistan or Bangladesh (Shaw 2000). It is these marriages

that provide the bulk of cases handled by the Islamic shariah councils. It is also similar to other cases involving Hijaz, in that she learned of Shaykh Siddiqi through a mutual friend, sought advice, and then was able to draw on the full-service dimension of the community, with a solicitor handling both the religious and the legal sides of her divorce, the insurance company providing her with employment, and the College lodging her.

Resolving the linen hire succession

On March 4th, 2010, I interviewed a young man who had asked for contractually binding arbitration from the MAT. Usman is of Bangladeshi origin, 26 years old but seemed older: “my father used to take me with him to meet people; it made me at ease with different people”. He owned a linen hire business in Birmingham, renting napkins and tablecloths to hotels and restaurants. His father ran this business for 19 years but died 16 months ago. “He was an important man in the community; those are hard shoes to fill.” Usman and his family had a 60% share in the business; another man who worked in it held 20%, and a third had 20% but was a silent partner. The second partner died around the time Usman’s father did, and that man’s son, Ridwan, a few years older than Usman, wanted to play a major role in the business and indeed previously had worked in a similar enterprise. But Usman refused: “I was selfish; I wanted to be the boss”.

From a friend who was working with the Hijaz community outreach program, Usman had heard about MAT. It did not mean much to him that they were Sufis; his father never had paid much attention to the difference between Deobandis, Sufis, and other streams of Islam, and Usman worshipped at a mosque from convenience; it happened to be a Deobadi one but he thought about worship as just an individual matter; “it is just me here”. Talking with his friend sparked his interest in learning about these differences. He would not have accepted guidance in business matters from the imam of the Deobandi mosque because that man thought about religion and business as separate things. He asked Ridwan what he thought about approaching the MAT, and Ridwan agreed. Indeed, the two of them had been childhood friends, had never argued, and felt awkward talking about financial matters. The generation before them would have asked community elders to mediate, “but for our generation, we don’t trust the elders, they don’t seem to have much experience or success, so how would they know?”

When they arrived at Hijaz, Fiaz Hassan, a barrister in training who works at the community, interviewed each of them separately and then in a joint meeting, and had them sign the contract indicating they would abide by the outcome. “I was not sure how things would come out but I said ‘I’ll just trust the system’.” Then they met with Shaykh Siddiqi. He had read the notes of their intake interview, summarized how he saw the case, and then asked them if they agreed. They did. At their final session, now with both Shaykh Siddiqi and Fiaz, the Shaykh told them of his decision, and then gave them guidance. He said they should have the same pay because they did equal work, and that Usman would be managing director, in charge of the company, while Ridwan would be a senior player, with a mission to develop new business and to carry out marketing, because these were his skills. Of course the profits would still be split along the lines of the shares (60/20/20), but there were no profits the previous year and small ones so far this year.

“Shaykh Siddiqi then gave us guidance, business and investment advice, but also said ‘if you run the business only for profit where then is the spiritual benefit?’ He asked us to give back to the community. He asked us to serve as role models for young people working in Hijaz community. There is no fee, he said, but that if they found a way to contribute to Hijaz that would be fine.”

Indeed, they donate a little bit from the business each month. And a person from Birmingham community outreach program of Hijaz has contacted him to ask him to mentor younger men, and he says he will once he gets his business together. Ridwan also said he would do this. In the meantime he goes to weekly events for these young people, plays badminton with them.

I asked if the experience was Islamic in some way.

“Shaykh Siddiqi explained how I had to offer my sister and mother their share of the inheritance, that it was their right. But how can you divide tangible assets? He suggested that we involve my mother more in the business; that she play a role. And it was a really good idea, because we are young, and she is an older figure in the Bangladeshi community; she has a presence, a PR person. And we thought the resolution was fair. Within the Asian community, we have all been brought up together, have faith in each

other, we did not want to screw each other over. I thought I would have a problem, but it has been alright.”

Now he chooses his mosque carefully, he thinks of himself as a Sunni and Sufi, “what you would call Barelvi [a South Asian form of Sufism]”. He worships at what he called “an ahl ul sunna mosque, which is also the closest one to me; it is also the only one open 24 hours”: the Ghamkol Sharif Masjid, on Golden Hillock Road in Birmingham. This mosque is a center for the other major Sufi figure in Birmingham, Sufi Abdullah (Geaves 2000: 118-25). Sufi Abdullah’s own pir, Hazrat Shah, or Zindapir, “the living pir”, is from Kohat, on Pakistan’s North-West Frontier (Werbner 2003).

Usman continued: “I am a very analytical thinker, always taking things apart. I have been reading books, looking at the shops around Birmingham. But I also recite the litany (*wirid*) of Shaykh Siddiqi’s father, and doing this helps me to turn off all this analytical thinking.” On the day we spoke, he had come to Hijaz with his wife to spend the day, and he intended to meditate at the mausoleum. “All this changed me. I had the beard before this, but now I feel more connected with God.”

Ten days later I followed Shaykh Siddiqi to Birmingham, where he held night-time “surgeries”, or open-hours for consultations. Usman was one of the many men and women gathered in the rooms belonging to the Muslim Insurance Company, and as people left their session with the Shaykh, he would ask them if they would be willing to speak with me. Most seemed to be. Among them was Ridwan, Usman’s partner in the linen hire business. I asked him about Shaykh Siddiqi.

“When I first heard about him, I thought it was a cult, these guys were growing beards and praying all the time, kind of weird. Two years like that and then I heard him speak, and he talked about purifying the heart, not about Islam per se, and six months later I am a father and I think, now I have responsibility and I want to get closer to God, so I come to Hijaz. When I saw Shaykh Siddiqi I told him I thought it seemed like a cult and he did not get mad but said, ‘I am sorry it seems like this, sometimes the brothers hang on every word, but they are supposed to think for themselves, not just come to me for everything.

If someone has run a business and asks me about how to do that I will say well what did you do before, did that work, why ask me?

Tonight I talked with Arif [the solicitor] about fiqh questions, I don't bring those to Shaykh Siddiqi because he so busy; I go to see Arif. I talk with Shaykh Siddiqi about matters of spirituality and also life's problems; every couple of months I come, I ask his advice on business also."

In this case Shaykh Siddiqi played the role of spiritual and also business advisor, and incidentally resolved the dispute between the two partners. Ridwan did not mention the arbitration; he had moved on to other things. Hijaz ended up recruiting two new acolytes as the outcome of the dispute, just as Meena became a member of the community. Disputes begin with practical concerns, but lead some individuals toward spirituality.

A cautionary note: I have come to know people who have approached Shaykh Siddiqi for advice through the intermediary of his staff. Thus I do not have a scientific sample of all those who make enquiries. But unlike the Islamic shariah council we are about to discuss, Hijaz is neither an office nor a council; it is a spiritual center with a full panoply of activities, the MAT being but one. The MAT acts in other ways as well: for example, in resolving a bitter dispute between two factions in the mosque at Walthamstow, in eastern London. In that case other actors played a more decisive role, including a non-Muslim policeman and a Muslim judge. But for those who approach Hijaz and Shaykh Siddiqi, the resolution gains its legitimacy from the spiritual status of the pir, and the sanctity offered by the tomb shrine.

The Shariah Council guarantee of procedure

The Islamic shariah councils carry out mediation in family disputes and award religious divorces (Bowen 2011). One of the largest councils today is the Islamic Shariah Council (ISC), London, which has offices in a large house on a quiet residential area of Leyton in the eastern London suburbs. Mediations may begin in a home or mosque, at the request of the husband or wife or family members, or at the Council office. If mediation fails, the case is brought to a formal meeting, including the monthly meetings held next to the large Regents Park Mosque in Central London. Six to ten Islamic scholars gather there to review case files and, when they have

enough information, grant divorces. The scholars come from Pakistan, Bangladesh, and Palestine, and they also rely on colleagues from Somalia, Sudan, and elsewhere to interview petitioners in their own languages. Among themselves, the scholars deliberate in English, Arabic, and sometimes in Urdu, depending on who is sitting at the table.

Each of these cases presents its own complicated history, but typically the wife initiates a divorce and complains of her husband's behavior. The couple might live north of London, perhaps in Manchester, Oldham, Leeds or Bradford. She is supposed to have initiated a civil divorce but many erroneously believe that if they were married in Pakistan or Bangladesh then they do not need to do request a civil divorce but that they will be completely divorced just by going to the Shariah Council. Often they only were married religiously. Before the formal proceedings, the Council will have tried to contact the husband by letter or phone, and tried to have a joint interview with husband and wife present. That effort usually fails, but someone, often one of the councilors, would have interviewed the wife, and delivered a report, together with supporting documents offered by one or the other of them. Frequently the husband is not in England. If one of the grounds for divorce is that they have been separated then they require proof in the form of two letters with witnesses. Sometimes they send back petitions lacking these letters.

According to the explicit rules of procedure adopted by the ISC, if the husband seeks a divorce, it is considered a talaq, and he will receive a certificate to that effect from the Council but must pay any outstanding mahr (dower) to his wife. If the wife seeks the divorce then it is considered a khulla, and she must return or renounce her mahr. Mahr may be quite substantial, and include money and gold. If her husband does not contest it then the divorce is given quickly; if he does contest it then it requires the full procedure, including a full deliberation.

As of 2011, the scholars generally insist on four things (Bowen 2011). First, they require that there be a civil divorce proceeding if the marriage was registered in the United Kingdom or conducted abroad. Although they do not necessarily wait for the completion of the civil divorce process to finalize the Islamic divorce, if a final divorce decree, the 'decree absolute', is granted, the councilors are likely to proceed quickly to granting the wife's request; they say that the marriage is over and there is little sense in prolonging its Islamic dimension. Councilors also wish to work in a way that complements the workings of the civil courts, in the hope of future closer linkages between the two bodies. They know of the existing collaboration between

Rabbinical tribunals and family courts based on the Divorce (Religious Marriages) Act (2002), which allows civil judges to suspend divorce proceedings between the decree nisi and the decree absolute (which mark the two stages of a civil divorce proceeding) if there is an ongoing religious divorce. The law was motivated by the observation that even after a civil divorce some Jewish men refused to grant their wives religious divorces. Currently the law only applies to Jewish proceedings, and in any case the issues facing Muslim women differ from those facing Jewish women. However, for some shariah councilors the law indicates that English courts might someday recognize their own judgments as having legal effect, and it leads them to value steps that would bring their own procedures closer to those followed by civil judges.

Secondly, the councilors require that the two parties have been separated for one year, though some councilors urge that there be a two-year separation if the divorce is contested. As with the first requirement, this rule is invoked for practical reasons, as a way of determining that the divorce request is serious. It is a lower bar to clear than are the two-year and five-year separation periods required for most divorces in English law (depending on whether the divorce is not, or is, contested by the respondent) but follows a similar logic.

Third, if the children live with the mother, and the father has indicated that he has difficulty getting access to them, they ask her to give an affidavit that she will allow him to see his children. In recent years the wife often swears to this undertaking in the presence of a solicitor. The ISC requires the undertaking in part to converge with what they think a family court would do in these circumstances, and in part because they consider it to be an Islamic norm that both parties be able to see their children. Some councilors believe that English family courts tend to give insufficient weight to the father's need to see his children and that consequently they need to pay particular attention to this issue.

Finally, they may ask the wife to return any mahr that she has already received. Usually they propose that she give it to the Council for safekeeping and notify the husband that he may come and collect it. If he does not respond in six months then they return it to her (or donate it to a charity in cases where she so requests). Often the wife has also received jewelry. Sometimes gold jewelry is clearly part of the mahr, and in those cases they require her to return it. Otherwise they make no ruling concerning its eventual disposition, on grounds that the jewelry and other goods given by one party to another around the time of the wedding obey local social logics of reciprocity and are not the responsibility of the Council.

Attesting separation

The Council changes procedures as councilors develop consensus around a particular issue. For example, councilors long have considered the couple's prior separation to be a critical element in establishing the seriousness and validity of the divorce request, but only in 2009 did they ask for written attestations from two people, each such attestation witnessed by two others. They justify this rule by invoking the rule's function, and by saying that when faced with multiple opinions from different schools of Islamic jurisprudence, the Council needs to establish a single, clear rule. As one scholar said, 'We want them to have been separated for a year, so that we are not hasty.' Councillors often review the differing opinions emanating from different Islamic legal schools, before re-validating their own rule as a workable compromise.² The councilors believe that the legitimacy of their outcomes, in the eyes of British officials, British Muslims, and even overseas judges, depends on maintaining transparent and consistently followed procedures.

These procedural rules are, however, the objects of continual discussion and revision. Often applying the rules require working against the wishes of one or both parties. Letters have to be written to both parties and the Council has to be convinced that they reached their destination, even if one party, usually the husband, does not want any part of the proceedings. Efforts have to be made to hold interviews and a joint meeting, but often the husband does not wish to attend and sometimes the wife, too, sees no reason to prolong the interviews since the marriage is so clearly over.

In January, 2010 I discussed the rule regarding proof of separation with the ISC chief clerk, Atif Matin:

"We have a rule that the woman has to prove separation of at least one year with two witnesses. Haitham [al-Haddad, a councilor] urged us to add this rule six to eight months ago. I wished they had not adopted the rule, because now I have to specify who does and does not count as a witness; it cannot be family members but perhaps those are the only people who know about the matter? English people, they say, 'We do not like to air dirty laundry' so they keep these things to themselves. Why do they need two people to attest to it? Well, when the scholars discussed this issue they said, well, judges require two

witnesses, and that is what you need for a talaq. [JRB: so it was a *qiyas* (analogy)?] Yes, a *qiyas*, so we have two witnesses here too.

Haitham insisted on this rule in cases where the husband has not responded to our letters. If he responds and does not contest the fact of separation, OK, but the other scholars were assuming that even without a response that they could tell from the case, from what the wife said, that there was separation, but perhaps, said Haitham, she is lying and she sneaks out and they have sex? There may be one case in 200 like this but now we have to make a general rule, and then that will just lead the one case to do some other trick.

[JRB: why require one year?] Well, the scholars said yesterday, that many jurists had different views about this: some said 60 years, some 10, some 5, some 1, and they took the easiest number. Those jurists' rulings had to do with the cases where the husband has disappeared, but they apply it to the length of separation.”

The following week this issue came up during the formal deliberations about a divorce petition. The wife had initiated proceedings with the ISC in June 2008, reporting that they already had been separated for six months. The husband refused the invitations of the ISC to attend a reconciliation session. She was told to begin the procedures to obtain a civil divorce, which she received (the decree absolute) in August 2009. The issue before the ISC was whether they had sufficient grounds to grant her a religious divorce. It is now January 27, 2010.

The scholar chairing the discussion of the case, Abu Sayeed, points out that the English courts grant a decree absolute if after six weeks the other party, here the husband, makes no response. But Haitham al-Haddad, the scholar who had been adamant about the need for proof of separation, objected to giving her the Islamic divorce right away. “We have not yet asked her to prove that they have been separated since that time, this is important.” The Council's clerk, Atif Matin, who was studying for his law degree, noted that the grant of the decree absolute proves that they have been separated, because English courts require that this be established. They continue the exchange, with two other scholars present, Suhaib Hasan and Khurram Bashir, joining in:

Haitham: “In so many cases, they say that they are separated but they meet from time to time [and have sex]; we can’t just act on emotions.”

Abu Sayeed: “They are living at different addresses.”

Haitham: “We have countless cases; here, she said [they separated] one year ago, and then we asked when they last had a relation and she said, two weeks ago. Because this will make our life easy...”

Abu Sayeed: “The recommendation is to end the marriage, so can we add that we do so if she provides independent evidence of separation.”

Suhaib Hasan: “Here is proof. In a July 2008 letter, the husband says `she took all my goods and did not speak to me since December; I am not allowed to see my son, I am required to pay child support, I do not want to divorce so I can see my son.”

Abu Sayeed: “Here I am going with Shaykh Haitham; there is still room for suspicion; perhaps they still sleep together.”

Khurram: “The husband himself says there is no contact [between them] and there is already a civil divorce; what else do you need? . . . Must we as judges try to prove [all] things that are not before our eyes?”

Abu Sayeed: “In these matters, we have to be strict [in following rules].”

Haitham: “The physical thing has not been established; we want physical evidence, we cannot say ‘this means’, we cannot assume that civil divorce is proof of separation. I admit that the letter proves that he admits that...”

The discussion continues and it becomes clear that Haitham is mainly concerned with making the general point and will allow the marriage to be dissolved; this action was taken by the Council. They remind themselves that they must be careful, and to that effect they cite an oft-quoted hadith that two of three judges will be in hellfire and only the third will make the correct decision.

Haitham’s concern is that the Council has to establish clear rules of proof; on this occasion he is less concerned about the basis for these rules in classical jurisprudence, although on other occasions they have discussed this issue as well. The others argue that the absence of such explicit attestations should not keep them from dissolving the marriage because (1) they can infer

from various statements that the couple has been separated for some time and (2) they are already divorced legally, so the Council should let them get on with their lives.

Who has initiated the divorce?

A similar issue of inference arises with respect to identifying the legal initiator of the religious divorce. If the husband initiated the procedure for a religious divorce at the ISC, or if he states he agrees with his wife's petition for divorce, then the divorce will be granted in near-automatic fashion. If the wife initiated the divorce procedure and the husband contests it then the Council begins the full procedure, which can take months and often over a year.

Often, however, there also was a civil marriage and the wife may have initiated a civil divorce proceedings. Should the Council infer anything from what occurs in the civil divorce proceedings, should they happen prior to the ISC deliberation? As Atif Matin, the ISC clerk, explained to me, the starting assumption is that if the husband initiated the civil divorce proceedings or if the wife did so but the husband did not contest the divorce, then he agrees to the religious divorce as well. But things are rarely so simple:

“Sometimes even if he did initiate it [civil divorce] he will not agree to a khulla, and he will say that he intended to divorce her only in civil fashion, that he did not formulate an intention [*niyya*] to give her a religious divorce, and so we have to give the wife's request the full formal examination: we have to contact the husband. And if then he asks for a full refund of mahr we will require it.”

These procedural rules sometimes lead to objections on the part of women seeking divorce. On one occasion, in February, 2010, I sat in on a consultation with Shaykh Suhaib Hasan. He was holding sessions at the Leyton mosque, the Masjid al Tawhid, as the ISC offices were undergoing renovation.

In the third case heard that afternoon, a young woman who was born in Pakistan but now lived in Canada came accompanied by a woman from Malaysia, a friend. The first woman had petitioned for civil divorce from her husband, who also had been born in Pakistan; he did not contest the divorce and now she had the decree absolute in hand. The previous May she had come to see Abu Sayeed and had asked him: “Now that I have my English divorce why can't I

get an Islamic one?” He had instructed her to begin the proceedings. She told Suhaib that she had never received the promised mahr but that he said he had paid it in full. They had a number of financial disputes that had been heard by the civil court.

Suhaib informed her that because he did not contest the civil divorce in court he should consent to an Islamic divorce, but also that he had the right to take back any mahr he had given her.

Suhaib: “Can he prove it [his claim that he had given her the mahr]? No? Well then just swear that you do not have it; will you do that?”

Petitioner: “Yes I will.”

Suhaib: “We are not required to write to him because he did not contest the [civil] divorce, but it is a matter of khulla, so he does not have to pay you the mahr.”

She then read aloud from the ISC web site where it says that if the husband does not contest then the civil divorce is Islamically valid. She asks why he does not have to pay the mahr he owes her. Suhaib responds by quoting the next part that if she comes to the council then it is a khulla. He reminds her what that means; that she loses the right to mahr. This goes back and forth until she turns to me and says: “You speak English, what does this mean?” She hands me the printout of the web site. It does indeed say both these things. I waffle and say that perhaps the ISC is saying that a woman has been freed of her marriage by an uncontested civil divorce but if she wants to undergo the ISC procedure then certain consequences would follow. She indicates her frustration with the whole procedure but says she will take the next step.

This woman had run into a particular complex dimension of the ISC’s procedures. Note that Suhaib was ready to take as proven that the wife had not received any mahr on the basis of her willingness to swear to that effect. He also was set to presume that the husband agreed to a khulla divorce because he had not contested the civil divorce. These two presumptions permitted Suhaib to not contact the husband. They could have been contested on procedural grounds by other scholars, who might have said (and have said regarding other cases): why should we believe the wife? And, as Atif Matin had explained to me, perhaps the husband did not intend to give the wife a khulla divorce as well as a civil one? Suhaib, however, tends to argue that if there is a civil divorce, the ISC should forthwith grant the khulla divorce, on grounds that it makes little sense to do anything else. (We already saw him take this position in the previous exchange among scholars.)

But Suhaib also reminded the petitioner that although the civil divorce allows her to get on with her life, if she wishes to complete the ISC procedures she will have to be willing to renounce any claim to mahr. One might find this in contradiction with the notion that she could be considered already Islamically divorced, as indicated on the web site. She so found it. But it is, essentially, a way for the ISC to forestall husbands' objections to their legitimacy. Husbands whom the ISC have divorced at their wives' behest often call up to berate the clerk, claiming that the ISC has no right to do so. They are less likely to protest if (1) there has been a civil divorce and (2) the ISC has said that they were free of the obligation to pay outstanding mahr.

Suhaib Hasan and, to some extent, the Islamic Shariah Council, take a relatively permissive stance regarding inferences to be drawn from the husband's actions. The presumptive procedural rules at play in the above example allow the Council to proceed as if no mahr had been paid and the husband did not contest the khulla. Their practical ability to maintain these presumptions rests on another rule, that once a woman begins a divorce action, it is presumed to be a khulla action, which will lead to her loss of mahr rights. These are presumptive and not definitive rules, in that the Council on each count can find to the contrary: that the mahr was paid, the husband opposes the granting of a khulla, and circumstances indicate that the woman should be paid (or not be directed to return) the mahr. Taken together, they have strategic value for the Council, in that they allow the ISC to grant the religious divorce more quickly and also to say to an irate (former) husband that he retains mahr rights.

Conclusions

The Hijaz community and the Islamic Shariah Council indicate two very different ways in which British Muslim religious entrepreneurs have articulated religiosity with legalism. The Hijaz community encompasses the Muslim Arbitration Tribunal; decisions are reached by the latter in the broader context of a Sufi network of education and spiritual practice. The result of this encompassment depends on the nature of the case. Meena, a young woman needing support, was brought into the fold. Usman, a young businessman, developed a stronger spiritual commitment. When the MAT has interviewed in disputes over mosque control, Shaykh Siddiqi has played on the two registers of the weight his word carries with ordinary mosque-goers and his knowledge of the relevant English law.

By contrast, the Islamic Shariah Council results from a narrowing of mandate. Formed in 1982 with the goal of treating a broad array of community problems, the ISC now focuses on matters of religious divorce, although the individual scholars give daily informal advice on a range of spiritual and social issues as broad as one finds at Hijaz. The ISC has become a tribunal, and indeed looks to the procedures found in English courts for some of its own rules. Its religious legitimacy is in the sphere of fiqh, and draws on the precedent of similar tribunals in operation in South Asia. Its credibility, though, depends on crafting procedures with a difficult set of clients in mind: warring wives and husbands, suspicious civil lawyers, and a substantial anti-Islamic portion of the tabloid-reading public.

These two institutions offer different services and largely address different publics. There is little or no ‘forum-shopping’ between them. Taken together, they illustrate how the development of juridical institutions in Britain can become religious in widely varying ways, emphasizing in the one case the importance of sanctity for resolving a conflict, and in the other the importance of procedural regularity for legitimating the work of a religious divorce tribunal.

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¹ Unless otherwise specified, information derives from fieldwork carried out in London, Birmingham, and Nuneaton between 2007 and 2011.

² There are various rules about separation prior to divorce that derive from the several legal schools, and the councilors often invoke these *madhhab*-specific rules, but the procedural rule that they follow is motivated by the general Islamic ethical norm described here.