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Legal Pluralisms, Legal Border Zones: Shar'ia Law and Trans-jurisdictional Migration in the United Kingdom

Abstract

The Shar'ia councils began as an informally operated arena for mediating and resolving familial disputes in accordance with the principles of Shar'ia law. This changed in 2008, when an application of the 1996 Arbitration Act allowed the Shar'ia councils' decisions to become legally binding. In this paper, I will discuss new possibilities for the conceiving of this legally pluralistic field in terms of a jurisdictional border zone, wherein legal agents engage in trans-jurisdictional migration in pursuit of the best outcome. Framing the Shar'ia councils in this light can uncover the ways in which British Muslims have been strongly incentivized to turn to the Shar'ia councils while engaging in forum shopping and trans-jurisdictional border crossings in pursuit of the best outcomes.

Key words: trans-jurisdictional migration, British Muslims, Shar'ia law

Introduction: British Muslims as Trans-jurisdictional Migrants

The British Shar'ia councils began as an informally, community-operated arena for mediating and resolving familial disputes in accordance with the principles of Shar'ia law. This changed in 2008, when an application of the 1996 Arbitration Act allowed the Shar'ia councils' decisions to become legally binding. There are now more than eighty such councils in the United Kingdom, empowered to issue legally--binding verdicts on cases concerning such matters as divorce, inheritance and child custody. Generally speaking, studies of these institutions, as well as of British Muslims' self-identified devotion to Islam or to Shar'ia law, have often been quantitative in nature and have thus failed to uncover the individual motivations or strategies at play when Muslims engage in forum shopping between Shar'ia law and state law. Alternatively, studies have treated acculturation as though it is a zero--sum game, wherein Muslims' use of mainstream institutions, legal or otherwise, is thought of as automatically accompanied by an erosion in ethnically-based religio--cultural practices and vice versa. This assumption, however, is in contrast to evidence that British Muslims are skilled bicultural navigators, able to transit easily and fluidly between a variety of social fields and normative orderings in pursuit of the most advantageous social and financial outcomes.

Therefore, while quantitative analyses and macro-analyses are useful for answering questions about a given group's broad tendencies or characteristics, I propose that understanding British Muslims' use of the Shar'ia councils and their adherence to Shar'ia law in general, requires a different framing. In this paper, I conceive of British Muslims as trans-jurisdictional migrants, wherein individual legal agents, highly aware of the multiple financial, cultural and social stakes, engage in forum shopping between mainstream institutions and Shar'ia-based institutions as they pursue the most favorable outcome. Much like transborder migrants "become a social force in reshaping the workings of legal domains in more than one state" (Glick et al. 2008, p. 27), British Muslim trans-jurisdictional migrants live their lives in more than one social, cultural and legal frame, manipulating and benefitting from participation therein.

In this paper, I will first provide a brief overview of the literature as I lay out the relevant theoretical framework. I will then provide a necessarily concise overview of Muslim migration to Britain and of the salient features of Shar'ia law and mainstream English jurisprudence. Finally, I will provide a case study before moving on to some concluding notes and observations.

Spatializing Law and the Legal Actor

The 1980s and 1990s saw an emerging body of literature devoted to the transnational movement of legal forums and the degree to which they are subsumed or appropriated by the relevant state actor (Griffiths 1986, p. 5); their analysis, however, "[did] not examine how these social spaces are grounded in physical space in any systematic way" (Benda-Beckmann 2009, p. 2). More recently, scholars of law and legal anthropology have come to interrogate the varying ways in which space, physical setting and the law are related; this includes literature that analyzes the "legal representation of space" and how it is seen as "constituted by – and in turn, constituted of – complex, normatively charged and often competing visions of social life and political life under the law" (Benda-Beckmann 2009, p. 3). Framing this plural legal field in terms of space can therefore provide not only a discursive frame for understanding and situating the actions of the legal subject, but also allows us to tease out the calculations and strategies undertaken by the legal subject as an individual. We can therefore conceive of these contiguous legal regimes as constitutive of a legal border zone, wherein the legal subject, a possessive of multiple identities and constantly generating a "critical biography of meaning" (Kleinhans 1997, p. 42) becomes a trans-jurisdictional migrant, strategically traversing the border between forums to secure the best outcome and shaping the legal processes of both forums as s/he does so.

In order to conceive of our trans-jurisdictional migrant as a legal subject, however, we must contextualize her within the framework of a critical legal pluralism. A critical legal pluralism, Kleinhans and Macdonald argue, is one that challenges "the social-scientific legal pluralism of reified cultures and communities… [imagining] legal subjects as «law inventing» and not merely «law abiding»" (Kleinhans 1997, p. 26). More specifically, in this methodological framework, the subjects are actively

able to influence law, however understood and are regarded as "legal authorities" in their own right. This authority stems in part from their ability to construct and transform law through practice and in part through the self-generation of normativity; legal subjects are endowed with the ability, if not responsibility, to "participate in the multiple normative communities by which they recognize and create their own legal subjectivity" (Kleinhans 1997, p. 38). This occurs in an arena wherein legal fields are not necessarily separate, cognitively or otherwise (Kleinhans 1997, p. 38), making engagement with state law and Shar'ia law antithetical to that of a zero-sum game. In other words, in this framework, a legal actor's self-identified adherence to Shar'ia law should not necessarily be constitutive of a corresponding disinclination towards mainstream legal institutions. Instead, British Muslims easily navigate between jurisdictional fields, existing in a legal frontier or border zone.

To be sure, defining the "border zone" or "frontier zone" in abstract terms or otherwise is fraught with challenges, given the plethora of applications and conceptions of these terms. For example, in their discussion of the American border during the era of Manifest Destiny, Leonard Thompson and Howard Lamar suggest that the frontier could be understood as "not a boundary or line, but as a territory or zone of interpenetration between two previously distinct societies" (Citino 2001, p. 678); alternatively, Adelman and Aron describe the frontier zone as a "meeting place of peoples in which geographic and cultural borders were not clearly defined" (Citino 2001, p. 678).

For the purpose of this exercise, however, I conceive of the border as a zone of fluidity – cultural, national and otherwise – unfettered from a physical connection to a particular political territory. In her treatment of the Mexican-American border, for example, Gloria Anzaldua extends the idea of the borderlands to any space wherein "two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy"; Daphne Berdahl, writing of the German borderland, writes of a "transitional zone wherein identity can be particularly fluid; it is a place of intense clarity as well as complicated ambiguity" (Berdahl 1999, p. 141). This, she suggests, is the paradox of the borderland.

This brings us once again to the notion of migration, albeit to a type of border--crossing that is jurisdictional, rather than political/territorial. In her discussion of migrants' transnational connections, Glick Schiller proposed the concept of the transborder citizen, wherein subjects lived their lives across the border of two or more nation states, participating in the normative regime, legal and institutional system and political practices of those states (Glick et al. 2008, p. 27). In doing so, transborder citizens claimed the rights and privileges from government, but "claim and act on a relationship to more than one government", engaging in the "multiple experiences of living within plural laws, customs and values" (Glick et al. 2008, p. 27). By disconnecting the law of the land from the state's physical territory, British Muslims become trans-jurisdictional migrants, reshaping the legal domains in the same state.

In our case study, the "dynamic, creative [legal] subject" (Kleinhans 1997, p. 45) engages in a complex process of "narrative collection" when confronted with

internormative conflict, engaging in a heuristic process and in order to strategize and engage with his/her "multiplicity of selves" (Kleinhans 1997, p. 45) in this multiplicity of frameworks. Understanding the narratives behind this trans-jurisdictional border crossing in terms of its cultural, financial and social incentives can, as Brian Z. Tamanaha advises, help us interrogate the existence of Shar'ia law in the UK "in ways that facilitate the observation and analysis of what appears to be interesting and important"; additionally it can highlight the legal subject's "active agency" (Kleinhans 1997, p. 45) in navigating through these jurisdictional orders in pursuit of the best outcome.

In order to interrogate the U.K.'s legally pluralistic field within this framework, I will now provide a brief history of Muslim migration to Britain and the creation of the Shar'ia councils before transitioning to an example of our "narrative collection" as it is practiced by British Muslim legal subjects.

Islam and Muslims in the United Kingdom: Background and Brief Review of the Literature

The 2001 census reports that there were over 1,500,000 Muslims living in Great Britain, approximately two-thirds of which are South Asian from Pakistan, Bangladesh and India (Peach 2003, p. 629). To understand how this came to be, one must remember that prior to 1948, British subjects had faced few formal restrictions when trying to travel between countries within the Empire. The post-World War II wave of economic Muslim migrants to Britain taking advantage of this relative freedom were primarily from India, drawn to Britain by the post-war reconstruction and its resulting demand for manual laborers (Poynting 2007, p. 64). At the time, the British government encouraged the emigration of Indians en masse in recognition of its need for able-bodied men who were willing to work for low wages (Ansari 2004, p. 246); even so, migration from former British colonies quickly became a source of anxiety for the British government, given perceived tensions between indigenous whites and newly-arrived ethnic groups from the global south (Ansari 2004, p. 148).

British Islam before the mid 1960s was therefore a tiny religion with a small handful of institutions, practiced in English homes, garages and terraces; spiritual nourishment came via traveling Imams who would go back and forth between South Asia and the United Kingdom, providing religious education along with a link to behavioral and social norms from the migrant sending countries (Mandaville 2009, p. 149).

Increasingly restrictive migration legislation between 1948 and 1981 led to an influx of non-white, primarily non-Christian migrants from Bangladesh, Kenya, Morocco and Malaysia joining family members already in Britain (Haddad 2002, p. 20). As a result, the 1970s and 1980s saw a growth in the construction of mosques, Islamic cultural centers and informal neighborhood Shar'ia councils as first and second generation of migrants from the global south began focusing on community- and institution-building in major cities in the U.K. (Haddad 2002, p. 20).

Many sociological models predicted that Muslims' self-identified religiosity, as well as their use of the Shar'ia councils, would discontinue as they became more acculturated to life in the West, however, this has overwhelmingly not been the case. A 2007 Telegraph poll showed that nearly 40% of Muslims in the U.K. held Shar'ia law in higher esteem than state law (Meehan, p. 2007), and there is evidence that Muslim couples in England often skip the formality of registering their marriage with the state, or conversely, view the civil portion of the marriage as a ceremony associated less with marriage than engagement (Yilmaz 2005, p. 73–76). The assertion that Muslims would give up displays of religiosity, however, is premised on the idea that biculturalism is a zero-sum game, wherein acculturation to mainstream culture is accompanied by a corresponding erosion of ties to one's ethno-cultural practices and identity; even so, it is an assumption upon which many arguments have been based.

Ihsan Yilmaz, for example, argues that the persistence of Islam and the existence of Shar'ia-based law is a form of active resistance to a secular society whose social and cultural organization appears to lack virtue or values (Yilmaz 2005, p. 57). Furthermore, he argues, Islam is the shared value around which communities from different parts of the world have coalesced upon arriving in the U.K.; this type of chain-migration that has led to the erosion of national or ethnic ties and the primacy of a religious identity (Yilmaz 2005, p. 156–157).

The notion that Muslim religio-cultural ethnic enclaves are organized by religious, rather than national ties, is disputed; even so, scholarship of these religio--cultural enclaves frequently proceeds with the assumption that "Muslim" is a meaningful category of analysis. A study conducted in 2008 by the Policy Studies Institute, for example, which was based on data gathered in 1993–1994, determined that the percentage of Muslims having a sense of "intense" religious identity was roughly two times that of non-Muslim ethnic minorities in Britain; Muslims also spoke English at home or with friends at a significantly lower percentage than non-Muslim minorities and were twice as likely to have an arranged marriage (Bisin 2008, p. 445–446). Muslims were also less educated than non-Muslims, had a lower household income and were twice as likely to be unemployed (Bisin 2008, p. 445–456). The data, however, did not indicate whether the Muslims surveyed were Pakistani, Bangladeshi, Moroccan or Indian, which, to British geographer Ceri Peach, may be a problem.

Ceri Peach agrees that "Islam" is not necessarily a useful category of analysis, positing that the sending country, rather than religiosity, political inclination or transnational ties, is of primary usefulness when devising a meaningful analytical category with which to study assimilation and acculturation. In his article about the 2001 census, for example, Peach highlights differences along the lines of national origin. Bangladeshis, for example, are far more likely than Indian Muslims to rely on social housing and other forms of government aid, challenging the wisdom of reducing Bangladeshis, Pakistanis and Indians to the monolithic category of "Muslim" (Peach 2006, p. 637–638).

Still, the British Muslim tendency is for self-identify according to one's religion, rather than "race" or nationality. This is a tendency that does not erode in diaspora as quickly as models would predict; nor does the Muslims' inclination to view

"private" matters as outside the reach of the state and therefore best addressed through Shar'ia law. Even so, problems exist with using "Muslim" or "Islam" as a methodological framework or a category of analysis, given the aforementioned different rates of achievement between Bangladeshi, Pakistani and Indian British Muslims. Moreover, as Roger Ballard (2002) has demonstrated, there is a rich diversity of religio-cultural practices and identities that can be teased out from the otherwise monolithic label of "British Muslim" or "British Islam".

Given, however, that the challenges in engaging in macro-analytical surveys have come to the fore, I shall now turn to the "narrative collections" that inform the individual British Muslims' decision to migrate between jurisdictions, engaging in a sort of legal arbitrage in pursuit of the best outcome. Such a methodology is, admittedly, not without challenges; the main points, however, should be made evident. These are that: 1. British Muslims should be thought of as skilled legal agents, possessive of a multiplicity of identities that allows them to navigate fluidly through a variety of social and legal settings; this is in contrast to the literature that portrays them as turning to Shar'ia councils out of a resistance to acculturation or assimilation; 2. Engaging with mainstream legal institutions is not necessarily accompanied by an erosion of ties to the Shar'ia-based arena; acculturation is not a zero-sum game; 3. There are significant benefits associated with the simultaneous use of Shar'ia law and state law. The presence of these benefits encourages trans-jurisdictional migration in pursuit of the most advantageous outcome.

In order to understand the benefits associated with the use of Shar'ia law, as well as the motivations accompanying this trans-jurisdictional migration, a summary of the salient features of English and Shar'ia law is necessary.

The Trans-jurisdictional Border: Narrative Collections and Heuristic Processes

A detailed assessment of either Shar'ia law or English family law is outside of the scope of this paper; what will follow is a summary of their relevant features. This highlights the narrative threads, challenges, incentives and identities that the legal subject will encounter when engaging in trans-jurisdictional migration from Shar'ia law to English law.

Islam was revolutionary in that it granted legal personhood to women, an extremely progressive notion in the seventh century Arabia, where women had previously been treated as chattel and femicide and female infanticide were not uncommon, nor frowned upon. In the mainstream schools of Islamic jurisprudence, women are therefore independently able to enter into marriage contracts. In general, the only formalities attached to marriage in its civil sense are that the offer of marriage is accepted by the wife within the presence of at least two witnesses and that none of the witnesses must be bound to keep silent about the existence of the marriage. Additionally important is that the bride receives a *mehr*, which will be discussed and explained in detail.

In English law, there is, for all practical purposes, only one way of obtaining a divorce, but in Shar'ia, there are several. Broadly outlined, these include *talaq*, or unilateral repudiation on the part of the husband and *khul*, or *khul'a,* which is

the way in which the wife initiates divorce. *Talaq* can be further broken down as well: *ahsan talaq*, which takes place when the man initiates divorce at the time of the woman's *tuhr*, meaning the time when she is between menstrual periods and they must refrain from sexual intercourse (Thompson, Yunus 2007, p. 367). After she is initially *talaq'd* during the *tuhr*, the couple must then wait three menstrual cycles (a time referred to as *iddah*), before the divorce is finalized, assuming that the husband does not revoke his request (Thompson, Yunus 2007, p. 368). This is to make sure that the wife and child are provided for in the event that she has become pregnant and to foreclose the possibility that disputes over paternity arise. *Hasan talaq* takes place during three consecutive lengths of time when the wife is not menstruating and the husband has the option of revoking his request until he pronounces it the last time (Thompson, Yunus 2007, p. 368). The "triple *talaq*" is when the husband simply announces to the woman that he divorces her three times in a row; it is considered to be in poor taste by some communities, but is supported by Shar'ia law just the same (Thompson, Yunus 2007, p. 367).

The *mehr* (sometimes written as *mahr*) is an integral part of the Islamic marriage contract and the term is often translated to mean "dower" or "bride price" in English; however, each of these are a poor rendering of the term. "Marriage portion" is perhaps the most accurate translation. The *mehr* is a gift given by the husband to the bride to signify his commitment to her, his interest in starting a family and his ability to plan for the future. It is a sum in the marriage contract to which both parties must agree and the bride is permitted to appoint a *wali*, or advocate of her choosing, in order to assist her in negotiating this sum. The wife is not expected to use her *mehr* to buy items for home, care for children, finance any aspect of marital or family life, use it to pay for her own upkeep while living with her husband or to pay off any of her husband's debts and she cannot be forced to do so (Thompson, Yunus 2007, p. 364). In fact, men can be jailed for denying the deferred *mehr*, which is treated like a debt in some Islamic countries (Thompson, Yunus 2007, p. 364). In every situation wherein she is *talaq'd*, the woman is entitled to keep her deferred *mehr* in its entirety as long as the marriage has been consumed.

Part of the *mehr* is given at the time of the marriage and the other part, or deferred *mehr*, is to be given if the couple separates or divorces through the husband's initiation of *talaq*, his death or possibly through *khul'a* if the husband fails to meet certain obligations that have been outlined in the marriage contract. However, if the woman initiates *khul'a* and the husband can prove that he has performed his marital duties and adhered to the terms of the marriage contract, she can lose her deferred *mehr* (Thompson, Yunus 2007, p. 365). *Khu'la*, however, is divorce at the request of the wife with the agreement of the husband. Factors such as the length of the marriage, the reasons for her request for divorce and the husband's behavior during the marriage have influence on whether or not the wife must surrender her deferred *mehr* upon initiating divorce.

The *mehr* is only one issue that Muslims face in dealing with a divorce in the British legal system, which has long been flummoxed by the variety of options present in Islamic divorce. For example, 1971 legislation declared that the Islamic *talaq* could be recognized only if both parties had been married in countries that

recognized such a divorce, but this failed to take triple *talaq*s into account since they typically are not part of judicial proceedings (Thompson, Yunus 2007, p. 391). The 1986 amendment to the Divorce and Legal Separations Act attempted to rectify confusion regarding divorce, but it still only recognized the triple *talaq* under a very specific set of circumstances (Thompson, Yunus 2007, p. 391).

Problems with enforcement of the marriage contract pose serious challenges to Muslim women as the British legal system only allows for divorce under a specific set of circumstances and does not honor pre- or ante-nuptial agreements. Although there are several instances of British courts attempting to account for the cultural nuances of Muslim petitioners, this stance on pre- and ante-nuptial agreements potentially compromises the ability to enforce payment of the deferred *mehr*.

The reluctance to honor pre-nuptial agreements stems from fundamental differences in how Christians and Muslims regard marriage. As established by the Matrimonial Causes Act of 1973, the British court is not bound by a prenuptial (also called antenuptial) agreement even if it is considered a legal and binding contract in the country where it was made. Thus, as Thorpe J. wrote and has been cited in numerous cases where a prenuptial agreement is in play: "Are antenuptial agreements as a class specifically enforceable? The attitude of the English Courts to antenuptial agreements […] has always been that they are not enforceable. The difference between an antenuptial settlement and an antenuptial contract or agreement is that the former seeks to regulate the financial affairs of the spouse on and during their marriage. It does not contemplate the dissolution of the marriage. *By contrast, an agreement made prior to marriage which contemplates the steps the parties will take in the event of divorce or separation is perceived as being contrary to public policy as it undermines the concept of marriage as a life-long union* [emphasis K.B.]. Although held to be unenforceable, the Courts have accepted that antenuptial agreements may have *evidential weight* [emphasis K.B.] when the terms of the agreement are relevant to an issue before the Court in subsequent proceedings for divorce" (Great Britain Law Comission 2011, p. 42).

This does not mean, however, that courts have completely ignored the cultural context of marriage, or the religious values of the respondents. "[…] When carrying out the exercise under s[ection] 25 of the Matrimonial Causes Act 1973 in a case involving a family with *only a secondary attachment* [emphasis K.B.] to the English jurisdiction and culture, an English judge should give due weight to the primary cultural factors and not ignore the differential between what the wife might anticipate from a determination in England as opposed to a determination in the alternative jurisdiction, including that as one of "the circumstances of the case". […] It is my view that this rationale applies to an application for full ancillary relief [alimony, or maintenance]" (Baron 2004).

While the marriage contracts are given theoretical weight within a divorce proceeding, the reality is that judges have frequently failed to award women the full amount of the *mehr* to which they are entitled. Rights in Islamic jurisprudence are often extremely gendered; women's rights are therefore often protected in the framework of *wives'* rights or mothers' rights. The result is a legal system wherein Muslim women were often entitled to certain assets upon divorcing but prior to

the 2008 decision to make the Shar'ia councils legally binding, they were lacking any mechanism to enforce this entitlement. Women marrying both in the mosque and in the civic sense additionally risked the possibility that they could one day be divorced in the eyes of the British legal system, but not their own communities and would not only be unable to collect the deferred *mehr*, but unable to remarry. Skipping the burdens of civil marriage marrying solely in the religious sense, however, puts women in the position of being legally unmarried and thus bereft of any state protection in the event of divorce or resulting disputes regarding retirement pensions, inheritance or alimony.

In conceiving of this legally-pluralistic arena in terms of a border zone, filled with individual, legal agents, we can understand how subjects "construct and are constructed by state society and community through their relations with each other" (Kleinhans 1997, p. 43), thus revealing the complex strategies, identities and narratives from which individual actors draw when migrating from one jurisdictional zone to another.

The Case of the Missing Pound: Shar'ia Law in a Legal Border Zone

In the case of Ali vs. Ali 2000, the *mehr*, as stipulated by the marriage contract, was to be £30,001 (Menski 2002, p. 6). Mr. Ali attempted to divorce his wife through the English court a few months after marrying her, although he did not issue her a *talaq*, triple or otherwise (Menski 2002, p. 7). Mr. Ali's wife, however, cross-petitioned the court to refuse his request for divorce until he paid her the *mehr*, however "in the High Court in London, the husband's defense was that the wife's claim was unreasonable and should be thrown out. First of all, Mr. Ali denied that he had already given his wife a *talaq*, a Muslim divorce. But whatever he claimed, his action in approaching the English court for a divorce clearly amounted to divorce and thus triggered off the wife's claim for her *mahr*. However hard the husband tried, he could not claim that his wife was divorcing him, which would have meant that she would have lost her claim to the dower" (Menski 2002, p. 8).

Furthermore, he pointed out that British family law would not have awarded such a sum of money to a professional woman who had been married for only a few months and did not have any children (Menski 2002, p. 7). Under English law, the wife would not have been entitled to any financial relief, much less £30,001; under Shar'ia law, however, she was. Ultimately, the judge, aided in his decision by an expert on Shar'ia law, awarded the woman £30,000 (Menski 2002, p. 7), thereby accomplishing several things at once: he protected the woman's interests, he foreclosed on the possibility that Muslims in Britain would lose complete faith in the British legal system and he sent a signal to Muslim men that they could not expect to make and break promises within the context of the wedding contract without any repercussions (Menski 2002, p. 7). The omission of the missing pound, however, is crucial in that it allowed him to avoid enforcing the *mehr* and thereby did not set any sort of precedent that Muslim marriage contracts, or any other pre-nuptial agreement in general, would be upheld in British courts.

This is but one example of British Muslims' bicultural fluency, wherein prior to the 2008 decision, men found ways to divorce in British courts so that they would be unmarried in the civil sense, but still married in the religious sense, thus avoiding payment of the *mehr*. Before the Shar'ia councils became legally binding, women had to also engage in similar calculations, lest they become divorced in the civil instead of the religious sense. This would leave a woman in a limping marriage, unable to obtain the *mehr*, but in a state of limbo wherein she is unable to exist as an unmarried woman within the eyes of her community.

Examination of this plural legal field on the macro-level has produced analysis interrogating this struggle over cultural borders, the extent to which they are acknowledged and codified in law and the ensuing implications for structures of power, identity, assimilation and possibilities for women. The examination of this narrative in terms of its individual actors, however, allows us to critically examine the strategies undertaken by each legal actor as he/she engages in a sort of legal arbitrage in order to ensure the best possible outcome.

Concluding Notes and Observations

As aforementioned, literature on the British Islam in general and on Shar'ia law in particular often frames self-identified religiosity and its concomitant adherence to Shar'ia law, as indicative of an unwillingness to become a part of the British mainstream society. This is not to say that there are no scholars working on Shar'ia law in the United Kingdom as a legal system, or engaging in studies regarding British Muslims' biculturalism and legal forum shopping. Even so, Shar'ia law in post-colonial, diasporic settings remains under-theorized and under-explored, particularly in terms of its function as a legal system.

As Prakash Shah (2005) and Samia Bano (2007) point out, the positivist orientation of European law leads to a discussion of "culture", "customs" or "religions" instead of "law" when discussing South Asian communities, placing religio-cultural preferences outside of "legal" matters. This means that behaviors associated with Islam are rendered as optional, if not intrusive and thus evidence of counter-assimilative tendencies are treated rather as "law" or as sincerely held beliefs. Additionally, the overwhelming perception that Shar'ia law is inherently detrimental to women might discourage researchers from embarking on any investigation premised on any assumption to the contrary. As demonstrated, however, British Muslim women have benefitted tremendously from their ability to manipulate the legal field; the borderzone in which Mrs. Ali found herself was wherein English law came within a hair's breadth of applying Shar'ia law to her advantage and to the advantage of other Muslim women.

Conceptualizing British Muslims as legal agents, who make informed decisions to engage in trans-jurisdictional migration, can illuminate our understanding of diasporic communities in general and of British Muslims in particular.

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Streszczenie

Rady Szariatu powstały jako nieformalna płaszczyzna mediacji i rozwiązywania sporów rodzinnych według zasad szariatu. Zmiany nastąpiły w 2008 roku, kiedy zastosowanie Ustawy arbitrażowej z 1996 r. nadało decyzjom Rad Szariatu moc prawną. Artykuł rozważa możliwość nowego ujęcia tego pluralistycznego pola prawnego w kategoriach jurysdykcyjnego pogranicza, w obrębie którego prawnicy, dążąc do najlepszych wyników, uciekają się do trans-jurysdykcyjnej migracji. Ujmując Rady Szariatu w takim świetle można odkryć mechanizmy stwarzające wśród brytyjskich muzułmanów silną motywację, aby zwracać się do Rad Szariatu oraz przekraczać granice trans-jurydyczne w poszukiwaniu najlepszych rozstrzygnięć.