



BRITISH MUSLIMS' EXPECTATIONS OF THE GOVERNMENT



LAW & BRITISH MUSLIMS:
DOMINATION OF THE MAJORITY
OR PROCESS OF BALANCE?



SAIED REZA AMELI
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KARIN LINDAHL
AND ARZU MERALI

ISLAMIC HUMAN RIGHTS
COMMISSION



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First published in Great Britain in 2006
by Islamic Human Rights Commission
PO Box 598, Wembley, HA9 7XH

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Printed in England by Islamic Human Rights Commission
Design & Typeset: Ibrahim Sadikovic
Printed by Impeks Publishing

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ISBN 1-903718-32-5

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ACKNOWLEDGEMENTS

IHRC would like to acknowledge the Joseph Rowntree Charitable Trust for their support for this project.

Thanks also to the following for their commitment and dedication to this volume and this series: Aisha Abbasi, Hiba Abdul Rahim, Nikki Afzal, Sanjida Akhtar, Fahad Ansari, Mohammed Ali Abdul Aziz, Faisal Bodi, Fatema Dossa, Huda Hlaiyil, Anas Kabar, Seyfeddin Kara, Musa Kazi, Shaheen Mamood, Abidah Merchant, Sara Russell, Sister Memoona, Yakoub Motala, Ali Naqvi, Humza Qureshi and Zainab Shadjareh

The following also provided insight into the various issues covered in this volume: Fiyaz Mughal, Yvonne Ridley, Anas Al-Takriti, Hassan Patel, Professor Humayun Ansari, Nazir Afzal MBE, Aisha Latif, Osama Daneshyar, Dr. Abdul Wahid, Asim Qureshi, Ahmed Thompson, Tufyal Choudhary, Sharmeen Pirbhai, Maulana Faiz Siddiqi, Taji Mustafa, Nureen Shahkazemi, Dr. Adnan Siddiqui

We would also like to thank Baronness Pola Uddin, Baroness Helena Kennedy QC, Mudassar Arani and Roberto Mangabeira Unger for their support, dissension and critical insight.

FOREWORD

The institutionalising of prejudice is an increasingly recognised phenomenon, and the development of new laws as well as the reinterpretation of existing ones is a means of tackling establishment prejudice. But what of the law and legal system itself?

The Islamic Human Rights Commission has worked on various projects and reports highlighting how certain laws and the experience of mainly Muslim communities of these laws is discriminatory and Islamophobic. However a larger question remains regarding the whole of the legal system. Can the legal system of any country be neutral as to religion, race and even gender? If so, in the United Kingdom are we almost there or is this a work in progress? By analysing Muslim responses to questionnaires on law, this report seeks to answer some of these questions and to contextualise within current debates how Western systems of law represent minorities both in democratic terms and in service delivery.

This report will also tackle the philosophical challenges posed by the questions of incorporating minority law into mainstream legal systems based on case studies, recent research and also the perception of respondents regarding how they feel the law affects, protects and serves them as citizens.

At a time when Muslims in the UK are at the forefront of debate as to how laws and their implementation can not only discriminate against people but have actually targeted certain groups of people, this report challenges the government to look at its so-called radical legal reform programme in a way that actually reflects the growing unease amongst minorities. This unease is reflected not only in the perceptions but the experiences of peoples for whom the law in the UK is not colour, creed or gender blind.

Human rights have no meaning without the effect of law. If the legislature is to have moral authority, citizens who must abide by the law demand to be respected as a source as well as a subject of it.

Islamic Human Rights Commission

INTRODUCTION

Every student of law in the UK knows – or learns at the outset – that Britain is one of the few countries with no written constitution. This is not yet another tome on the anomalies that this omission creates, or a treatise on the dangers of having an excessively powerful Parliament. In this research, this aspect of British law has obvious philosophical significance when trying to scientifically assess the impact of law as structure, process and experience on minorities within the realm.

Much discussion has taken place in recent years regarding Muslim minorities and law – particularly shariah law, perceived by politicians, the people and pundits alike to be a savage and violent legal and moral code by which Muslims define their personal and social existence (e.g. Hitchens, 2003 and Sookhdeo, 2005). This discussion takes place within the remit of a comparison to another ‘law’ or ‘higher’ law as understood to be either secular, neutral, a reflection of majority culture or a combination of some of these, thus polarising the debate into an inevitable clash and confrontation dichotomy. It also results in the marginalisation of the concept of multiculturalism (itself hotly debated) of which Britain was once held as a shining example. Whether it is French *laïcité*’s attack on hijab or British determination to criminalise aspirations for shariah as terrorism, such debates pit one form of law as the normative superior and better of the other.

This report seeks to understand from a Muslim perspective what ‘law’ actually means to them and what their experience of the British legal system is. It further seeks to understand the nature of the British legal system and whether it delivers equality for all. In so doing this research asked key questions as to how British law is understood by minorities, what their relationship is to concepts of law per se (Muslim, British, other) as well as their specific beliefs regarding Muslim legal injunctions and British law.

Questions addressed by the research look to evaluate the publicly made contentions by politicians and media that Britain is a country whose law and structure is variously secular and / or Christian in orientation and that these values ensure a fair system for all. Respondents were asked, amongst other questions:

- Is the British legal system fair?
- Is British law neutral or inherently biased?
- Is the British legal system secular or Christian in orientation, and what would be an ideal orientation for the British legal system?
- Do you feel that British law can do more to relieve tension between different communities?
- Do you see the possibility for greater conflict between British law and your values, or more sympathy between the two?
- Do you believe that all British citizens are treated equally under the law?

Experiences of the legal process as well as case studies reported to or dealt with by IHRC have been included to highlight pertinent issues as they feed in to a threefold debate regarding Muslim minorities in the UK and the law.

- What are the moral, legal and academic cases made for a system of minority rights to be developed in the UK?
- How far are minorities involved, reflected in and protected by the law of the UK?

- What significance do the findings have on the contention that this country has or is developing an egalitarian and empowered form of citizenship and a cohesive society?

There is of course overlap between this research and previous volumes in this series, particularly with regard to the effect of British governmental policy (in this case legal) on minorities' sense of affiliation and belonging that is a required component of citizenship (Ameli and Merali 2004a). Experiences of discrimination and structural or institutionalised Islamophobia (Ameli, Elahi & Merali, 2004) inform other volumes of this series. They again figure heavily in these findings and also in our recommendations of the action that needs to be taken. This research, perhaps more than others reflects the urgency for a re-evaluation of British law and a discussion as to what informs it and how it can be a guarantor of equality for all.

As the Universal Declaration of Human Rights declared all men to be born free and equal, a government committed to these principles needs to assess the human rights requirements of minorities and implement policy accordingly. Whilst human rights discussions from the outset of the post-war period have looked towards models of differentiated rights¹ as a modus operandi for ensuring equality, the British government seems to be increasingly shying away from such measures. The Framework Convention for the Protection of National Minorities has been interpreted by the British government to reflect the anomalous understanding under the Race Relations Act 1976 that inter alia British Jews are recognised and protected as a recognised minority group, yet British Muslims are not (see Appendix I).

So long as rejection and exclusion remains the position of this government, this research remains valid. In attempting to set out the case for minority rights, an examination of the implications of current understandings of British law and Muslims' expectations and experiences of it, and assessing possible solutions to the impasse between minority aspirations for equality and governmental rejection, this research demands to be heard by the very policy-makers who have been making far-reaching legislative changes in recent years and whose project for a New Britain must reflect its diversity at every level if it really is to be a safe, just and tolerant society.

1

'Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics' (United Nations Commission on Human Rights, 1947)

BACKGROUND STUDIES

The idea that Western legal systems are neutral spaces wherein legislation is developed according to liberal theories, enacted and implemented has been under attack for some considerable time with the influence of critical legal theorists, critical race theorists as well as feminist theorists keenly felt (see e.g. Dworkin, 1997, Wing 1997). A review of some of their ideas helps create an understanding of how marginalised peoples and communities feel vis a vis legal systems and their claims, and how they see potentiality for difference and equality to be understood, legislated for and systematically recognised as part of a project of social justice.

Using these critiques, often heavily influenced by, if not imported wholesale from (ongoing) American experiences of civil rights' struggles, we can look at the justifications made by legal theorists for and against minority rights. In so doing we can unpack what is actually understood by the term 'minority rights law' as well as who is figured to be its subject (Kymlicka, 1995). If human rights theory understands and takes for granted the need to develop better law to protect human rights, are the formulation of minority rights as part of national lexicons of law mandatory as part of a human rights mission or inimical to them? And do international covenants not already mandate their formulation?

If we are to argue that there is a need for a comprehensive minority rights system in Britain, we need to know where Britain is at, what's wrong with Britain's policies, and where improvement is needed. What effectively is the British experience? In practice the experience by minorities in the UK is shaped by many factors and actors. We need to be able to identify in practical terms what model Britain espouses as the legal system that reflects: 'the commitment and determination of the Government to turn [their] vision of a successful multi-racial society into a reality.'²

Does policy match the thinking of leading theorists (Parekh et al, 2000)? Does multiculturalism allow for differences in the law, or is the law as it stands and the processes by which it is developed, adequate for dealing with the aspirations and needs of an increasingly diverse population? Can the incorporation of dual systems of law, and dual spaces for legal identity be one that the UK can emulate or indeed develop en route to a just, peaceful and tolerant society?

Whilst posing many questions this theoretical journey is necessary to determine the complex affiliations between law and citizenship that require re-examination if a truly cohesive society that respects and integrates its minorities is to be a real aspiration in an increasingly polarised society (Ameli, 2000).

2

Rt Hon Jack Straw, REPORT SUBMITTED BY THE UNITED KINGDOM PURSUANT TO ARTICLE 25, PARAGRAPH 1 OF THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES, ACFC/SR(1999)013, submitted to the Council of Europe, 26 July 1999

MINORITY RIGHTS

There is a broad consensus that there is, and should be, such things as minority rights. The main disagreement is whether the rights of minorities are the rights of the group itself or the rights of the individual members of the group, in other words, whether the rights of minorities are derivative or intrinsic (Van Dyke 1977).

This consensus prevails despite what Singh (2002) defines as a nervousness on the part of liberalism at the notion of minority rights. This nervousness derives from a fear that awarding such rights actually leads to the oppression of the individual. This supposition that liberalism (in various guises) is in fact the teleological superior of other cultures permeates the literature and defines minorities as inhering patriarchal and traditional systems that are intrinsically oppressive to some or all of the minority group. That aside, Singh narrates various instances where liberal systems have in practice been very accommodating of minority groups.

The debate rages as to whether minority rights, as a discrete body of rights, needs to ground its justification in human rights theory. In so doing, one would have to identify the aim, objective and justification of human rights. It seems that the motivation behind the advancement of minority rights theories is the concern for tackling oppression that spurred the advancement of human rights theory. The idea that this needs to be the case has far reaching implications for existing theory in that it suggests either that human rights theory is wanting (Kymlicka, 1995) or that human rights theory needs further development in the direction of minority rights.

A further tension within the literature relates to whether minority rights are the rights of individuals or whether groups also have rights. These arguments are fought not only along traditional communitarian vs liberal lines, but within liberal theory itself e.g. Kymlicka's theory of minority rights is an individualist reduction of minority rights. Strong opposition to the attempt to create a new normative framework for minority rights has been advanced by Higgins and Mullerson (cited in Shapiro and Kymlicka, 1997), who are both equally strongly committed to individualist reductionism. Others such as Kukathas (1997) argue that the primary reason for denying groups the status of right-and-duty bearing units is that groups are not fixed and unchanging entities

However tension arises in the negative reflection (again) on citizenship rights from a western liberal tradition, as a call for minority rights indicates their insufficiency to accommodate the legitimate interests which people have by virtue of their ethnic and cultural identity (Shapiro & Kymlicka, 1997). Further there is often heated concern over what those interests are. At a cultural level, these concerns are often reflected negatively in the media e.g. the much publicised criticism of a defence teams' claim that a father who murdered his daughter in a so-called honour killing had acted with diminished responsibility as a result of his culturally motivated outrage. This criticism was made explicit by police (Baker, 2004) and picked up by the media despite the fact that it was not accepted by the jury and the father was convicted of murder. This defence strategy sparked huge debate over cultural difference. Given that the defence of diminished responsibility is argued by many people who are later convicted of murder the furore can be seen as an example of how Islamophobia enters into public perception (Majid, 2003). Women's rights activists (Justice for Women, 2005) have long pointed out that diminished responsibility and indeed provocation have been successfully used as defences for brutal killings by men of their wives or girlfriends. Provocation and diminished responsibility have been cited in cases where men have claimed that wives or partners were sarcastic or consistently nagging, and judges have not only

accepted arguments but given non-custodial or suspended sentences of a few months duration.

This anomaly aside, the effect of media hype as regards ‘cultural’ practice focuses on negative, often brutal and violent images of non-majority culture, be it honour killing, forced marriage or female genital mutilation. All arguments by minorities that their cultural rights – be they religiously or ethnically derived – are tainted with speculation that to protect minority cultural value is to somehow promote the negativity that has come to be associated – rightly or wrongly – with these values.

Singh (2002) cites various examples whereby the tension between the claim of the group to protective measures that enable them to facilitate cultural or religious practices without falling foul of the law, have been resolved. According to Singh, such examples are testaments to the possibility of having minority rights that protect the cultural values of groups, whilst not violating the precepts of liberalism. These examples include the ability of Amish parents in the USA to withdraw their children aged under 16 from compulsory state schooling on the basis that the knowledge taught interfered with and threatened the survival of their culture. Majority schooling systems were a threat to the survival of the minority culture and as such the right of minorities to protection trumped the right of the child as understood in a majority system of law.

A dual system of legal obligation and right is exemplified in this example, with importance of a minority group’s culture being given recognition and precedence. A more systemic recognition can be found in the example of the so-called ‘shariah’ courts in Canada. More realistically described by proponents (Patel, 2005) as arbitration in family matters, such processes have the effect of creating a legal space whereby members of minorities – if they so choose - can work out various personal legal matters according to their legal principles. As the findings of this research indicated (see below), many Muslims in the UK see Islamic law as a matter of primary importance for them and tensions created by the inability of mainstream legal systems to reflect this is a cause of strain for minority individuals. As Thomson (2004) points out, such a dual system is not unknown to the UK, which has afforded Beth Din courts to the Jewish community.

Looking specifically at the furore surrounding ‘shariah courts’ in Canada, it is pertinent to note that much critique of the process is based on liberal arguments advancing women’s rights. As the UK findings presented below testify, such laws have importance for women as well as men. According to Singh – having reviewed the variety of cases where accommodation has been made and where it has been rejected, minority rights can be seen as any of the following: ‘...either claims, or entitlements, liberties or immunities or identity protection.’ The rights of women in the Canadian example are well protected by the affording of choice in procedural redress – women and men from Muslim minorities do not have to use Muslim arbitration. The rights question within the scenario of Canadian jurisprudence rests on the availability for application of the Ontario Arbitration Act 1991. Its use by Canadian Jewish and Christian communities raised questions as regards equal treatment for Muslims.

However lack of clarity as to what constitutes minority rights has in a wider context leads to uncertainty, unfounded assumptions and fear. States worry that affording minority rights may be a precursor to political disintegration threatening the territorial integrity of the state (Packer, 1999) Such fears are reflected in the UK in suggestions by pundits that the facilitation of Islam on a par with other religions will lead to the conversion of British youth, particularly women and the poor (Hitchens, 2003) and eventually lead to Islam and

its 'savage but simple remedies of Sharia law' becoming the official church of the UK. Measures thus far enacted are seen not so much as identity protection but a means of forcing minority identity on the majority.

Whilst the popular perception remains that minorities, and in the UK context the Islamic minority, have some considerable existing and latent power, Thomson (2004) argues succinctly that Muslims and other religious minorities suffer inequality before the law in various ways, including the non-reflection of their traditions, personal laws, as well as disparities in protection from discrimination, religious incitement laws and funding for faith schools. This is clearly an actualisation of the theory that minority rights claims are voiced by those without the power to fulfil their desires through the normal operation of prior rights, because those claims are not voiced by the majority in terms of democratic decision-making. Thus the minority remains an association of persons seeking a specified end which differs from that sought by the numerical majority (Packer 1999), whose dominance is not curtailed by the normal operation of law (Singh, 2002).

COMMUNITARIAN ARGUMENTS

Continuing the assault on philosophical liberalism, Bowring (1999) attempts to show that it is not justifiable that the existing laws on minority rights are concerned only with the rights of the individual who compose the minority. He claims that there is a fundamental problem with the current theory of minority rights which has its roots in political and philosophical liberalism. He uses Harré's maxim that 'collectives are ontologically prior to individuals'. Thus groups have real existence, i.e. things can be said about them that cannot be said about the individuals who compose the minority. This provides the basis for viewing groups as right bearing units/ groups capable of moral claims.

He also uses of Archer's model, based in critical realism, called the Transformational Model of Social Action, to conclude that society pre-exists the individual: the church-goer or language user finds their beliefs or language ready at birth, so people do not create society. Bowring argues that this route offers very much better prospects for a serious study of minority rights.

Van Dyke (1977) also argues for a communitarian conception of minority rights. The first step in showing that minority communities are in themselves right-and-duty bearing units according to Van Dyke is to show that liberalism, with its emphasis on the individual, precludes a proper theory of the state and cannot be trusted to deal adequately with the question of status and rights for minority communities. Rights that belong to a group may be derivative or intrinsic. A group right is derivative if it is delegated by one or more original holders of the right.

Van Dyke argues that this conception of minority rights is compatible with liberal individualistic theory, with some modification of individualism. Van Dyke states 'that human needs exist at various levels and that the existence of needs implies a right to meet them.' He contends that this principle justifies individual rights, rights of communities, including the communities that constitute states.

Van Dyke uses the establishment of the state itself to be evidence that shows that communities are rights-and-duty bearing units. The primary reason for him to argue against an individualistic conception of minority rights is that individualism gives an advantage to the members of the dominant group and is indirectly destructive of cultures other than the dominant one.

LIBERAL ARGUMENTS

Kymlicka (1997) contends that we need to supplement traditional human rights principles with a theory of minority rights. His aim is to explain how minority rights coexist with human rights and how minority rights are limited by principles of individual liberty, democracy and social justice. Kymlicka distinguishes between 'national minorities' who possess self-government rights and 'ethnic minorities' who possess polyethnic rights. Polyethnic rights include things like changing the national education curriculum to demands for public funding of various activities. The most controversial demands are exemption from laws that disadvantage the minority, e.g. animal slaughtering. These rights help ethnic groups and religious minorities express their cultural particularity and pride without their success in economic and political institutions being hampered.

Kymlicka contends that the individual is morally prior to the community, i.e. that the community matters only because it contributes to the well-being of the individuals who compose it. Hence individualists reject the idea that ethnic and national groups have any collective rights. He then seeks to show that an individualistic conception of rights is capable, and indeed preferable, of providing the base for a theory of minority rights. Kymlicka distinguishes between two kinds of claims; the claim of a group against its own members and the claim of a group against larger society. The first claim is one of internal restrictions, where a group seeks to restrict the liberty of its own members. The second claim is one of external protection, where a group seeks to protect its distinctive existence and identity by limiting the impact of the decision of larger society. There is no necessary conflict between external protections and the individual rights of group members. Most such rights are not about the primacy of communities over individuals rather they are based on the idea that justice between groups requires that the members of different groups be accorded different rights.

Liberal principles impose two fundamental limitations on minority rights. Firstly they cannot justify internal restriction i.e. the demand by a minority culture to restrict the basic civil or political liberties of its own members. Secondly they cannot accept rights that enable one group to oppress or exploit other groups, i.e. external protections are legitimate only insofar as they promote equality between groups.

Kymlicka however does not address the situation where group members themselves do not see these restrictions as restrictions or violations of their rights. He does not consider the well-established principle in human rights theory, the waiver of rights (Ignatieff, 2003). There is an obvious problematic in identifying real and free waivers in internal situations, especially, as some argue, when it comes to 'oppressive and paternalistic' minority groups.

A pertinent example of this was the debate provoked by the acceptance of expert evidence on Islamic law that led to the recognition in law that a marriage conducted in a possibly polygamous situation in Nigeria with a 13 year old girl was deemed valid in the English courts (Muhammed v Knott, 1969] 1 QB 1). Ruth Deech (cited in Pearl, 1995) argued in the *New Law Journal* that this was against the interests of the girl and the state in that the girl may contract venereal disease, never learn English and get educated and have many children, be abandoned and thus be left a burden on the state. As with the foregoing example of the honour killing, these comments represent the institutionalisation of myths and presuppositions inherent in common culture that render blacks and other minorities as inferior (Freeman and Bell, 1974) and form part of the critique of critical race theory. Despite the support for this decision it is Deech's view that became popularized and was eventually reflected at the polit-

ical level in the amendments to the Immigration Rules in 1986 (Pearl, 1995).

Whilst Kymlicka's and Packer's assertions regarding the trumping of individual over group minority rights is reasonable, the above examples expose a danger inherent in this model of ingrained societal prejudice being reflected in policy and within legal structures (IHRC, 2000).

CRITICAL LEGAL STUDIES

The focus of Muslim concern in the UK at the lack of substance in liberal democratic promises (Ameli and Merali, 2004a) has theoretical precursors relating to critical theories of liberalism and particularly liberal legal theory. The double standards often cited in qualitative work and the discriminatory experiences of minorities identified *inter alia* by the McPherson Inquiry (1999) highlight serious systemic problems, at the root of which, some argue, are the philosophies of liberalism itself. Whilst Muslims are deemed to be the academic inferior to liberals in this line of thought, it should be noted that this critique is not solely that of Muslims and represents a rigorous academic tradition that is both dynamic and replete with potentiality in unpacking the standoff between minorities and government.

INTOLERANCE AND DEMOCRACY

Thinking on the relationship between discrimination and the nature of a state *i.e.* the autocracy – democracy continuum has been heavily critiqued. The idea that the more democratic a society is the less it discriminates against minorities has been undermined by research that involves analysing the situation of ethnic and ethno-religious minorities in liberal democracies, semi-democracies and autocracies. Using the Minorities at Risk (MAR) dataset, Fox & Sandler, found that whilst autocracies (as expected) discriminated the most against minorities, there was no discernible difference between the treatment of ethnic minorities between semi-democracies and liberal democracies. However, more startling was the definite and discernible difference in the treatment of ethno-religious minorities, with semi-democracies treating them markedly better and liberal democracies scoring highly in their poor treatment of ethno-religious minorities.

The authors recognise that more work needs to be done on why several reasons were hypothesised after further regression of the data ruled out certain criteria. Amongst these is the idea that in some cases, liberal democracy masks the influence of a majority religion within a state that subtly disadvantages those belonging to other faiths. It also subjects liberal democracies to pluralist critique, affirming the status of liberal democracy as a religion that disadvantages others that disagree with its tenets, rather than the oft-supposed idea of liberal democracy as a mechanism of governance that affords equality to all in its realm. In other words, the institutionalisation of liberal democracy has an exclusionary effect without political or legal redress.

This critique of liberal democracy is complimented by new work on claims making theories with regards to minorities. Jenne (2004) focuses on the example of Hungarians in the former Yugoslavia to articulate her model whereby minorities' claims rest not on the severity of their situation but on a variety of external and internal factors, including the level of repression from the majority government as well as the likelihood of support from external governments. In summary, more repression as well as lack of external sup-

port are contributing factors to fewer demands from minorities. However greater repression can be the result of greater rights claims when the possibility of external support is offered, rendering the claims making process for minorities one fraught with fear and unpredictability. The possibility that this is a universal experience, as tested by Jenne in various scenarios from East Timor to Sri Lanka and Malaysia / South Thailand, is of pertinence when minority 'claims-making' on religious grounds, in Europe and the UK in particular, is surrounded by increased public scrutiny and hysteria.

The likening of Muslims with Nazis and fascists by politicians and press (Cameron, 2005, Littlejohn, 2005 and Clarke 2005) attests to such a climate. Very often the suggested Nazi-like tendencies of Muslims are based on their belief in and/or aspirations for shariah law, and this rejection of the importance, significance or validity of their legal aspirations marks out the treatment of Muslim minorities as those who undermine the law. In similar fashion their desire for legal interpretation according to their beliefs – rather than being discussed as a matter of affording parity between religious minorities and creating multiple legal spaces – becomes one of containing and suppressing Muslim minorities within a narrow legal system that may or may not meet their needs.

CRITICAL LEGAL THEORISTS

The idea of inherent intolerance in liberalism characterises the work of critical legal theorists (Matsuda, 1996). Liberal legal thought is considered as an ideology whose surface character hides its true nature, often concealing its right-wing leanings and masquerading as liberal or radical 'value free' teaching and thought (Kennedy, 1986). Liberal legal theory claims to be a politically neutral and objective way to resolve conflicts. Critical legal scholars refute this and state that its exterior conceals authoritarian and totalitarian power structures within the law (Kennedy, 1990 and Unger, 1975, 1976).

The law is portrayed as rational, coherent, necessary and just in liberal legal scholarship when in fact it is arbitrary, contingent and profoundly unjust. Some theorists go further and see Western liberal concepts of civil and political rights which are supposed to guarantee an individual's freedom of speech, assembly and religion, as contrary to the cause of justice, e.g. it is critical of the liberal democracies' emphasis on the freedom of the individual. Critical legal theorists state that while these rights and freedoms are promoted as necessary to ensure self-fulfilment they actually serve the political and economic needs of liberalism. Contract law is an example of the deception. It does not liberate the individual, instead it ties individuals to the market place and serves the requirements of capitalism.

Agreeing with formalists, critical legal theorists state that the formal rules provided are inadequate and cannot resolve disputes, denouncing liberalism as 'a system of thought beset by internal contradictions and conflict'. Yet, it systematically represses these contradictions. Kelman (1987) identifies areas of tension:

- 1) The contradiction between mechanically applying rules and precedents to resolve conflict and a commitment to situation sensitive *ad hoc* standards.
- 2) Contradiction between the belief that values and desires are arbitrary, subjective and universal and a belief that social and ethical truths can be known objectively. Liberal theory downgrades and

de-legitimises values and beliefs dismissing them as matters of taste whereas reasoned analysis of facts and laws lead to universal truths.

In the mid 1970s Critical Race Theory emerged with the work of Derrick Bell and Alan Freeman who were disillusioned with the slow process of racial reform (Delgado & Stefancic, 2000). Critical Race Theory makes various observations:

Firstly, they note that racism is normal in society and because it is an ingrained feature of society it seems ordinary and natural to everyone. Therefore laws promoting equality can only go so far and remedy the most obvious and blatant forms of racial discrimination. More everyday discrimination which leads to alienation and distress is not dealt with. In the wake of the Stephen Lawrence Inquiry this criticism is deeply relevant and penetrating. Muslims have increasingly cited the failure of e.g. the Race Relations Act 1976 to deliver effective protection against blatant discrimination, let alone indirect discrimination and cite the existence of institutionalised prejudice within the legal system (IHRC, 2000).

Taking the ineffectuality of law in this context further another facet of Critical Race Theory was developed by Derrick Bell (see 1995) and is known as interest convergence. He argued that white elitists will only tolerate or promote racial advances for black people if it also benefits white self interest. Others question whether civil law can benefit black minorities or suggest that it is merely a mechanism to keep the present status quo in place.

CONTEXTUALITY

Unger (1983) argues that the legal process with its surface of neutrality and fairness hinders any attempts at substantial change in society. The legal system is inherently backward looking and merely upholds the status quo stifling revolution in society. He also argues that such a blanket approach to society is harmful as it goes against human nature. Legal decisions should include open-ended discussion about values and not just be restricted to narrow doctrinal debate about precedent.

Unger (1984) also believes that our mental and social lives are shaped by 'institutional assumptions' which he labels as 'contexts' and it is impossible to think or act freely from these contexts. However, if these contexts can be broken or revised then new contexts can emerge which in turn can be broken or revised and change in society can occur. The more rigid a context the harder it is to break or reform it. 'Plastic' contexts allow greater flexibility and change. To make society more plastic individuals must reject rigid contexts and legal systems must turn its back on rigid rules that squeeze individuals into assigned roles. Legal systems should also engage in open-ended debate about politics.

The assigning of roles via law and presumptions within the law has been heavily critiqued by feminist jurisprudence.

FEMINIST JURISPRUDENCE

Feminist legal theories are concerned with how women are treated by the legal system and the perception, or lack of perception of women's experience and needs in legal provision.

Feminist theory rejects a search for objective 'truths' about law and prefers a contextual understanding of law as a social construct which is a product of a variety of influences, some of which are covert or unrecognised. It is also suggested in some feminist theory that a 'male'-oriented approach to the law emphasises individualism and 'rights' at the expense of 'female' emphases upon interaction and cooperation (McCoubery & White, 1999).

As female sexuality is constructed in male terms, women are unable to identify their own wants and needs. Catherine Mackinnon (1981) writes that women are alienated because of the construction of their sexuality in male terms: "Sexuality is to feminism what work is Marxism: that which is most one's own is taken away"

Mackinnon argues that laws are gendered but are presented as being neutral and objective. When they are applied to everyone in a universal, abstract fashion this amounts to nothing more than the enforcement of the male perspective:

*"If objectivity is the epistemological stance of which women's sexual objectification is the social process, its imposition the paradigm of power in the male form, then the state appears most relentless in imposing the male point of view when it comes closest to achieving its highest formal criterion of distanced aperspectivity. When it is most ruthlessly neutral, it is most male; when it is most sex blind, it is most blind to the sex standard being applied. When it most closely conforms to precedent, to 'facts' to legislative intent, it most closely enforces socially male norms and most thoroughly precludes questioning their content as having a point of view at all"*³

This has much resonance with other minority critiques and is backed up by case studies wherein majority norms are presented as the neutral standard against which all else is judged. In this context a court appointed psychiatrist can state without concern in child care proceedings that a child of Balkan Muslim heritage is better off with adoptive parents in Britain rather than her actual family, because of the inferiority of her native culture (IHRC, 2000).

Laws are gendered in substantive terms because they are formulated from a male standpoint which posits the male as naturally aggressive and dominant, and women submissive. Likewise recent critiques of new legislation in the UK, particularly anti-terrorism laws but also legal and quasi-legal policies relating to forced marriages and honour killings have all posited Muslims and some other minorities as more prone to criminality (see e.g. Ansari, 2004, 2005 and Majid, 2004).

Feminists also attack liberalism on the grounds that the liberal subject of rights based discourse that is the presupposed 'individual' is almost always a male. Thus, on an abstract level women and by extension minorities are ignored all together because the prototypical human being is masculine and from the majority.

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C.A Mackinnon, *"Toward a Feminist Theory of State"* (Harvard University Press 1989) p248

Feminist legal theorists identify an inherently ‘male’ legal mindset which implicitly discriminates against women because it is expressed in terms of male experience which may not relate to that of women. They cite examples in legal practices and provisions. Problems can arise where societies attempt to establish gender equality and equal rights. . Often the needs and experiences of men and women are not always the same, yet in this situation women are treated ‘as if’ they were men with repressive consequences. For example, current conceptions of employment reflect a male norm construct: that of a male working full-time and unionised. Women workers deviate from this norm, their working patterns are often interrupted and part-time. Labour laws ignore this difference, focusing exclusively on the world of paid work putting aside the differing responsibilities of men and women.

The attempt to enact an anti-pornography ordinance by Katherine McKinnon and Andrea Dworkin in the 1980s exemplifies how existing liberal discourse on human rights – notably free speech, negatively affects the marginalised, powerless and exploited. Dworkin and MacKinnon’s anti-pornography ordinance did not ban pornographic magazines and videos but enabled those “harmed” by them to sue pornographers for damages. The measure, twice passed by Minneapolis City Council but vetoed by the mayor, was supported by some feminists on the basis that it violated the human right to free speech. Other communities approved the measure, but federal courts ruled the laws unconstitutional on the grounds of free speech, a decision upheld by the U.S. Supreme Court. Kappeler (1986) described the decision as evidence of gender bias and violence inherent in human rights discourse, ‘Human rights violate women’s civil rights’.

These examples again have pertinence to the Muslim minority experience in the UK. Not only do Muslim women suffer similar effects of gender discrimination and the dual compact of discrimination as a result of being Muslim (ECRI, 2000), they face Muslim specific problems (as do many Muslim men) of being penalised for praying, not allowed time off for religious requirements and festivals, and little or no union support when faced with such discrimination. The Rushdie Affair of 1989 was highlighted as a struggle to protect the human right to free speech of the individual from the onslaught of the angry, repressive mob reviving outdated notions of blasphemy. Subsequently Parekh (2000) described Rushdie-type writing as ‘communal libel’ which a multicultural society should not allow as it violates minority rights.

When legal structures are used to secure gender equality by taking into account female needs and experiences, they are based on analogy with outdated and irrelevant male experiences. An example of this is the treatment of maternity leave which is analogous to the sick leave of a male employee, as well as the assumption that parenting is an exclusively female role.⁴

Supposedly neutral laws in reality are not neutral at all. For example, the law prohibits homicide. There are justifications for self-defence, provocation and diminished responsibility. However, women who have suffered from years of domestic violence and eventually killed their husbands found no justification under the law for their actions (*R v Ahluwalia* [1992] 4 All ER 889; *R v Thornton* (No 2) [1996] 2 All ER 1033.⁵

⁴ H. McCoubery & N.D White *Textbook on Jurisprudence* 3rd Edition (Blackstone Lmt Press 1999) p242-3

⁵ J.W Harris *Legal Philosophies* 3rd Edition (Butterworth 1998) p.294

Finley (cited in Freeman, 1994) focuses on the relationship between language, power and the law. She states that legal language is gendered; it is based on men's experiences and the power of their social position in comparison to that of women:

“Universal and objective thinking is male language because intellectually, economically, and politically privileged men have had the power to ignore other perspectives and thus to come to think of their situation as the norm Disempowered, marginalized groups are far less likely to mistake their situation, experience, and views as universal.”

Based solely on these critiques there seems ample scope to argue legal systems need to reflect minority rights in a way that has normative meaning to the people it proposes to protect. A review of Muslim critiques of the legal system also shows that what is deemed effective compliance with European Human Rights requirements by the government is seen to have little or no effect on those it supposedly serves.(Thomson, 2004).

Whilst acknowledging Muslim concepts of law as divine (Thomson, 2004), Muslim critiques look to solutions in a British system.

“The English legal system, being largely the creation of humans, is in constant need of repair. It is always being developed. As social situations change, it has to adapt. It is always in the process of trying to catch up with changes in society. Where current laws are inadequate or outdated or non-existent, balance must be restored by passing new laws. Jeremy Bentham whose utilitarian approach to life profoundly influenced the evolution of English law would agree with this assertion.”

Whilst Muslims have sought engagement with the law e.g. The UMO's Ten-Point Bill of Rights, the Muslim Institute's Muslim Manifesto dating back several decades to the increasing participation of Muslim organisations in government defined consultations; and engagement on issues from polygamy (Thomson, 2004) to discrimination (e.g. IHRC, 2000, 2002, 2004a, 2004b, 2005), there has been little or no reciprocity as some of the case studies will elaborate, from government.

The varying scope of issues that concern Muslims is reflected within actual human rights theories about minority rights and their justification when human rights discussion is decidedly universalistic in tone and reach.

EQUALITY OF RELIGIONS

Religious equality is another area of legal procedure that needs development. The blasphemy laws as well as the position of the Church of England are cases in point.

The Church of England enjoys rights not available to other religions, and only the Christian faith is protected by blasphemy laws. This privileged position has provoked complaints that this amounts to unequal treatment of other religions. Parekh distinguishes between equality of religions and equal right to religion and holds that the former is a controversial principle. While the arguments regarding the history and culture of British society being closely tied up with Christianity are valid, so are claims that since Britain has undergone radical change official acknowledgement of minority religions is needed. Thus Parekh's conclusion is that:

‘the acknowledgement cannot be equal because they have not shaped the British identity as decisively as Christianity has, are not an equally deep and pervasive presence in British political culture and do not form as integral and central a part of British society as Christianity does’.

Thus minority religions can rightly demand some public recognition by the state. So far as the principle of equality is concerned anti-blasphemy laws should be extended to include all religions. Others have argued that effective protection can only be guaranteed through the scrapping of all blasphemy laws (IHRC, 2002) and the introduction of legislation aimed at banning incitement to religious hatred, or communal libel as Parekh (2003) describes it.

Whilst government has moved towards this latter position in recent years, even Muslim campaigners have cautioned against its introduction on the basis of wider concerns regarding inherent bias and inequality in the system of law. IHRC noted in 2001, 2002, 2004 and 2005 that previous legislation outlawing incitement to racial hatred had seen a disproportionate number of prosecutions against people of ethnic minority backgrounds, including the very first prosecution against Black activist Michael X in 1968. A similar scenario is feared where the much vilified ‘sop to the Muslim community’ (Moore 2004) is actually used to prosecute Muslims whose beliefs have been under increasing scrutiny and exaggerated judicial interest, such as the prosecution and acquittal of Sulaiman Zainul Abedin 2002, the imprisonment of Sheikh Faisal 2003 and various attempts to prosecute Abu Hamza (see case studies). Further raids on Islamic bookshops, letters from the Charity Commission prohibiting the mention of Palestine in prayers at some Commission registered places of worship (Shadjareh, 2004) all add to a feeling that government initiatives in the realm of minority rights are at best superficial. Worse still, further analysis shows such policies run counter to all expectations of minority protection and worse still target minorities. The question then is whether this is the peculiarity of this particular executive or does this run deeper within the British legal system?

In their post 7/7 comments, Prime Minister Tony Blair (2005) and Home Secretary Charles Clarke (2005) have clearly targeted what they deem to be the unacceptable beliefs and aspirations of Muslims. These include a belief in (undefined) shariah, aspirations for Khilafah and various positions regarding Israel including a one state solution for peace in the Middle East. This ill-defined and all-encompassing dismissal of political and religious beliefs held by Muslims is not only misrepresentative and lop-sided but deeply dangerous and perhaps the single most certain way to ensure deep and dangerous fragmentation in British society.

It is worth remembering that the current leader of the opposition, David Cameron, himself described Muslim ‘extremists’ as Nazis (2005). This language and discourse has informed policy initiatives that have included proposals to effectively outlaw the espousal of certain beliefs in provisions in the new Terrorism Bill (United to Protect Our Rights, 2005) rather than to facilitate a legal framework that empowers and includes minorities (Parekh, 2003) and protects their rights to religious and political expression as well as other minority rights and claims (Kymlicka 2000, Ameli et al 2004a, 2004b).

MINORITY REPRESENTATION

Minority empowerment thesis looks towards electoral and political participation as a means towards legislative balance and justice in multicultural societies. Attempts at increasing political awareness amongst Muslims in the UK have taken different approaches to this process. Characterised amongst first and second generation communities by class difference the 'Muslim' vote was considered largely a birthright of Old Labour, particularly in northern cities (Ansari, H., 2004, Nahdi, 2005). Despite current rhetoric about Muslim disempowerment, Muslim turnout is thought to have been high amongst these generations of voters. The current perceived Muslim electoral apathy has been laid at many doors.

Criticisms of the Muslim 'vote' have focused on loyalty based rather than substance based voting. Projects looking to address this have taken various tacks, including Muslim election '97 and Muslim election 2001, as well as ongoing research by Innovative Minds, that sought to raise awareness of candidates' stances on various human rights / 'Muslim' related issues e.g. Kashmir, Chechnya, Palestine, the wearing of hijab and faith schools. Others focussed on encouraging Muslims to join all political parties to promote 'Muslim' interests based upon the model of Zionist lobbying in the UK (MPACUK, 2005, Merali, 2001). Others endorsed Muslim and perceived pro-Muslim candidates of various parties based on issue (MAB, 2004 and 2005, MCB). Still others saw the ballot box as a means of promoting other causes. In a move reminiscent of Bobby Sands election as an MP, imprisoned British Muslim Babar Ahmed, then awaiting the outcome extradition proceedings against him, stood as an MP in the Brent North constituency.

Another model of Muslim political participation is highlighted by the formation in 1989 of the Islamic Party of Britain. Based on the philosophy that an 'Islamic alternative' could be appealing to voters across the electorate, the party fought campaigns on mainstream issues including agriculture, social affairs and international relations. Whilst never gaining a seat in local or national elections, the Islamic Party's stance has been influential in shaping Muslim political debate.

The Union of Muslim Organisations' call in 1997 for its 10 Point Bill of Rights to be adopted by the party that won the elections is another manifestation of Muslim organisational lobbying vis a vis the law and Muslims in the UK. It called for the implementation of Muslim personal law through the court system for Muslims, as well as comprehensive anti-discrimination laws, government funding for Muslims schools and two statutory Islamic holidays each year.

The level of visible representation of Muslims within the legislature in the UK is disproportionately low, with only 4 Muslim MPs. According to Muslim demography in the UK there should be in the region of 18 – 20 MPs in Parliament. Some Muslim organisations' desires to increase descriptive representation of Muslims i.e. greater numbers of Muslim MPs, can be critiqued as undermining the substantive representation of Muslims within the legislature i.e. the advancement of a minority rights agenda. This can be seen to be publicly played out in the furore over the 'selling out' of Muslim MPs over key issues affecting Muslims e.g. the new terrorism laws, where all Muslim MPs either supported the government's measures that disproportionately target Muslims, in full or in the main. (Ansari, 2006).

According to Banducci et al (2004), studies on the benefits of descriptive representation suggest that despite the trade-off with substantive representation and gaining visibly minority ethnic peoples in positions of public office,

descriptive representation still has normative value. Citing research by Bobo and Gilliam (1990) they refer to empirical work undertaken in New York that found greater ethnic minority voter turnout where a member of that ethnic minority held high public office and / or there was substantial other descriptive representation in political affairs. The authors argued that the presence of minority elected officials sent a cue to minority voters that the benefits of voting outweighed not voting. This hypothesis was justified on the basis that the macro-level cues felt by the minority electorate included the idea that there would be or was policy responsiveness on the part of the legislature as a result of descriptive representation. Whilst initial concerns by some Muslim organisations to increase Muslim faces in parliament in the UK in the last five years can be seen to follow this thesis, the recent meltdown regarding the nature of the representation with particular regards to the Iraq war and anti-terrorism measures, indicates that this thesis may not hold true for the UK.

The galvanising of the Muslim vote in the East London constituency of Bethnal Green and Bow by Respect party candidate George Galloway at the 2005 general election indicates a turning towards a desire for more substantive representation by Muslim voters. Issues regarding the lack of Muslim representation in previous volumes of this series have seen the lack of Muslim faces and the 'wrong' type of Muslims there as serious barriers to real and meaningful representation for the community. Muslim women frequently cited the lack of female representation as problematic (Ameli and Merali, 2006) and lay the blame for this lack on the government itself which is seen to promote certain sections of the Muslim community, according to a Home Office mentality of a monolithic Muslim community in the UK (Nahdi, 2005). Further criticisms included the tokenism of Muslim representatives, the anomaly of why they should be considered to be representing Muslim interests when they are elected to represent the whole of their constituencies, and accusations of cronyism based on the fact that all Muslim MPs hail from the Labour Party and achieved their positions by virtue of their loyalty to the Labour Party and not their ability to promote the interests of Muslims (or indeed other) constituents (Ameli and Merali, 2004a). Most notably, findings in that research undermined the idea that descriptive representation in the UK has normative value on its own. Figures indicated that the majority of Muslims felt that those Muslims within the Houses of Parliament saw Muslim representation in its current form to be nominal and lacking in any practical power. This is both an indictment of the present situation and an implicit recognition of the political process as meaningful and relevant as a way of addressing Muslim minority needs.

SOLUTIONS: INTEGRATION, ASSIMILATION, MULTICULTURALISM OR DUAL RIGHTS?

The United Kingdom is often cited as a success story in the panoply of experiences of minority relations in Europe, yet the government's actions in recent years and months harks towards European models that have rejected pluralism and multiculturalism (in their widest senses) for assimilationist rhetoric and discourse.

New Conservative party leader David Cameron's speech (2005) that equates Britishness with 'freedom for all under the law' as opposed to the Nazi like aspirations of 'Islamists' and 'Jihadists' is one example of the confusion of an idea of British law as non-discriminatory and an exemplar of human rights theory. The contrast made to this summation is individual loyalty to faith or ethnicity rather than nation.

The conflation of ethnic or confessional loyalty with enmity to the law (Cameron 2005), and particularly freedom guaranteed by law characterises new proposals in the field of community relations. As this report goes to press, controversy rages over the government's failure to guarantee a race or religion committee in the new Commission for Equalities and Human Rights (CEHR). The CEHR replaces the Commission for Racial Equality, and other equalities bodies.

With this level of anomaly at a fundamental level of policy change, the question arises as to what model of community (cohesion) Britain has, what it espouses and what it should look to given current crises.

CONSTITUTIONAL CHANGE AND THE EQUALITY OF DIFFERENCE

Parekh focuses on various aspects pertaining to citizenship, but pertinent to this subject he focuses on the structure of authority as key to sustaining peace and justice, suggesting a constitution or some fundamental rules laying down basic structures of civic authority. These institutions must be, and be seen to be, impartial in their treatment of the members of different communities. This entails the principle of equality, which is in Parekh's vision the 'equality of difference' e.g. Parekh cites the example of India where criminal law is universal but civil law follows various cultural traditions included amongst them Muslim family law. This facilitation of cultural and religious legal space accommodates dual identities of Indianness and cultural / religious traditions. Principles of justice are essential to the good life, the basic structure of society, which is not only economic and political. Thus principles of justice should also deal with cultural rights and opportunities.

Parekh's model of multiculturalism includes a vision of equality as 'equality of difference' (243). This entails the idea that equal protection of the law may require different treatment (242), and that equal rights do not mean identical rights.. Dress is the obvious example and includes the rights of Sikhs to wear turbans instead of crash helmets, and Muslim women to wear the hijab at work, school etc.

INTEGRATION OR ASSIMILATION: BRITISH POLICY AND LAW VIS A VIS MUSLIMS

In practice the experience of minorities in the UK is shaped by many factors and actors. Parekh (2000) notes that the UK and other mature democracies have only had limited success in tackling the problems thrown up by multicultural societies and show signs of moral and emotional disorientation in the face of increasing demands for recognition and equality. Parekh argues that the French ban on hijab and the British government's denial of state funding to Muslim schools were in part motivated by anti-Muslim sentiments, and that neither can be justified on the principle of equality. The lessons Parekh extracts from the Rushdie affair shows that UK policies and political forum suffered (and still suffers) from many deficiencies. Parekh does not point fingers but it is clear from his six conditions ('navigational devices') to be used in order to reconcile the demands of unity and diversity, that Britain still has a long way to go.

De Wit and Koopmans (2005) explore their hypothesis that 'variation in citizenship regime type will lead to variation in political claims-making of

minorities of migrant origin'. They come across many interesting findings. They conclude, inter alia, that British integration policy 'should be viewed as a moderately pluralist regime type that shares the pluralist characteristics of the Netherlands, but not in all domains and, moreover, mostly on the basis of cross-ethnic and cross-religious 'racial' categories, rather than nationality of origin or religious belief as in the Netherlands' and that, 'The Dutch and British civic-pluralist model of minority integration has induced minority claims to refer to the country of settlement rather to the country of origin,...'. Also "An expectation that was not fulfilled is that violent forms of protest would occur more often in Germany than in Britain and the Netherlands. 'Migrants in the UK appear to be more integrated into political culture than migrants in Netherlands'. The Dutch ethnicity- and religion-based system of political representation facilitates cultural demands and identities to a greater extent compared to the British system based on race, which is focused on anti-discrimination, rather than cultural issues. Britain grants fewer cultural rights than the Netherlands, but its 'limited multiculturalism' seems to integrate more into political culture with at least twice as high a level of participation in public debates.

Squire(2005) is less complimentary. In her discussion of "How far we can describe New Labour's approach as racist or anti-racist,..." based on how far they use "conceptions of the multicultural and the monocultural nation..?", she uses New Labour's introduction of the 2002 White Paper 'Secure Borders, Safe Haven: Integration with Diversity in Modern Britain'. For Squire this marks a progressive shift in migration policy. Her two key claims are that firstly New Labour's response to migration works primarily through a monocultural conception of the nation. Labour's purportedly non- or anti-racist multiculturalism is articulated through an arguably xeno-racist primary exclusion. Squire argues that this is evidence of a monoculturalist 'white heart', whereby 'integration with diversity' is limited to a homogenising 'assimilation through segregation'. Secondly, she argues that an essentialist conception of the monocultural nation becomes decontested and ideologically concealed whilst New Labour's purported multiculturalism becomes divested of any radical progressiveness.

This type of majority exclusivity has been articulated under the banner of new conceptions of corruption in democracy (Warren, 2003), whereby the unchecked dominance of the majority excludes minorities who have an equal right to participation for the gain of the majority.

WHICH MODEL HAS BRITAIN GOT AND WHICH MODEL SHOULD IT ADOPT?

Parekh (2000) rejects the four political structures of multicultural societies: (i) assimilationist theory more or less ignores the claims of diversity; (ii) the millet theory ignores those of unity; (iii) the proceduralist and (iv) civic assimilationist theories respect both diversity and unity but fail to appreciate their dialectical interplay and to strike a balance between them.

He goes on to suggest not a model but 'navigational devices' to be used in order to reconcile the demands of unity and diversity. His vision of the multicultural society requires one to go beyond liberalism. When these conditions obtain in a multicultural society it is likely to develop a common sense of belonging among its diverse communities (see also Ameli, 2004a). Amongst these devices, Parekh cites national identity as an arena which, if it is to serve valuable purposes, needs to meet four conditions :

- the identity of a political community should be located in its political structure, not ethno-cultural characteristics;
- it should allow for multiple identities without subjecting those involved to charges of divided loyalties;
- the national identity must include all its citizens. The definition of national identity should accept all citizens as equally valued and legitimate members of the community;
- the history of most countries, however, is tied up with that of particular ethnic or cultural groups who played a decisive role in their development etc. although a political community cannot deny its historically inherited identity it can officially declare itself multicultural.

This salvaging of multiculturalism as a British concept under attack has many merits, particularly its emphasis on dual identities for minorities being recognised instead of demonised, and that whilst that can be reflected in law (Parekh also cites provision of religious personal law being affected), an equal and fair treatment of minorities at the unified level of law – law enforcement, mainstream court procedures etc. – is a prerequisite to the success of any such project.

DUAL CITIZENSHIP & DUAL RIGHTS

Previous studies have highlighted the need for dual spaces to facilitate minority and majority relations and rights (see Ameli et al, 2004a, 2004b, 2005s, 2005b). The idea that Muslims in this case need to see recognition of their identities, aspirations and beliefs as integral to the project of an integrated and cohesive society is key to any discussion on law and legal process. Research in this series on social discrimination sees a psychological tie between victims of discrimination and the idea that they are rejected by wider society and government institutions (Ameli et al, 2004b). At the same time a threat of disloyalty does not inhere in these findings if for example recognition is not afforded – results consistently indicate loyalty despite feelings of rejection. What the qualitative findings surmise is that the potential for more manifest disaffection exists and that this is a normative question that needs recognition by policy makers, rather than, as increasingly has been the case, attempt to realise better Muslim participation as part of a security discourse.

As regards law, Thomson (2004) points to the rectification of existing anomalies that see some religious minorities recognised by law and not others. This would involve removing the anomalies in the Race Relations Act whereby Jews and Sikhs and to a lesser extent Rastafarians are recognised as ethnic minorities but not other faiths (Thomson advocates for the recognition of all major faiths, not just Islam). Thomson also calls for the application of Muslim personal law through discrete legal procedures, as seen in other countries, notably India where religious personal law runs alongside mainstream secular laws (largely based on British law).

Arguments for the further secularisation of legal space fail to grasp the significance of religious experience and feeling. Aside from the requirements of political and cultural recognition (Turner, 2001), emotional aspects of the need of recognition are required to effect empowered and effective citizenship. Such feelings of recognition are often taken as read as existing within the majority. However the kindling of the 'Respect' agenda by the current government indicates that there is a recognition that many people (in this case, the old and parts of the white working and middle classes) feel marginalised and unrecognised to the point that policy needs to be changed to effect

respect from others. Whilst the furore over whether this is a justified debate exists, it is code for the understanding by government that alienation exists and that recognition in the case of parts of the majority needs to be effected again. In that scenario, minorities also require to be understood.

Calls by leading commentators citing humanistic values and inter alia, gender rights call for greater secularisation of laws (National Secular Society, 2003 Toynbee, 2005) are based on an assumption that religious feelings and experiences are 'misguided by presupposing a false premise' (Azari and Birnbacher (2004). Such an analysis according to Azari and Birnbacher is intellectually unsound in that it refuses to see and recognise the difference of religious feeling and experience as 'thinking that feels like something'. This complex of the rational and emotive needs systemic recognition if all religious minorities are to feel equally valued. Such a process would not, contrary to pundits, undermine the collectivity of the British public, but rather create a hitherto lacking feeling of recognition amongst alienated minorities (Ameli et al, 2004a).

This also has implications for the way that mainstream law enforcement and process deals with minorities. Increasingly police have been given new powers which – whether by dint of legislation or direction – are couched in universal language but have sole application towards ethnic minorities and in some cases specifically religious minorities. The anti-terrorism laws are well-cited cases in point (Ansari 2004, 2005), however other measures e.g. new police powers to deal with possible cases where an honour crime may be committed at some point in the future (Baker, 2004), specifically target minority cultures and therefore minority adherents. The specificity of the minority and its recognition at procedural levels cannot be solely negative. To leave recognition of difference at the level of rejection and criminalisation undermines the idea of equality before the law. Ethnic minority experiences of law and process in the UK seem to be universally negative. The BBC Race Survey (2003) as well as the Law Commission as far back as the 1980s, and the McPherson Inquiry are a few of the reports and fora that highlight increasingly negative experiences and perceptions of law and law enforcement in the UK. Even the Home Office's recent reports on Stops and Searches (Statewatch 2003, Shadjareh, 2004, IHRC, 2002) highlight a disproportionate rise in the stopping and searching of ethnic minorities – analysis of which indicates the rise is as a result of targeting Muslims under anti-terrorism laws.

Whilst the discourse of government and media indicates that Muslims are expected to endure a negative duality where they are treated differently to facilitate security (e.g. Blears, 2005), the same are unresponsive to ideas that dual legal spaces actually facilitate active and meaningful citizenship. Liberal presuppositions that liberal democracies have a corrective that prevents the dominance of the majority are belied by an analysis of these experiences, some of which can be summarised as:

- Greater possibilities of being charged for a crime
- Longer sentences if found guilty
- Greater fear of bias from the police and other law enforcement agencies
- Negative experiences from the police, despite not having committed a crime

Whilst there appears to be a greater chance for acquittal amongst BME defendants, this is understood to be the result of charges being pressed with less evidence than is sustainable in a court of law, rather than a propensity of the legal system to favour BME defendants or the operation of a corrective balance within court proceedings and institutions.

BRITISH MUSLIM REPRESENTATION

Many countries facilitate minority representation through electoral provisions that guarantee minorities seats in parliament. These countries include Belgium, Iran, Lebanon, Slovenia and Zimbabwe. Banducci et al's (2004) research indicates that there is value in descriptive representation according to minority empowerment theories that see a higher rate of participation by minorities in the system where there are members of ethnicities involved at the district level. The authors concede that this is based on snapshots of one election in New Zealand and one at the district level in the US and idiosyncrasies may occur as a result. However the effects of provision whether in Maori only districts and the involvement of Maoris on party lists as a result of proportional representation, or the existence of majority-minority districts in the USA, indicates models of electoral difference that empower minorities. Whether this empowerment leads to the perceived policy responsiveness needs further analysis. However the institutionalisation of difference and the guarantee of difference seems to have enhanced minority trust in governments and systems in both cases. This flies in the face of attempts by the British government to homogenise political culture often with explicit reference to Muslims.

The results of the survey to be discussed below, lend some weight to the argument that an acceptance of difference at institutional levels may well increase cohesion and loyalty amongst Muslim minorities in the UK.

METHODOLOGY AND SAMPLE GROUP

At the time of writing, government figures have explicitly stated that shariah i.e. the Muslim legal system, and the aspiration for it is akin to criminality. In the wake of the 7/7 bombings both Prime Minister Tony Blair and Home Secretary Charles Clarke have cited 'shariah' to be an aspiration that characterises those who wish to commit criminal acts of violence against innocents. This maligns the vast majority of Muslims for whom there are many 'shariahs', all of which have some meaning of varying degrees of significance to them.

The quantitative and qualitative research for this volume took place before the 7/7 bombings and its findings reflect upon issues of conflict and congruence between Muslim perceptions of British law, the legal system and Muslims' experience and aspirations for both.

Common-sense arguments by politicians, pundits and press alike align multicultural practice with communitarian values leading to separateness, the implication being that promoting particularism through overt difference is the supposed antithesis to universalism. As previous work in this series shows (Ameli et al, 2004b) common-sense arguments that posit a norm against which all else should be defined as aberrant undermine serious issues of equality for minorities, whose equality can sometimes only be recognised and guaranteed through the acceptance of their difference. The aspiration for law in this study is assessed using various sociological lenses to elaborate on how Muslims perceive their value system and their life experience, including their expectation of equal treatment before the law as it stands and their perception of what a fair legal system is and should be.

Basing its conception of equality upon the contention that protection from unfavourable and discriminatory treatment is not enough - real equality can only be achieved by granting positive rights and taking special measures in favour of minorities (Andrysek in Shapiro & Kymlicka, 1997) - the authors

look at the expression of difference in belief as a transformative exercise that shifts boundaries and actually makes a case for cosmopolitanism in theory and policy (Appiah 1990 and 2001) i.e. ‘universalism plus difference’.

This report follows a sociological approach based on a quantitative survey and qualitative interviews. The quantitative questionnaire was part of a major survey carried out by the IHRC and reported in the first volume of ‘British Muslims’ Expectations of the Government : *Dual Citizenship: British, Islamic or both?* (Ameli & Merali, 2004), the second volume *Social Discrimination: Across the Muslim Divide* (Ameli et al, 2004), the third volume, *Secular or Islamic: What Schools do British Muslims want for their Children?* (Ameli et al. 2005) and the fourth volume *Hijab, Meaning, Identity, Otherization and Politics: British Muslim Women* (Ameli et al, 2006)

A detailed description about participants and their demography has been offered in volume one, here follows a summary. The total number of quantitative responses came to 1125, with some 800 being collated by hand, and the rest through a widely publicised on-line facility, over a three-week period. The majority of them are male (64%), with slightly over one-third female (36%). They are from diverse ethnic backgrounds, including South Asian, mixed, Turkish, Iranian, Afro-Caribbean and English, and the level of their religiosity and identification with Islam is also diverse, ranging from devout practitioners to cultural and secular Muslims. About 90 percent of the participants are British citizens and more than half of them (55%) are born in Britain.

About 43 percent of the respondents are employed, while the rest of the participants fall into the categories of the unemployed, self-employed and students. The sample group includes respondents from England, Scotland and Wales; approximately half (47%) of them live in London.

We also interviewed 47 Muslims from England, Scotland and Wales of whom 27 identified themselves as female and 18 as male. Respondents came from various places including Wembley, Harrow, Slough, Colchester, various parts of inner London, Edinburgh, Accrington, Manchester, Birmingham, Cardiff and Reading. The ethnic origins of interviewees were also diverse and included Bangladeshi, Indian, Pakistani, West Indian, Iraqi, East African Asian, Kashmiri, mixed Arab / white, Afghan, Irish/Scots/English/Jewish. Respondents were asked their views on the experience of law enforcement, their preferred legal system, their opinion as to what the current laws of the UK derive from and how the system can be characterised and what expectation they had regarding the compatibility of their personal beliefs and the wider legal system. Questions regarding the nature of political representation were also asked and the qualitative interviews helped us to interrogate the quantitative findings, and examine in a more sophisticated manner underlying problems with current discourse.

Additionally a number of community activists and academics, some active with political party structures, were interviewed to gauge a Muslim civil society response. Those actively involved in political parties included former candidates for the Respect Party as well as a senior member of the Liberal Democrats. Also interviewed were lawyers of various backgrounds, including immigration specialists and senior officers in the Crown Prosecution Service. Professions of those interviewed are indicated.

The phrase ‘British law’ has been used throughout this volume of specific research in that it relates to ideas of laws in the minds of non-specialist respondents rather than precise legal concepts and defined and which may differ between the law of England and Wales, and that of Scotland. Law has in many recent political speeches, been used as a marker of ‘Britishness’ against which Muslims in particular have been characterised as opponents (e.g. Blair, August 2005, Clarke, 2005, 2005, Cameron, 2005).

RESEARCH FINDINGS

The existence of minority systems of law, be they Beth Din courts or even the Church of England courts, in the UK raises many issues with regard to equal treatment of minorities, as well as the recognition that the facilitation of minority law space in the UK is not only imperative but actually extant.

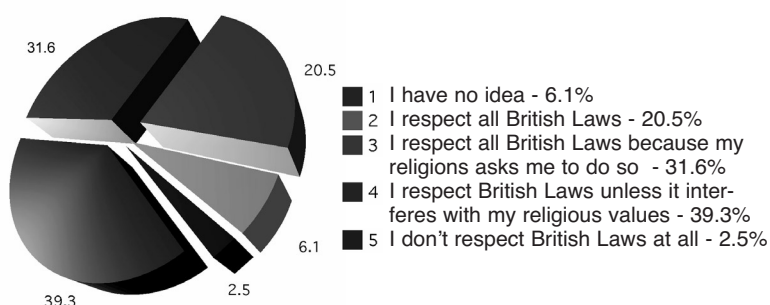
Beyond simply raising the question of equality between minorities however, the aspirations of respondents as discussed below also call into question citizens' relationships with the law and the idea of the neutrality of the law itself. Experience of discrimination has often been argued away as aberrance and faulty implementation. However critical legal thought, whether based on ethnic, religious or gender differences, claims that the law is as situated as the individual subjects it supposedly serves. Without that understanding, the law will alienate and even work against those who are differently gendered and of different ethnic, cultural or religious backgrounds as individuals and as groups.

Whether a universal concept of law can be salvaged from this critique can be interrogated through these findings which indicate the desire for understanding and respect of Islam and Muslims is based not only on the need for recognition (Ameli and Merali, 2004a) but as the only way of ensuring that Muslims are treated equally by the law.

Insofar as these aspirations call for the application of different systems of law, they reflect current thinking on the effecting of minority law – that protects and facilitates equality, amongst communitarians and liberals alike. Ignoring these voices as anti-universal, belies the violent silencing of minorities under the guise of objective law. The creation of particular legal spaces, as well as the tackling of prejudice by law-enforcers at institutional levels, reflects the aspirations of groups of citizens whose role in the process of making and applying law as voters, legislators, advocates, enforcers etc. is diminished and faces no immediate prospect of improving.

Despite the potentiality for negativity on the part of Muslims when respondents were asked whether they respected the law in the UK, of those who responded 91.4% stated they respected the law to varying degrees. Of this figure the largest group – 39.3% - stated that they respect British laws unless they interfere with their religious values.

Figure 1: Respect for law

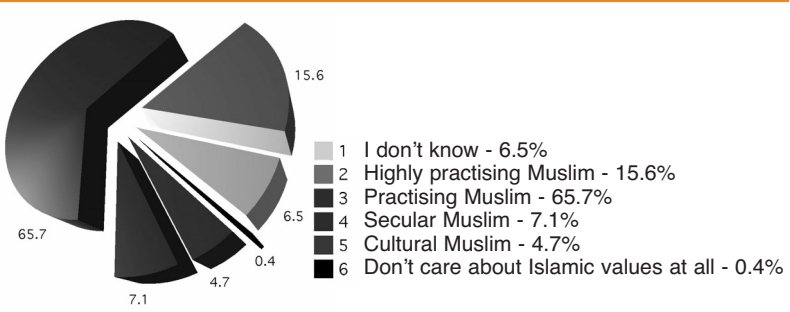


However the second largest group – 31.6% - stated that they respected all British laws because they believed their religion asks them to. Immediately there appear to be clear lines of demarcation in respondents' understanding

of religious values with regard to law, in almost equal number. The nuances of these understandings will be discussed in further detail below. However both results indicate that the possibility of stability and congruence between the aspirations of a community maligned for its legal principles is, at least in the psyche of its community members, very high.

Also of significance is the group of 20.5% for whom no (religious) reason was needed to justify their respect for all laws. This value has added significance in that it is higher than the total of those who identified themselves as secular and cultural Muslims – groups for whom one would assume this response.

Figure 2: How religious do you consider yourself to be?



Further anomalies arise when religiosity and respect for British laws is compared (Table 1).

| Table 1: Level of Religiosity and Respect for Law among Muslims in Britain | | | | | | |
|--|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| I don't know | 57 78.1% | 6 8.2% | 1 1.4% | 9 12.3% | 0 .0% | 73 100.0% |
| Highly practicing Muslim | 3 1.7% | 46 26.3% | 50 28.6% | 68 38.9% | 8 4.6% | 175 100.0% |
| Practicing Muslim Count | 7 .9% | 132 17.9% | 267 36.1% | 323 43.7% | 10 1.4% | 739 100.0% |
| Secular Muslim | 1 1.3% | 27 33.8% | 22 27.5% | 25 31.3% | 5 6.3% | 80 100.0% |
| Cultural Muslim | 1 1.9% | 16 30.2% | 15 28.3% | 17 32.1% | 4 7.5% | 53 100.0% |
| Don't care about Islamic Values at all | 0 .0% | 4 80.0% | 0 .0% | 0 .0% | 1 20.0% | 5 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

Those who considered themselves to be secular or cultural Muslims and those who did not care about Islamic values had the highest responses for not respecting British laws at all, at 6.3%, 7.5% and 20% respectively, with highly practising Muslims who did not respect British laws at all numbering 4.6% and practising Muslims at only 1.4%.

If the assumption is that practising and highly practising Muslims have some affiliation to the idea of shariah and indeed some form of attachment to and aspiration for it, these findings suggest that either shariah as understood by adherents to the faith is markedly different in substance to the public portrayal of it, or that the 'savagery' of shariah as portrayed in public discourse (e.g. Hitchens, 2003) has resonance and congruence with the British legal system. One male respondent aged 35 from Birmingham, stated that his expectation of the government would be that they embrace Islam. This he saw as fulfilling a normative promise for society where: '... inshaAllah England will be called a muslim sharia country where white black, one treated equally, where women and men are treated equally.' Whilst he was the only respondent expecting a fulfillment of sorts of the 'prophecies' of right-wing voices from Sookhdeo (2005) to Griffin (2005) that Muslim immigration precedes Islamisation of an area or state, his vision of an Islamic state does not fit the maniacal expectations of its detractors.

Again, 26.3% of those who identified themselves as highly practising Muslims supported all British laws without qualification, and a further 28.6% felt that it was their religious duty to do so.

The foregoing results highlight certain critiques of the way 'multicultural practices' have been considered in theory and increasingly within the public realm i.e. through a liberal normative lens, that inheres in many of the problems discussed in previous sections. Therefore results such as the above show that theories such as Kymlicka's multicultural citizenship are not so easily categorised, or that Young's Justice and the Politics of Difference (1990) are essentially bound by context (May et al, 2004). The limitations of these levels of abstraction are being recognised, and there has been a shift away from hypothetical examples to the recognition that a proper approach involves sustained engagement with real examples taken from everyday political and social issues (Favell and Modood 2003). The findings below need to be reflected in a move towards engaged research that moves away from the objectification of the minority, in this case Muslims, to empiricist comparative approaches before any generalisations can be drawn (Parekh 2000).

EQUAL IN THE EYES OF THE LAW? IS THE LAW BIASED?

Discussions centring on the law and Muslims emphasise experiences of law enforcement (Runnymede, 1997, IHRC, 2000, 2002, 2004a and 2004b, Ansari, F. 2004, 2005). However perceptions of the law, its inherent nature and origins, as well as its normative basis have been marginalised, and considered only largely in connection to perceptions of racism and discrimination according to the McPherson recommendations (1999). Using these recommendations that consider perceptions of racism to be conclusive of racism, responses regarding British law and the legal system are damning. In discussion of law and minorities very often what turns a category of people into a group proper is the experience of oppression or discrimination. (Miller, 2002).

Respondents had an overwhelmingly negative response to the questions of whether they believed that the British legal system was fair, and whether they believed that British law was unbiased.

Of 46 respondents an overwhelming 35 stated that the British legal system was unfair. Reasons given ranged from unqualified negative answers to those that saw variation in that the system was fair to some and not others – notably Muslims, the operation of unfair immigration and terrorism measures and practices, unfairness towards religions – notably Islam, and the idea that as a man-made system it was fallible.

Only when it wants to be. Normal Court procedure seems fair at time, but not renegade courts/tribunals like SIAC, or with ‘flip-flop’ Attorney Generals
(Male, 20, London)

No, legal system has some parts which are unfair to some religions and sectors.
(Male, 16, London)

No majority of the time
(Female, 22, Birmingham)

Not at all
(Male, 31, London)

No, not for Muslims
(Female, 13, Birmingham)

Not always, As any man-made thing it has faults, hence there are times when it is most certainly fair.
(Female, 27, Reading)

Not regarding when it is to do with islam. They make all these laws against islam.
(Male, 35, Birmingham)

Yes, but there are flaws on the system for some people of a particular faith.
(Male, 25, Leicester)

Whilst most responses identified areas of tension with regard to religion, ethnicity and the experience of Muslims. Some also saw wider problems:

No at all. For example, penalties for certain act such rape and child abuse do not portray the severity of these crimes. Furthermore, the recent proposed law for holding a suspect for 28 days without charge is totally unacceptable. It is immoral and unethical because the suspect may lose their credibility, job, reputation within the community if later found to be innocent. This will most certainly lead to the individual seeking compensation for their unjust detention, which the average taxpayer will become liable for.
(Female, 22, Accrington)



Activists, specialists and lawyers picked up on other problems, notably diminishing legal aid and the reduction in access to the legal system for the less affluent:

There should be firstly a greater access to the legal system and a reform of outdated models. The CPS has many flaws and cannot withstand the daily issues, hence reform is needed. There needs to be less media scrutiny on cases and a stronger control of the jury in terms of people being vetted. I do feel that the vulnerable should be entitled (sic) to greater legal aid in order to have an equality in defence against multi nationals, the state and the rich and famous.

(Male, 26, Project Worker, Leicester)

Turn the commitment of senior individuals into mainstreamed thought. The era of “diversity training” has passed, it is time for understanding and in that regard everyone has to own the responsibility for learning. We can no longer say “this is your problem,” it is ours. The more diverse the professions, the better the treatment,.

(Male, 42, Lawyer, London)

difficult question becuz there are safeguards within the acts of law but unfortunately there's no real effort to enforce them- my field of work definitely demonstrate that the government discriminate on basis of race religion and gender

(Female, Lawyer, 27, Birmingham)

If I was to pick the issue of family law there is a great bias in favour of woman in custody battles over children. Whilst this should be the case, in a minority of cases for fathers who want to get access to their children they can sometimes have to wait 1-2 years to even see their children. It is clear that family law needs changing and amending to take into account changing social norms where mothers also have a duty not to use children as bargaining tools in divorce cases.

I also refer you to my answer above and if wealth is a pre-requisite to put forward a person's case then there is a bias towards the wealthy having access to justice whilst the poorest members in our society may have to settle out of court and not get the best outcome for them.

(Male, 33, Political Party Project Manager)

Too much paper work and the wheels of justice move very slowly

(Female, Journalist, London)

One academic made a more general case for bias, even though his experiences of the legal system had been good:

From my personal experiences the British system appears to be reasonably fair, though from an examination of it intellectually and for academic purposes it is clear that there are biases present in it.

(Male, 57, Professor, Windsor)

Significantly, several respondents picked up on recent developments and saw a change in fairness in the system as a result.

No. Recent changes in policies

(Female, 25, Edinburgh)

Believed so, until recently when the system looks like it can be changed according to the political views

(Female, 27, Birmingham)

The idea of political interference was echoed by activists:

Stop government interference in both the legal profession and the ranks of the police.

(Female, Journalist, London)

The terrorism laws, as with previous research in this series, were often cited as the reason for consideration. One activist, a journalist from London, stated that only by, ‘Scrap[ping] all the terrorist laws from the year 2000 and start[ing] again...’ could the legal system become fair and just. Even amongst those who saw the system as fair – most qualified their responses, with this issue being cited. One female aged 22 from Norwich stated: ‘Yes, certain aspects but some I do not agree with, (esp terrorism laws)’. Whilst many practising Muslims responded thus, even a secular male aged 24 from Slough stated: ‘Not the anti-terrorist legislation’. This recent development comes into play in responses to the following question regarding bias within the system and will be discussed further, however it seems clear that the pre-occupation on this topic by respondents from various backgrounds indicates that the British legal system’s credibility has been severely dented in the eyes of Muslims as a result. As one respondent and one specialist respondent stated:

Traditionally & in a general sense it was, but anti-terror laws have contradicted this fairness. Throwing people in prison without evidence is not fair.

(Female, 25, London)

..there is element of bias especially with reagrds to the ‘closed appeals system’ that suspected international terrorists are put through.

(Female, Lawyer, 27, Birmingham)



In response to the question, ‘Do you find British Law fair?’ the following qualifications were used:

Mostly yes

(Male, 48, Birmingham)

To an extent yes if propaganda does not play a part

(Male, 31, Birmingham)

For the average Joe yes its fair but anything with an Islamic slant is not treated fairly.

(Female, 22, Edinburgh)

Tolerant

(Male, 60, Harrow)

Pretty much fair

(Male, 30, Birmingham)

Selectively fair

(Male, 43, Edinburgh)

The disparity between principles and reality is frequently cited throughout the findings, with many people alluding to double standards and unfair practice when it comes to Muslims.

Legal system seems to be fair but if it is practiced is debateable

(Female, 39, Colchester)

IS BRITISH LAW BIASED AND IF SO HOW?

There was obvious overlap between these two responses, and whilst 40 people saw British law as biased not all who answered negatively or affirmatively to this question had the same answer to the previous question.

While one female, aged 26, from Birmingham responded with uncertainty that British law 'can be neutral' she also saw the question of whether the legal system was fair to be a 'grey area'. Another respondent, a male aged 48 from Wembley, saw the legal system to be fair and the law and practice of the law to be unbiased, but felt the police were biased.

Bias within the law was again largely attributed to the experience of Muslims under new laws. This bias perceived by respondents, is a recent phenomenon, and was either explicitly stated or implied through the use of recent examples.

I have noticed some bias recently

(Female, 21, Manchester)

Biased especially with the new laws being introduced

(Female, 22, Birmingham)

It is neutral in some aspects (again as above) Bias when it comes to Asians & terrorism

(Female, 22, Norwich)

Don't think it is. Since Tony Blair came in. Has made a few comments which offended me. Human rights for Muslims is slowly slipping away.

(Female, 20, Birmingham)

I think they have many biased laws. Especially the new laws that are coming out.

(Female, 20 Birmingham)

Yes, more so due to the political climate and spineless MP's (both Labour and Opposition)

Laws which the courts can't challenge (such as Acts of Parliament as they are absolute) are designed to further governments interests, and acts to the detriment of Muslims.

(Male, 20, London)

In recent times appears to be becoming more biased. I believe it varies according to your particular area & how their relationship with police.

(Female, 27, Reading)

No its not neutral – very biased towards Muslims at present. Backlash

(Female, 25, London)

Bias – extradition laws e.g. Babar Ahmed

(Female, 18, London)

Even a human rights lawyer concurred with this general picture:

There is adequate protection for all British citizens within the legal system but over the last few years I have seen a gradual decline in the recognition and respect for basic human rights/civil liberties which is portrayed in the number of legislation passed through parliament especially concerning asylum, immigration, human rights, nationality. they appear to be xenophobic and demonstrate a lack of sensitivity towards 'foreigners' - the system fails to fully afford protection to ethnic minorities from racial attacks and has countless times highlighted that there is institutionalised racism/prejudice in the system which severely undermine its purpose to protect all

(Female, Lawyer, 27, Birmingham)



The case of Babar Ahmed has had significant impact on Muslims and both his treatment on arrest as well as his detention pending extradition have created disillusionment among Muslims. One campaigner cited this example as the motor for his belief that the British system is inherently biased:

Yes, primarily because of the case of Babar Ahmad. There is too much interference by politicians. The Judiciary is no longer free to exercise independence because the Executive is now putting its weight into it. Judges are not independent because they are worried about keeping their jobs and under pressure from politicians and third parties. On the other hand, juries are just thick and prejudiced.

(Male, GP, 37, London)



Others made more general charges of racism (the citing of the ‘cricket test’⁶ by one respondent indicates a long term disillusionment in that case with British law) and racism against Muslims. Some responses to both questions about fairness and bias also spoke about discrimination against women (per se rather than just Muslim women) and one respondent felt that the system was biased towards the (generic) offender. However the overwhelming cause of disappointment in the system and law was recent and resultant from anti-terrorism measures.

Previous research in this series (Ameli and Merali, 2004a), saw terrorism laws as the major concern for respondents when asked about their future in the UK, with many expressing their fear of being wrongly targeted. Whilst the findings of that research on citizenship defied governmental attempts (Nahdi, 2005) at homogenising Muslims into one community, the negative experience of Muslims that contributed to a sense of a ‘common Muslim experience’ (Ameli and Merali, 2004a) reappears here as a common, negative Muslim experience of law and the legal system.

Again, even when respondents felt that the legal system was fair their response regarding bias in the law evidenced a sophisticated understanding of the differences between the two. Again religion was cited as a cause of differentiation and bias. One male respondent, aged 60, from Harrow who believed the system was ‘tolerant’ stated with regard to the law that: ‘Few issues need addressing. Shouldn’t say bad [about] religions.’ He added when asked about experiencing conflict between his religious values and British law: ‘No – but beginning to now’. Again, the newness of negative experience rears its head and has affected even those within the sample whose respect for and belief in British justice is extremely high.

A TWO TRACK SYSTEM^P

Further interrogation of the ideas of fairness and equality within the law were even more revealing. As public discourse has tended to posit itself in the role of liberal champion in the face of communitarian demands by minorities, particularly Muslims (e.g. the wearing of religiously mandated clothing to school), Muslim responses were more nuanced.

Whilst recognising Muslim specificity and Muslim needs, respondents’ relationship with the law as it stood reflected varying degrees of expectation with regard to its potential and its (perceived) stated claims to egalitarianism. This undermines lazy arguments that minority rights should be resisted because they are a relativist or communitarian incursion on liberal values (Sookhdeo et al, 2005) that could lead to ‘apartheid’, ‘segregation’ or an ‘Islamic state’.

Pre and post 7/7 commentators have decried Muslim affiliation to Islamic law and values as a precursor for Muslim hegemony in Western countries. Browne (2003) declared that the first terrorist attacks by Muslim on British soil would unleash a backlash from a rightly embittered public who had gradually seen the

⁶

In 1990, former British minister Norman Tebbit proposed the “Cricket test”, also known as the “Tebbit Test”, where he suggested that people from ethnic minorities in Britain should not be considered truly British until they supported the England cricket team, as opposed to the country of their or their ancestors’ birth. In August 2005, after the 7 July 2005 London bombings, Tebbit claimed vindication for these views..

erosion of public safety through trite human rights arguments that inter alia, allowed mass immigration through the back door via the asylum system, and gave Muslims more rights – all justified through human rights discourse. He grimly warned:

“In the battle between the British public and the human rights lobby, it is Britain’s five million ethnic minorities, and two million innocent Muslims who will be the real losers.”

Sookhdeo (2005) takes this further with the claims that:

“Migrant Muslim communities in the West are constantly engaged in sacralising new areas - first the inner private spaces of their homes and mosques, and latterly whole neighbourhoods (e.g., Birmingham) by means of marches and processions. So the ultimate end of sacred space theology is autonomy for Muslims of the UK under Islamic law.”

Results from this research question such assertions as regards Muslims’ expectations of rights discourse and law. Rather than seeing the potential for autonomy, most responses look towards equality under the law as a means to integration and the realisation of moral rights (Jones, 1999).

As well as underlying the claims of Kymlicka, Kauthkas et al that minority rights (however conceived) can be part of a liberal project, these responses indicate a sophisticated conception of equal citizenship on the part of respondents that sees the recognition of their difference and the realisation of dual identities as part of an integrative process (Ameli and Merali, 2004a). In answering the questions, ‘Do you feel that Muslim needs are recognised under British law?’ and ‘Do you feel that Muslims are protected by British law?’ respondents highlighted lack of recognition and lack of equal recognition as key issues in addition to lack of protection based on their religious beliefs and discriminatory and abusive treatment by the ‘law’.

Of those questioned as to whether Muslim needs are recognised under British law, 12 replied in the affirmative and 13 in the negative. Of the remaining 20 responses, there was some affirmation of the statement but always heavily qualified. Some of these qualifications indicated that the situation could be better and that the current status was appreciated only in that it was better than that in other countries.

Yes I do think they are, especially compared to other laws in other countries

(Female, 20 Birmingham)

Not really adequately so, although I appreciate we in the UK are far more fortunate than some in other countries.

There was talk of halal meat being banned at one point, so thing are okay for now. Things could be better, insha allah

(Female, 27, Reading)

Much better than other countries like France

(Female, 20, London)

They are better than any European countries in only in hand full of areas but they have long way to go.

(Female, 32, Colchester)

It is better here than all of Europe

(Male, 42, Wembley)

Others qualified their endorsement of there being some recognition of Muslim needs in British law, with regards to specific instances of recognition as opposed to areas where as one female respondent from London, aged 20, who answered negatively stated, it was ‘lacking’.

In particular the recognition of dietary needs was the topic of some endorsement although there seemed to be different experiences in this respect with some citing it as a form of recognition:

Yes, for example where they place ingredients on food, this ensures we know if its permissible or not.

(Female, 22, Edinburgh)

There are in schools, Halal foods.

(Female, 25, Cardiff)

Some Colleges and Universities do cater for Muslims when it comes to dietary requirements. However, this needs to be improved in Schools.

(Female, 22, Accrington)

Dietary yes generally, praying not in airports etc

(Female, 22, London)

Not under law (doesn't count for dietary concerns etc)

(Male, 24, Slough)

One respondent took the example of halal food beyond availability and into the ‘Jamie Oliver’ debate around school dinners and healthy eating as part of children’s rights, stating that:

I would say on the whole yes. It depends what you mean by are they recognised; would British law provide halal meat for children in schools so they can have balanced meals?

(Male, 43, Edinburgh)

The issue of prayer facilities in institutions and public spaces was also considered by many respondents to be a key area where recognition is lacking. Some cited successful examples at some universities and schools. However the lack of systematic recognition was often repeated. One respondent described their perception of the recognition of Muslims’ needs thus:



Not recognised by the legal systems but more by institutions it's not whether they want to or not; they just disregard.

(Female, 25, Edinburgh)

In so doing she summarises the experiences and perceptions reflected in response to this question particularly but not solely, in regard to praying.

In school they have praying facilities and university.
I don't think work would say no either. I can only speak from my own experiences.

(Female, 25, Cardiff)

1. Depends upon where. I am aware that in schools Ramadan is not always recognized, girls are pressured to do sports with boys and there are not always adequate prayer facilities. However, other religions' requirements also need to be recognized.

(Female, 33, London)

Some of the basics are like prayer rooms, but others are not eg. Polygamy

(Female, 18, London)

Interestingly two respondents, both female, cited the failure to recognise polygamy as a concern. One respondent spoke from her experience of polygamy, when questioned about possible conflict between her religious values and British law:

Yes, I am a second wife, but married only Islamically. I cannot register my marriage in Britain.

(Female, 33, London)



Parekh's (2000) model for assessing the validity of group claims involves issues that cannot be problematised as issues of equality as falling under what Parekh calls 'intercultural evaluation'. This is when a minority practice is perceived by the majority to be a morally outrageous practice. Parekh offers a model of how to 'decide whether or not to tolerate such practices. According to Parekh the Muslim defence of polygamy is open to the fundamental objection that it violates the principle for the equality of the sexes, an operative public value, and also a rationally defensible universal moral value and therefore a ban justifiable. However as Parekh is a theorist who concedes that evaluating minority practices is necessarily contextual, assigning agency to the women in whose name such a ban is proposed seems to be the logical way forward. As polygamy was only cited by female respondents who saw its lack of recognition as a marker of inequality, it is worth further research. Supporters of polygamy claim that Islamophobia and anti-Muslim sentiment permeate this debate. Parekh's support for the outlawing of 'communal libel' i.e. offences to feeling such as that caused by the publication of *The Satanic Verses* bases some of its justification on the anti-Muslim sentiment evidenced in the aftermath of publication and controversy. A similar argument could be advanced with regard to polygamy, with supporters rightly pointing to the lack of moral outrage at the status given in law to mistresses in France as evidence of the existence of anti-Muslim prejudice.

One respondent pointed out that whilst there was 'cultural' recognition of Muslim needs, the law:

...ignores the holistic & political dimension of Islam

(Female, 25, London)

Others saw recent improvements in recognition of Muslim needs and in terms of the protection afforded to Muslims under the law:

They are becoming recognized, I think Muslims need to be more confident about asking for things in the first place.
(Female, 25, London)

Not at present, but I feel encouraged that changes are occurring in terms of entitlement to religious practice without discrimination in the workplace.
(Male, 26, London)

Yes. Now they are making all new laws.
(Male, 35, Birmingham)

Not entirely – but there are improvements compared to before
(Female, 21, Manchester)

Yes, especially now, not previously
(Female, 22, Norwich)

Yes, through incorporation of Human Rights Law and Basic British law. However, the gap lies in Muslims lacking knowledge of their rights.
(Female, 28, Birmingham)

DOUBLE STANDARDS FOR MUSLIMS?

However the overall figures for those who felt that the law did not afford Muslims any protection was very high compared with those who felt that Muslim needs were not recognised. Respondents were able to distinguish between types of protection e.g. some stated that they were protected from racist abuse. However many of the 30 respondents who believed that there was no protection for them under the law stated specifically that as a Muslim they were unprotected. A total of only 7 respondents felt that they were protected, whilst 7 saw some protection and 1 respondent stated that they did not know.

I feel that there is no specific protection offered to me as a Muslim. In the case of some abuse or discrimination, I would hope to fall under the protection of other laws that may relate to similar offences but feel that in a court, my case would be weak if relying on non-specific laws. I feel it is negligent of British Law to offer protection to Sikhs and Jews that is specific, but not to Muslims.
(Male, 26, London)

As a Muslim, I don't. We know about the increase in Backlash but we have never heard of any of these attackers being punished which doesn't make me feel confident about the legal system.
(Female, 22, Birmingham)

No, I don't think Muslims are protected as well as non-Muslims from racial or religious harassment. One reason could be that Muslims fail to report this kind of abuse.
(Female, 22, Accrington)

No, an anything said against Muslims (an against ethnic) is not frowned upon.

(e.g. racism against a religion as opposed to ethnic race).

(Male, 24, Slough)

No, an anything said against Muslims (an against ethnic) is not frowned upon.

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(Male, 24, Slough)

Significantly, many respondents cited police failures or prejudice as their experience of not being protected under British law. Some saw this as proof of the law itself failing to protect them, whilst others made a distinction between the law and its implementation. The operation of terrorism laws and their implementation by the police, as well as the use of new extradition laws were cited as areas that targeted Muslims in particular for differential and prejudicial treatment under the law.

Upholding the Law? The Police Service and Feelings of Protection under British Law.



No, many incidents have happened (especially with police) where Muslims have been physically abused but the police haven't been charged or anything. Many incidents as such are ignored

(Female, 20 Birmingham)

No. At the mo there is hatred stirring in non- Muslims. The police know that they can get away with abuse. I think black people would understand where I'm coming from.

(Female, 20, Birmingham)

No, bring this subject up and you can see in their faces, that you must be up to no good.

(Male, 38, Birmingham)

To a certain degree yes.

There is the British law against inciting racial or religious discrimination (I think that its called that) But how much do the enforcers of the law i.e. police pay attention to this? This is a big question that needs to be answered. We hear many times where the police are the ones which are not fair in their treatment of certain groups.

(Female, 27, Reading)

No. Both verbal and physical abuse by police officers as in the case of Babar Ahmed has gone unpunished.

(Female, 25, London)

No way – the new anti-terror laws target Muslims directly

(Female, 18, London)

No not really. It really depends on who you are dealing with on one to one rather than laws. Depends on the local constabulary

(Female, 25, Edinburgh)

Even as regards existing protection, there was confusion and some concern among respondents. One female respondent aged 28 from Birmingham, felt that the incorporation of the Human Rights Act ensured protection for Muslims but that, ‘ the gap lies in Muslims lacking knowledge of their rights.’ Another who answered positively as regards the equality of protection afforded by British law, qualified his response thus:

Yes, everybody is protected by BL but law does not seem to be implemented.

(Male, 27, Birmingham)

Differences in positive and negative responses to questions on Muslim needs and protection indicated that even when respondents felt needs e.g. dietary requirements, were recognized, they did not feel protected from verbal and or physical abuse by the law. One respondent, aged 22 from Norwich, stated that she felt needs were especially recognised at the present time but when asked whether she felt protected by the law, stated: ‘No, not really esp after 7/7’. A male respondent aged 33 from Birmingham also stated, ‘No, recent events will give a clear indication to my answer.’

Others again saw the need for improvement. The existence and utility of incitement laws was brought up by various respondents, as well as the lack of action taken after attacks against Muslims.

Verbal = No...
Physical = I guess

(Male, 20, London)

No, as there are various attacks continually happening on Muslims and there seems to be nothing concrete to minimize this.

(Female, 21, Manchester)

No, they are not. Otherwise attacks on innocent Muslim men/women due to racial discrimination would have been addressed legally just as other matter.

(Female, 27, Birmingham)

No, amount of Muslims being abused has risen

(Female, 20, London)

At this moment, there are loop holes in the Religious Incitement laws.

(Male, 25, Leicester)

No! because they do the abuse

(Male, 27, London)

No cause many Muslim women wearing hijab etc do suffer much verbal abuse

(Female, 22, London)

Others saw some protection in aspects of the law but a lack in others.

At the moment not, but once the new legislation is passed – Muslims will be protected by laws

(Female, 17, High Wycombe)

Yes. I would say that in terms of physical and verbal abuse they are protected but when it comes to specific rights its not that equal.
(Male, 43, Edinburgh)

Still others drew comparisons with the experience of communities defined by ethnicity as minorities, and their experiences of inequality mirrored in their own.

EQUALITY BEFORE THE LAW AND DUE PROCESS.

Respondents were asked if they believed all British citizens were treated equally in the eyes of the law and if they thought Muslims were treated justly by the legal system e.g. they could receive a fair trial.

Racism and the treatment of ethnic minorities were cited as well as an inter-play with Islamophobia and other religious prejudice. One 25 year-old female respondent from Edinburgh, in line with the majority of respondents, did not feel that all British citizens were treated equally and saw it as inherent in British law and history: 'No. History has provided great evidence in that there will always be a group that will be stigmatised. So this time it's our turn.'

No, they treat black people differently by saying they commit gun crime etc. Maybe they treat Asians the same. My experiences in this are very limited I am judging only from what I've heard from other people.
(Female, 25, Cardiff)

Certainly not. Black men and Asian men are still treated roughly, sometimes physically.
(Female, 33, London)

Of course not. In this case, the prime example is Muslims, but definitely not limited to Muslims.
No, not when it comes to Muslims even black people
(Female, 22, Norwich)

I've found that anybody who isn't white, is targeted suspiciously or rough
(Female, 20, Birmingham)

Lack of implementation and the hint of double standards for minorities also appeared, although at least one 27 year-old female respondent from Reading felt that this was inherent and inevitable through human fallibility rather than intrinsic chauvinism: "As the legal system is made up of individuals, each individual has his/her weaknesses & faults so they are bound to affect the running of the law etc. & bring unfairness & mistakes."

When specifically asked about the existence of equality for all British citizens, the negativity of the perception of double standards:

The laws may state equal treatment, but it most certainly is not enforced by many organisations
(Female, 17, High Wycombe)

No not really, it seems the erosion of civil liberties has meant that the Muslim community is marginalised. However, anyone who stands up to the authorities is at risk.

(Male, 25, Leicester)

No...evidently not in that case of Babar.

(Female, 25, London)

No as the law is not acted on all times.

(Female, 26, Birmingham)

One 25-year-old female from London indicated systemic demonisation of Muslims in response to this question: "No – Muslims are seen as a threat which cause mass panic, hence laws have been introduced to demonise all Muslims just for the sake of actions of a few."

Demonisation and the role of the media in the process formed a significant response by Muslims when asked as to whether Muslims were treated justly by British law.

Muslims can get a fair deal but if there are any media hype than the odds are against them

(Male, 25, Leicester)

No – too much vilification in media of Muslims hence pressure for legal system to find scapegoats and curb the moral panic that has been created.

(Female, 25, London)

No- what with media coverage all Muslims undergoing trial are faced with wither a biased judge, jury.... etc

(Female, 18, London)

Depends on media hysteria.

(Male, 38, Birmingham)

No, as the misconceptions created by the media automatically influence the judgment or trial will get

(Female, 21, Manchester)

The role of the media in tandem with terrorism laws and measures were the main marker in responses as to why Muslims felt that they were not treated justly by the legal process.

Mostly, but due to propaganda, sometimes the legal system is capable of becoming biased, especially when it comes to terror charges.

(Male, 30, Birmingham)

No, due to laws related to terrorism & misrepresentations in the media, trials will be biased

(Female, 17, High Wycombe)

I think when it comes to cases regarding suspected terrorism, no, in other cases maybe (I don't think the prejudice has spread that far yet...well hopefully not).

(Female, 25, London)

Prejudices of juries, judges and other parts of the prosecution and trial process were also mooted as reasons as to why Muslims could not get a fair trial:

No – I believe that a Muslim is much likelier to attract attention from the police and to be perceived in the law as being guilty or have a suspicious agenda without evidence. I feel judges and juries are affected by this.

(Male, 26, London)

It would depend upon the jury and what they felt about Islam and Muslims.

(Female, 33, London)

No! No fair trials!
Detention without trial!

(Male, 27, London)

They might or might not get fair trial depends the prosecutors

(Female, 39, Colchester)

No – as Muslims rights can be taken away due to new laws.

(Male, 24, Slough)

In total, only three respondents stated that they believed Muslims were treated justly by the legal process. Negative responses focussed on prejudice from personnel within the legal system, particularly at trial, the effect of the media in this and the introduction of new anti-terrorism laws and their implementation. Responses critical of the trial system e.g. the existence of juries, the adversarial nature of courtroom procedure etc. came not from the main set of respondents but activists asked to give their views based on their experiences. Two campaigners against police abuses stated:



Personally, I have had only experience with the legal system where I was on jury service as a student. I thought it was a very scary system because not any of the 12 jurors are good, true men but just 12 ordinary men with their own prejudices and biases. The crass of society are making decisions on someone based on their prejudices. It's not about the truth but about how good your lawyer is. I was thrown off after 1 day of service because of my insistence that I would not find the defendant guilty because I had reasonable doubt, against the wishes of the judge and the other jurors.

(Male, GP, 37, London)

I've seen horrendous miscarriages of justice like the Guildford FOUR and the Birmingham 6 through to the persecution of Muslim community today. Thank God we got rid of the death penalty

(Female, Journalist, London)

Despite the negativity of responses, the much cited characterisation of Muslims as inimical to ‘British’ law and legal process was not reflected in the responses to these questions.

THE STRUGGLE AGAINST DISCRIMINATION

According to Miller (2002), very often what defines a category of people into a group proper is the experience of oppression or discrimination. In this context respondents’ answers regarding their perception of where discrimination originates from, is key in understanding the perceived barriers between communities and also the presumptions inherent within policy and debate about those communities.

In volume 2 of this series (Ameli et al, 2004b), it was found that 80% of respondents had experienced Islamophobia. Despite this, those who recorded higher levels of experience of Islamophobia i.e. on a daily, weekly or monthly basis, still showed high levels of support for British law. For those who experienced almost daily discrimination, 52.*% voiced unqualified support for British law with 40.7% supporting British law unless it conflicted with their religious values. For those with weekly experiences of Islamophobia, 45.1% gave unqualified support with 49.5% stating that they supported the law unless it conflicted with their values. For those with monthly experiences of discrimination 49.4% gave unqualified support to British law, and 47.1% qualified support.

| Table 2: Experience of Discrimination and Respect for British Law | | | | | | |
|---|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| I don't know | 51 78.5% | 4 6.2% | 4 6.2% | 6 9.2% | 0 .0% | 65 100.0% |
| Almost Daily | 0 .0% | 24 26.4% | 24 26.4% | 37 40.7% | 6 6.6% | 91 100.0% |
| Weekly | 2 2.2% | 15 16.5% | 26 28.6% | 45 49.5% | 3 3.3% | 91 100.0% |
| Monthly | 1 1.1% | 10 11.5% | 33 37.9% | 41 47.1% | 2 2.3% | 87 100.0% |
| Only on some occasion | 11 1.8% | 124 20.0% | 215 34.6% | 258 41.5% | 13 2.4% | 621 100.0% |
| Not at all | 4 2.4% | 54 31.8% | 53 31.2% | 55 32.4% | 4 2.4% | 170 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

There is no statistically significant difference between results as to experience and frequency of experience of discrimination and respect for British law. The only significant variation exists among those with no experience of

Islamophobia, with 63% giving unqualified support to British law as opposed to 32.4% who supported the law unless it conflicted with their religious values. Whilst unqualified support is double that of qualified support, the latter figure is still quite high, and the cause of possible conflict between religious values and law needs to be examined, as well as its impact on defining, if not creating, a united Muslim experience (Ameli and Merali, 2004a) in the UK.

WHAT CAUSES CONFLICT BETWEEN RELIGIOUS VALUES AND THE LAW?

When asked if they had ever experienced a conflict between their religious values and British law, most respondents answered negatively. Those who answered affirmatively cited various reasons from the ethics of car insurance, the availability of abortion on demand to the experience of being a polygamous wife.

The only repeated response in the affirmative was that of a recent conflict between the law and religious beliefs, particularly, politically oriented religious beliefs.

... I have to hide my 'evil ideology', i.e. stop caring for the Ummah, stop challenging the parasitic state of Israel, deny the right for violent struggle against unjust wars etc...

(Male, 20, London)

I was giving invitation in city centre inviting people to Islam when I was assaulted and I reported to police. He smiled and said you were preaching.

(Male, 35, Birmingham)

Intro of new terrorism laws will not allow me to hold a valid Islamic opinion such as affiliation to Shariah law & hope of an Islamic state.

(Female, 25, London)

Of those who answered negatively, many stated that they had heard of such conflicts anecdotally.

No, but it's happened with others

(Female, 30, Wembley)

Not personally, but heard many incidents of acquaintances (conflicting). E.g. The rights of man over the woman in the marriage as per Shari'ah, have no place in the system here. Therefore, women can walk out of a marriage without being held liable.

(Female, 27, Birmingham)

Personally I haven't experienced any problems as such but I am sure there are people who have been in these situations.

(Male, 43, Edinburgh)

Again the spectre of conflict based on political oriented religious belief was cited.

Not personally but in situations such as the recent discussion about powers to shut down places of worship, the extreme degree of the

regulation of preachers and laws passed that take OUR country to (internationally illegal) war.

(Male, 26, London)

Further, others who answered that they had not experienced a conflict between their religious values and British law, stated that they had as yet to experience a conflict. The repetition of this indicated a pervasive expectation of imminent conflict.

Not so far, but won't be surprised if I come across that situation soon

(Female, 20 Birmingham)

Not yet

(Male, 21, London)

No – but beginning to now

(Male, 60, Harrow)

Not til present but I do feel intimidated by the current legal system and feel being a Muslim is a crime and in a sense am waiting my turn to be picked on.

(Female, 22, Birmingham)

This was reflected in later responses (discussed in below) which asked if respondents foresaw conflict or sympathy between their religious values and British law.

MUSLIMS' UNDERSTANDING OF THE ORIGATION OF BRITISH LAW

When asked what orientation British law has, respondents mainly described British law to be secular, with only two indicating that they did not know, and six replying that they felt it was Christian in orientation. Whilst some described it as secular with Christian tendencies and biases, a few of those who described it as Christian indicated that it had secular tendencies. Two respondents specifically cited the orientation of the law in the orientation of MPs.

Definitely upholding Christian values and ideals. How many MP's are from ethnic minorities?

(Female, 22, Accrington)

Neither [secular or Christian] MP's go by their own beliefs

(Female, 13, Birmingham)

Respondents were further asked what orientation of law would be their ideal. Most respondents did not answer, indicating either a lack of critical expectation regarding the law, or disinterest in or misunderstanding of the question. Of those who responded however, responses almost equally came in preference of a secular system, an Islamic system or a system that was inclusive of all minorities.

MUSLIM PREFERENCE FOR LAW IN THE UK

Right-wing (e.g. *The Spectator*, 12 November, 2005) and even governmental narratives (Clarke, 2005) of Muslim political and legal aspirations suggests that Muslims are inimical to secularism. Whilst it can be argued that secularism has a wide meaning, respondents in this sample who preferred the law to have a secular orientation expressed this understanding to mean equality (and inclusion) for minorities:

Secular; Secular is better
(Male, 60, Harrow)

I feel it should remain secular to cover minorities.
(Male, 25, Leicester)

It is perhaps more secular in orientation and this is also probably the ideal orientation.
(Female, 24, London)

In common law, its secular and it would be better for it to stay secular and fair to all races/ethnics
(Male, 24, Slough)

This reflected the general concern in all responses that the inclusion of minorities and the recognition of their identities be integral to any new orientation in the law.

An ideal orientation would be equality for all.
(Female, 22, Accrington)

Secular. The ideal orientation should be just, with sensitivity to its people.
(Female, 25, London)

I think its non-believer orientation. An Ideal would be, something that respected all religions & human rights.
(Female, 20, Birmingham)

As the 25-yearold female from London indicates, those who believe the system is currently secular do not always see this as meaning the same thing as those who want secular orientation. To this respondent secularism is the opposite of justice.

Of those wishing to have an Islamic system, there was a recognition that this is most likely unfeasible, but did see the potential for other transformative orientations in the law which they would prefer.

As a Muslim, if not a Muslim state, then secular conservative is ideal.
(Female, 30, Wembley)

Ideally we'd like Islamic rule, but we'd settle for Christian rule in a Christian land
(Male, 30, Birmingham)

Christian would be better than secular. Islamic would be better than Christian, but how likely that would be, Allah knows best.
(Female, 27, Reading)

Ideally Shariah law but not possible at this stage so best would be secular

(Female, 22, Norwich)

I believe the ideal orientation is towards Islamic Law J, but failing that strong Christian values

(Male, 20, London)

Again, there is lack of uniformity as to what mostly represents the closest fit to an ideal Islamic system, with some seeing some form of secularism as more analogous than another Abrahamic faith.

Another group described their ideal orientation without any ideological detail. They saw the inclusion, recognition and protection of minorities as a prerequisite to any ideal system.

Ideal – one that does not discriminate against any religious practices

(Female, 25, London)

I believe that OUR legal system should be oriented to also recognise and reflect the common values among the main faiths practiced in the UK and to be consistent, rather than the often perceived double standards e.g. extradition pending guarantees of humanitarian conduct and internationally recognised procedures for fair trial.

(Male, 26, London)

To be fair and respect all colours and religions

(Male, 31, London)

A system based on religious values. At the moment it's half secular and half Christian value-based.

(Male, 21, London)

To take a mix of ethnic and religious ideas and incorporate it in order to better represent the diverse population of Britain

(Female, 21, Manchester)

Where all religions are noticed taken into account

(Female, 26, Birmingham)

Specific responses regarding the incorporation of Muslim law into the mainstream system were also raised, all citing the example of India, as per Parekh (2000) and Thomson (2004). One male respondent aged 43 from Edinburgh stated: 'it should try and incorporate Muslim Family law as India does.'

Thomson (2004) cites examples of Jewish Beth Din courts already extant in the UK as an example of how minority law can be recognised and incorporated within mainstream systems. Parekh (2000) refers to the Indian system, where Indians define themselves as both individuals and members of particular communities and demand both individual and collective rights. Parekh argues that there is no reason either why the Indian state should not have both features and reflect its citizens' dual political identity. Thus Parekh urges a reconceptualisation of the nature and role of the state.

The recurring concern of equality and inclusion particularly of religious as well as other minorities pervades responses and indicates the most persistent worry as to where conflict is based – not on the frustrated aspiration for

Islamisation, but the current inequalities faced by religious and other groups. The lack of clear ideological narrative – some seeing secular conservatism as the next best thing to a Muslim state, others, strong Christian values as the next best thing to Islamic law – also belies claims that the Muslim communities in the UK are a monolithic and ideologised mass. Clearly the idea of universalised Islam is deeply meaningful – however its narrative is one of unity and harmony amongst respondents rather than as a nationalistic and colonialistic discourse.

The emphasis on lack of recognition within the current system for minorities again suggests ‘common Muslim experience’ (Ameli et al, 2004b) as opposed to common Muslim aspiration.

In describing themselves, most respondents saw their religion as the most important part of their identity, with many respondents rejecting ethnic or national identities:

Yes. I consider my religion to be a determining factor of my identity rather than my race or nationality.

(Female, 22, Accrington)

Yes, is greater than race and nationality

(Male, 25, Leicester)

Damn right I do! Race/nationality mean nothing to me

(Female, 18, London)

Yes, most definitely

Being raised in the UK most of my life, I feel little affinity to Iraq, but I am not British by my way of living, so I define myself by my religion as this is what Allah will look at, not our race or nationality.

(Female, 27, Reading)

Yes. I consider myself Muslim 1st. Most of the time race & nationality doesn't come into it.

(Female, 20, Birmingham)

Two respondents, one male, secular respondent, aged 24, from Slough, and a male, practising Muslim from Birmingham, also pointed to the determining factor of external perceptions.

All contribute through in the current climate, I feel ostracised because I am Asian + Muslim no more aware.

(Male, 24, Slough)

Because I'm not what the stereotype of a Muslim looks like, I take my religion as normal part of me, race does come up but it's not on my mind.

(Male, 38, Birmingham)

Again respondents described a homogenisation of Muslim identity (Ameli and Merali, 2004a) by public perception rather than forces within the Muslim communities / y in the UK, with public perception imposing identity upon Muslims.

Other barriers have been mooted by key protagonists in public debate, (particularly but not solely within the right wing press) as regards Muslim affiliation to British law. Some of these i.e. citizenship status, place of birth and ethnicity can be interrogated by the findings of this research. Phillips (2003)

suggest that Muslims form a fifth column and the ethnicities of the 7/7 and 21/7 bombers and suspects has been continuously spotlighted, with quite alarming effects.



Profiling bombers I: Ethnicity & Religion

In July 2005 Somali mother Aziza Hassan, 39, her young son Ahmed Omar, and 74-year-old grandmother Kadija Hassan were walking from their house to the local mosque. Suddenly undercover, plain-clothed police with guns jumped out of a car and confronted them. The officers were shouting 'put your hands up, against the wall, face the wall....'

They pointed a gun at Ahmed's head who was only 12-years-old at the time; he thought they were going to kill him. His grandmother Kadija leaped forward to protect her grandson, putting herself between him and the armed officers. When she was pushed away by the officers she fell and suffered a heart attack. Kadija walks with a stick and has trouble controlling her balance. When the officers pushed her away, her walking stick fell down and she fell against a wall.

Police eventually called an ambulance when Kadija began to breathe heavily. However, the ordeal continued when the officers separated Ahmed from his mother and questioned him.

The family has yet to receive any apology or even explanation from the police. The incident has destroyed the family's faith in the force.

The idea that asylum seekers to the UK and those born outside the UK or those who do not have British citizenship have less affiliation to British law or by virtue of cultural heritage are inimical and hostile to British law and authority can be unpacked using the data on ethnicity and place of birth. Criteria for ethnicity was based on the UK Census 2001 categorisations, with the category of East African Asian added as a result of respondents' self-description.

The data undermines traditional notions of Turkish secularity and integrative, even assimilative tendencies as opposed to Iranian religiosity and sharp cultural segregation.. Those indicating Turkish ethnicity had the highest rate for opposing all British laws, whereas there were no respondents in this category from those of Iranian heritage. Likewise those Iranians giving unqualified support to British law numbered 73.3% whilst qualified support was 20% amongst Iranians, with Turks polling 45.5% and 36.4% respectively. Similarly those stating they were of Afro Caribbean ethnicity had no responses in the category of opposition to British laws and 50% of responses from this category stated that they supported British law, 'because their religion told them to do so'. This result particularly belies claims about the radicalisation of young Black Muslims based on the ethnicity of Germaine Lindsay, one of the 7/7 bombers and on sensationalist reporting of e.g. the Muslim Boys' gang from Brixton and latterly HM Prison Belmarsh.

White British Muslims, who had reported higher incidents of Islamophobia than other ethnic groups at 88% (see Ameli et al, 2004b) also supported

British law based on their religious belief at the rate of 40%, with a further 35% stating they did so unless it conflicted with their religious values.

Whilst we must infer that Somali respondents were categorised under the category 'Other' when describing ethnicity, those among this group who didn't respect British law still numbered significantly lower than other groups at 2.3% with 92.5% giving some sort of support for British law. Those giving unqualified support numbered 51.7%. Similar trends can be ascertained under the Arab (under which some Somalis may have registered their ethnicity). Those of Arab origin again are the subject of much speculation because of the ethnic origins of the 9/11 bombers. Similarly Pakistanis have been further scrutinised as a result of 7/7. Again the results for this group are significant in that 93.9% gave some sort of support to British law. Those who gave unconditional support to British law numbered 47.7% and similar trends can be seen in the responses of Bangladeshi respondents. Both Muslim ethnicities have a longer history in the UK as well as greater experience of socio-economic alienation and deprivation (Modood, 2004). This trend in responses differs from the other long established UK Muslim 'ethnicity', Indian, which is understood to have higher educational and economic levels. The difference in responses may reflect economic experience rather than religious or ideological experiences or aspirations. Notably all three groups had lower responses in the category of supporting British law because of religious values. Whilst this was the highest response amongst Indian Muslims, an almost identical number stated that they respected British law unless it interfered with their religious values. Indian responses to all-out support for British law regardless of religious values was on a par with Afro Caribbean, Arabs, Mixed, Other and East African Asian, and well below the Iranian response.

When responding to questions regarding Muslim recognition and protection by the law, the only significant variation attributable to why the few who responded positively to the idea that Muslims were recognised and protected was area of residence in the UK as opposed to place of birth, and level of income. One 26 year-old female respondent from Birmingham who described her income level as upper class, thought that Muslims were both recognised and protected. The only other respondent to believe both statements to be true was a female resident of Cardiff aged 25. Both women were Pakistani. One described herself as a secular Muslim, the other a practising Muslim.

Table 3: Ethnic Background and respect for law amongst British Muslims

| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
|--------------------|--------------------|---------------------------------|--|---|-------------------------------------|------------------------|
| Pakistani | 10 2.6% | 68 17.8% | 114 29.9% | 176 46.2% | 13 3.4% | 381 100.0% |
| Indian | 27 10.1% | 61 22.8% | 92 34.3% | 86 32.1% | 2 0.7% | 268 100.0% |
| Bangladeshi | 9 9.6% | 11 11.7% | 26 27.7% | 42 44.7% | 6 6.4% | 94 100.0% |
| Arab | 7 8.0% | 20 22.7% | 35 39.8% | 25 28.4% | 1 1.1% | 88 100.0% |
| Afro Caribbean | 2 20.0% | 2 20.0% | 5 50.0% | 1 10.0% | 0 .0% | 10 100.0% |
| White British | 2 5.0% | 7 17.5% | 16 40.0% | 14 35.0% | 1 2.5% | 40 100.0 |
| Turkish | 1 9.1% | 1 9.1% | 4 36.4% | 4 36.4% | 1 9.1% | 11 100.0% |
| Iranian | 1 6.7% | 6 40.0% | 5 33.3% | 3 20.0% | 0 .0% | 15 100.0% |
| Mixed | 0 .0% | 9 25.7% | 9 25.7% | 17 48.6% | 0 .0% | 35 100.0% |
| Other | 9 5.2% | 44 25.3% | 46 26.4% | 71 40.8% | 4 2.3% | 174 100.0% |
| East African Asian | 1 11.1% | 2 22.2% | 3 33.3% | 3 33.3% | 0 .0% | 9 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

When profiling has been undertaken by the police, there have been serious disparities with regard to Muslims and ethnic minorities. Previous work (Statewatch, 2004) has shown phenomenal increases under anti-terrorism laws in the numbers of 'Asian' (from which it can be inferred those of Muslim affiliation, either real or mistaken), as well as other ethnicities (within which it can be inferred some rises may be due to Muslimness, either real or perceived). Many respondents spoke of Stop and Search as an experience or one they expected at some time. Effective counter-terrorism strategies do not seem to have been taken on board by law enforcement agencies in that they seek out the overtly Muslim, rather than basing their profiling on the characteristics of actual terrorists (see IHRC, 2002 and Shadjareh, 2004).

Significantly those who were born outside the UK have a higher rate of unqualified support for British law than those born in the UK (55.1% and 49.6% respectively). Likewise those who supported British law because they felt their religion required them to was higher for those born outside the UK, and conversely those who expressed qualified support, based on the possibility of conflict with their religious values, was higher amongst UK born Muslims (41.6%). Again, whilst the figures for not respecting British law were low, more UK born Muslims (3.4%) chose this option than those born outside the UK (1.4%).

Table 4: Place of Birth and Respect for British Law among Muslims in Britain

| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
|-----------------|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| Britain | 33 5.4% | 104 16.9% | 201 32.7% | 256 41.6% | 21 3.4% | 615 100.0% |
| Other Countries | 36 7.1% | 127 24.9% | 154 30.2% | 186 36.5% | 7 1.4% | 510 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

Increasingly the idea of Muslimness appears to outweigh ethnic considerations in police action. White Muslims report frequent stops and searches by police, and Muslims of other ethnicities report supposed mistaken identity.



Case Study 2:
Police Profiling: Wrong ethnicity, right religion

In July 2005 Osman Tekin checked into a travel lodge hotel in Liverpool. The receptionists mistook Osman Tekin for one of the men wanted in connection with the failed London bomb attempt on 21 July, and contacted the police. The police watched CCTV footage of Osman Tekin and concurred that he was indeed the wanted man. This was despite the fact that Osman is of Turkic ethnic origin and the wanted suspect was of East African origin.

The next morning, unaware the police had been contacted, Osman was in his car and about to leave for work. He heard shouting and banging, he realised his car windows were being smashed. The door was opened and he was dragged to the floor, hitting his head on the ground. He was placed face down on the broken glass and a gun was pointed to his head. There were a number of men with guns and they began to shout at him ask him what was in the car.

Osman realised that the men were police officers but could not understand why he was being placed under arrest. He repeatedly stated that he had not done anything wrong and that they had the wrong man. Still shaken and disorientated he was taken at gunpoint to a van, searched, then driven to a police station.

At the police station it became apparent that he was not the suspect. The officer joked with him and explained that Muslims had to expect such things and that Osman was lucky he did not resist as he would have been shot.

Interestingly those with British citizenship had an almost identical percentage result for the category of respecting British law based on religious precepts, as those born in the UK. However, there was slight variation as regards complete support without any reason and qualified support. More of those without British citizenship felt that they respect British laws unless they interfere with their religious values (43% as opposed to 38.8% of British citizens).

| Table 5: Citizenship Status and Respect for Law among Muslims in Britain | | | | | | | |
|--|-----|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| Citizenship | Yes | 60 6.0% | 202 20.1% | 327 32.6% | 390 38.8% | 25 2.5% | 1004 100.0% |
| | No | 9 7.4% | 29 24.0% | 28 23.1% | 52 43.0% | 3 2.5% | 121 100.0% |
| TOTAL | | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

WHERE DOES CONFLICT COME FROM
AND HOW CAN IT BE RESOLVED?

Whilst there are significant and often the highest response rates in the category of qualified support for British law i.e. support unless the law interferes with their religious values, thus far all responses have indicated a frontline interaction with the police as the main cause of conflict and this reflects negative Muslim profiling rather than a clash of values within the law. The following section undertakes an analysis of the quantitative survey to see where, if anywhere areas of conflict may be located.

When asked about their experiences of the police or other law enforcement agencies, most responded that they had no experience. Of the few who had had experiences, those who had negative experiences just outweighed those who had positive experiences. Positive experiences mainly involved stops and searches – the stops and searches themselves not being the positive experience but the fact that no abuse was received from police officers:

Yes, I was stopped but the ‘elderly’ officer was very polite so I responded in a likewise manner.
(Male, 20, London)

Been stopped & searched, and arrested, never been harassed. Abused, or behaved inappropriately by police officer
(Male, 30, Birmingham)

One respondent referred to an incident of abuse that the police dealt with promptly. This runs counter to experiences and expectations recounted in earlier responses:

I have had a positive experience with the police recently, in which they wanted to investigate someone who had verbally abused me.
(Female, 33, London)

Of those who reported having no experience, some understood the question to be specifically about stop and search:

By the grace of Allah never been stopped
(37, London)

Never stopped & searched. Alhamdulillah.
(Female, 27, Reading)

One respondent recounting her experience of stop and search felt it to be a neutral affair:

I have been stopped by police, but it was OK. There was nothing positive or negative about it.
(Female, 39, Colchester)

Some again narrated experiences and anecdotes of others, again based on stop and search and terrorism related issues:

Personally haven't been stopped & searched but know people that have a very negative experience as you can tell the police are targeting Muslims and intimidating them
(Female, 20, Birmingham)

Again those citing negative experiences revolve around experiences of the police.

Yes, have been stopped for being in wrong place at the wrong time. Experience was negative. But rectified after complaint.
(Female, 26, Birmingham)

I had a negative experience a long time ago. They asked to look at our passports. This was a while ago I don't think they had rights to check my passport then even though now they do.
(Male, 43, Edinburgh)

Police smiled and said you were preaching.
(Male, 35, Birmingham)

I've been stopped on many occasions. Around four times, from South Africa I was stopped on return from the UK
(Male, 25, Leicester)

These experiences were predominantly though not exclusively recent. Some related to treatment inferred to predate the current climate.

I had a negative experience a long time ago. They asked to look at our passports. This was a while ago I don't think they had rights to check my passport then even though now they do.
(Male, 43, Edinburgh)

Not for years. Negative when happened couldn't count the times, I was stopped i.e. 3 times and it would not be strange.
(Male, 38, Birmingham)

Cases reported to IHRC of stops and searches vary in nature, however there have been many notable examples (see e.g. Ameli et al, 2004b for examples), where abusive language and violence have been alleged to be used by the police e.g. in the arrest of Babar Ahmad, currently detained pending an extradition hearing (see also Waseem, 2005).



Case Study 3: Abusing the Qur'an

On 31 October 2005 police were called to the house of Mr Muhamed Osman after his sister had called following an argument. The dispute had calmed down by the time the police arrived, Muhamed was packing for a business trip to Leeds.

At first the officers were civil waiting for him to finish packing; that was until one officer in particular began to become impatient and began to mock Muhamed. Muhamed asked the officer's name and badge number so he could write them down. This seemed to anger the officer who then said to Muhamed 'F*** you and your Quran' and then threw his Quran and prayer mat into the rubbish bin.

The act angered Muhamed who began to protest. The officer started to restrain him, pushed him against the wall, forced him on the floor and stamped on him while telling him 'I won't leave marks'. Muhammed was handcuffed, placed under arrest and taken to a police station.

Other cases reported to IHRC relate to the experience of prejudice and discrimination from social workers, legal case workers, parts of the Crown Prosecution Service, personnel working for the Official Solicitor's office (including representatives of the official solicitor and psychiatrist commissioned by her office), and even judges. Some of these case studies can be found in *Social Discrimination: Across the Muslim Divide* (Ameli et al 2004b) and others in *Anti-Muslim Hostility and Hatred in the UK, 2000* (IHRC, 2000). In earlier work, major concerns centred around bias evidenced in family proceedings and two cases are reprinted in Appendix II. Two more recent examples are listed below, and represent cases reported to IHRC.



Case Study 4: ‘Angry enough...?’

Jane Simpson is a convert to Islam. Eight years ago she divorced her husband and has parental responsibility of their son. Her ex-husband wanted more access. The judge in the case referred the boy’s father to see a psychiatrist about his drinking problem and ordered him to carry out a blood test. The psychiatrist who was supposed to be assessing the father stated in the report that Jane was bringing the child up to become a ‘Muslim fundamentalist’. The psychiatrist has never met, or had ever spoken to, either Jane or her son.

When discussing the finding of the report with her social worker, Jane noted his attitude was hostile. She had observed that this social worker’s attitude towards her had always been odd, however, on this occasion his attitude was obviously antagonistic. He referred to the London bombings asking her what she thought about them. She replied that they angered her and she thought they were wrong. He asked her about her husband (after her divorce Jane had married a Muslim man). She stated that he was angry too. The social worker then replied: ‘Angry enough to strap a rucksack on his back and blow himself up?’

Case Study 5: The End of McPherson

Abdul Qadir Mustaqim, a young Muslim of mixed ethno-cultural heritage alleged police racism during a stop and arrest. In spite of video and audio evidence of the arrest and the police having to drop trumped up charges of possession of an offensive weapon, Mustaqim was convicted in the Aylesbury district court for allegedly making a statement offensive to the police officers. District Judge Williams concluded that the allegation of racism against a police officer was offensive and constituted racism itself.

Systemic prejudice is a recurrent theme in responses. An overwhelming number of respondents indicated that they felt the law itself was hostile towards them due to their faith or political beliefs. Some however distinguished systematic abuse from inherent bias:

The laws are okay but the way police deal with matters is ridiculous. Something should be done about the police
(Female, 20, Birmingham)

Yes, I don’t think it’s the law, it’s the people behind the law.
(Female, 25, Edinburgh)

...the law is not racist but unfortunately some of the people who are employed to oppose it and/or defend it have blatant racist tendencies.
(Female, journalist, London)

Others however described the law itself to be hostile towards them due to their faith and / or political beliefs, particularly anti-terrorist legislation and again the operation of the police and security services:

Yeh I do feel hostility in the laws - I feel it's an attack on Islam.
British law can't be tolerant to Muslims as it aims to please the 'people in power' who are ultimately against Muslims + Islam
(Female, 18, London)

Yes, feel like being watched, feel like being judged
They should try to be more involved with the communities they serve.
(Female, 27, Reading)

Not openly hostile, however there is a hidden undercurrent of faith hate.
(Male, 43, Edinburgh)

British is hostile as law related to terrorism target the Muslims community. During terrorist attacks by IRA, no laws/legislation were made for catholic (Irish) individuals, so why the need for those laws for Muslims?
(Female, 17, High Wycombe)

Remedies to this impasse between the law and Muslims focussed on the actions of the police, remedying current anti-terrorist legislation and ensuring inclusion of Muslims within the legal professional and law establishment:

It is hostile. This can be changed by simple things like being more specific in laws such as the current law says we shouldn't glorify terrorism. This is so general! How do we know what constitutes glorifying.
(Female, 22, Birmingham)

Show us that they will give us a fair trial in any case.
(Female, 25, London)

British law could allow polygyny. That would make it easier also for non-Muslims to have flexible family arrangements and not have to go through so many divorces.
(Female, 33, London)

There is some hostility. Greater tolerance can be achieved by facilitating greater representation of judges and juries in trials and by being consistent in matters of extradition.
(Male, 26, London)

British law should be inclusive for all people regardless of faith and political beliefs
(Male, 25, Leicester)

Offer more support for faith based projects. Introduce laws that offer protection for people of all faiths from discrimination on the grounds of faith.
(Male, 26, London)

By giving us our rights
(Male, 31, London)

Similar ideas were espoused when respondents were asked if the law had the capacity to relieve tensions between communities:

...treat everyone the same.

(Male, 38, Birmingham)

Yes – encourage & help to instigate dialogue between the communities

(Female, 21, Manchester)

Most definitely. One of the key ways is by distinguishing terrorism from Islam – they are not one.

(Female, 17, High Wycombe)

Yes. By taking into consideration of all religions but also every person involved with the law going out & learning about every religion.

(Female, 20, Birmingham)

Yes they can in the application of law, especially if they take into account minorities when making laws.

(Male, 43, Edinburgh)

Yes. Can be relieved through more workshops. Stop threatening to monitor Masjids. Change use of language by politicians.

(Female, 22, Birmingham)

Yes. Better understanding of the beliefs and portraying them to the ignorant.

(Male, 31, Birmingham)

Yes. Stop looking at the Islamic faith at conspiring towards terrorism and start with homegrown organizations, for example, the BNP Party and IRA.

(Female, 22, Accrington)

Offer more support for faith based projects. Introduce laws that offer protection for people of all faiths from discrimination on the grounds of faith.

(Male, 26, London)

I feel that an equal platform for all communities and that they are publicly highlighted by any injustice. Also it is essential that misconceptions have to be explained

(Male, 25, Leicester)

Respecting all communities and religions and giving them their fair rights

(Male, 31, London)

They need to educate children in schools about real meaning and values of religion Islam. Treat young people with respect and provide equal opportunities for them for jobs.

(Female, 39, Colchester)

Yes. I believe it can do more to relieve some tension. The recent anti-terrorist laws have seemed to be only targeted at Muslims and this has only created more tension between Muslims and other communities.

(Female, 24, London)

Yes – to begin with read & understand the intricacies of different commentaries & faiths – And not give shocking & inaccurate speeches about evil ideologies which feed the passing of discriminatory legislation

(Female, 25, London)

Treat all people as equal, all races/ethnics can be stopped + searched not just 'Asians'.

(Male, 24, Slough)

To be more open minded and not have pre conceived ideas about Muslims.

(Female, 27, Reading)

One respondent argued that possible solutions and remedies already existed:

Definitely hostile towards faith/political beliefs. However, I know local police are holding seminars on how they can become more understanding towards Islam, especially when it comes to arresting and detaining suspects. If the British law can continue with this, then hopefully they can become more tolerant.

(Female, 22, Accrington)

These themes were repeated when respondents were asked if the law was able to reduce tensions between communities or inflame them.

The overwhelming response that the law neither recognised nor protected Muslims and that it is hostile to Muslims due to their faith, can be further elaborated by examining responses regarding respondents' sense of being respected by the government, the media and wider society.

LEVEL OF EDUCATION

Some Muslims and Media have suggested that lack of education and educational ability amongst Muslims prevents them from being effective advocates for themselves or indeed respectful of the law (see MPACUK, 2005b and Ramadan cited in Reyes, 2005 for examples). However the quantitative results for this research undermine these assumptions. The groups amongst which the largest number respected all British law without any qualifying reason were those without GSCE qualifications. Whilst those with PhDs had a very high response (48.5%) of respect for British law being affected by their religious values, all other groups had the largest highest rates in the category of supporting the law unless it conflicted with their religious values.

| Table 6: Educational Level and Respect for Law among Muslims in Britain | | | | | | |
|---|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| Below GCSE | 6 14.3% | 13 31.0% | 10 23.8% | 12 28.6% | 1 2.4% | 42 100.0% |
| GCSE or Equivalent | 16 7.6% | 42 19.9% | 58 27.5% | 86 40.8% | 9 4.3% | 211 100.0% |
| A Level or Equivalent | 16 6.6% | 52 21.6% | 76 31.5% | 93 38.6% | 4 1.7% | 241 100.0% |
| Undergraduate | 16 4.8% | 60 18.0% | 114 34.2% | 133 39.9% | 10 3.0% | 333 100.0% |
| Postgraduate | 14 5.2% | 59 21.9% | 83 30.9% | 109 40.5% | 4 1.5% | 269 100.0% |
| PhD | 1 3.4% | 5 17.2% | 14 48.3% | 9 31.0% | 0 .0% | 29 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

As these figures reflect Muslim educational attainment through British educational systems, the idea that Muslims need further education to either appreciate British law better or advocate for themselves, indicates that the problem is generic to British society rather than Muslim specific. This factor becomes an important consideration if we look at the scrutiny under which Muslim political and conceptual literacy has been placed by public commentators who portray Muslims as unfamiliar and indisposed to liberal systems³⁷. This portrayal of Muslims comes from various quarters but respondents in this research saw much fault for this in the workings of the media.

ROLE OF THE MEDIA

As discussed above and in previous research in this series, the role of the media in creating stereotypes about Muslims is cited by many as a key issue that needs addressing by government. As per the foregoing, Muslims saw the demonisation of Muslims in the media as impacting on their ability to have a fair trial and undermining any prospect of being treated justly by the legal system. One respondent saw the key to addressing hostility within the law as lying in the effect of the media. She saw the law to be hostile because:

... media represents muslims negatively
(Female, 22, London)

Of those surveyed on whether they felt the media was racist, Islamophobic, fair etc., those who believed the media to be racist, Islamophobic or only overtly fair but covertly racist or Islamophobic mainly felt that they respected British law unless it interfered with their religious values. The corresponding figure is noticeably low amongst the minority who believe that the representation of Muslims in the media is fair. Perhaps significantly, those who

believed the media to be racist rather than Islamophobic had the highest response for not respecting British laws at all at 5.7%.

| Table 7: Respect for Law and Perception of Media | | | | | | |
|--|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| I have no idea | 57 61.3% | 13 14.0% | 9 9.7% | 12 12.9% | 2 2.2% | 93 100.0% |
| Islamophobic | 8 1.1% | 125 17.8% | 242 34.5% | 313 44.6% | 14 2.0% | 702 100.0% |
| Racist | 2 1.1% | 49 28.0% | 49 28.0% | 65 37.1% | 10 5.7% | 175 100.0% |
| Fair representation of Muslims | 1 2.2% | 25 55.6% | 13 28.9% | 6 13.3% | 0 .0% | 45 100.0% |
| Overtly fair representation | 1 .9% | 19 17.3% | 42 38.3% | 46 41.8% | 2 1.8% | 110 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

Many respondents saw the potential of relieving tensions between communities by the law addressing media behaviour:

Promote better understanding, i.e. maybe outlaw media stories based on lies.
(Male, 21, London)

Reduce news of Muslims on TV
(Female, 20, London)

Control information being let out,...
(Male, 38, Birmingham)

Yes the media have much influence
(Female, 22, London)

Yes, stop media hatred & stop labeling people by their religion. You never hear of Christian murderers etc only Islamic extremists/fundamentalists.
(Female, 22, Norwich)

Get some type of law limiting the media, as in what they show/say because that stirs up a lot of tension between communities.
(Female, 20 Birmingham)

Live in harmony; Don't do Islamophobia; Media make it difficult
(Male, 60, Harrow)

It can introduce penalties for religious discrimination and abuse of that nature. Less ‘are you thinking what I’m thinking posters’! More tackling the immigration problem rather than enticing the BNP. Less allowing media bias that keeps pinning their new Islamic scapegoat. I suppose some sort of law censorship of media that incites religious hatred.

(Female, 25, London)

Responses regarding the expectations of Muslims from the government will be discussed below, but also showed significant concern about the unfettered actions of the media.

Only one respondent felt the media had been restrained in its work:

Regarding Iraq and Afghanistan, newspapers need to be allowed to report on atrocities committed there by the British government.

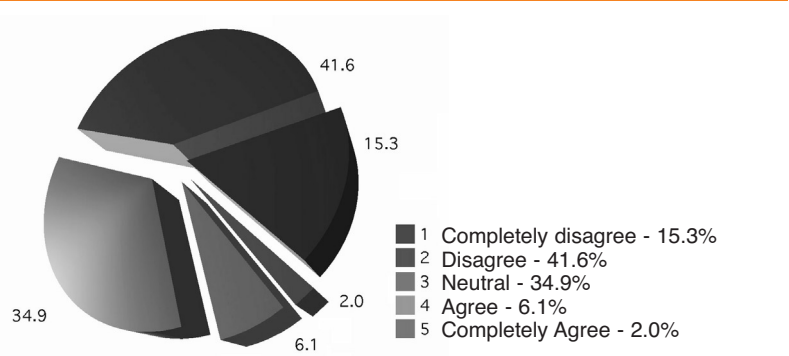
(Female, 33, London)

Overall however, perceptions of the media and its role in fomenting public opinion, were key to Muslims’ analysis of where actual and potential conflict between Muslims and law enforcement agencies and the legislature arises. The media’s role as an educative tool that could create better public understanding and as a result effect better law was also stated and implied, again underlying Muslims’ understanding of the democratic process as effecting law.

CULTURE / SOCIETY

Ameli and Merali (2004a) found that most Muslims felt that wider society did not respect them. This disheartening figure might suggest reciprocated feelings of disrespect to the law which, as previous responses have indicated, most Muslims feel to be biased, often towards the majority.

Figure 3: Do you feel British Society respects British Muslims?



However findings relating to the relationship between respondents’ sense of being respected in British society and their respect for the law again belied such a supposition. Whilst 40.2% of the 10% who felt they were respected by wider society unconditionally supported British law as a result of their religious beliefs, only approximately a third of those who were neutral towards the statement as well as those who disagreed and strongly disagreed with the statement felt the same.

| Table 8: Relations between Sense of Being respected in British Society and Respect for Law among Muslims in Britain | | | | | | |
|---|--------------------|---------------------------------|--|---|-------------------------------------|------------------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| Completely agree | 4 21.1% | 10 52.6% | 3 15.8% | 2 10.5% | 0 .0% | 19 100.0% |
| Agree | 0 .0% | 40 41.2% | 39 40.2% | 17 17.5% | 1 1.0% | 97 100.0% |
| Neutral | 50 12.1% | 80 19.3% | 128 30.9% | 149 36.0% | 7 1.7% | 414 100.0% |
| Disagree | 13 3.2% | 78 19.1% | 130 31.9% | 177 43.4% | 10 2.5% | 408 100.0% |
| Completely disagree | 2 1.1% | 23 12.3% | 55 29.4% | 97 51.9% | 10 5.3% | 187 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

Whilst seeing hostility within the law against Muslims because of their faith, many respondents saw the remedy to be community based projects, to encourage dialogue between communities and also to educate wider society about Muslims. Implicit in these assumptions is the idea that the legislative process and majority understanding and normative aspirations are intertwined:

They should try to be more involved with the communities they serve.
(Female, 27, Reading)

To be more tolerant – you must have knowledge. It's the only way to understand something & not be intimidated
(Female, 20, Birmingham)

Yes, to remedy this they must 'kill' this climate of fear and learn about Islam from its 'true' representatives & not pretend to do so by giving the platform to speak to ignorant, irreligious people.
(Male, 20, London)

Many of these themes were reiterated in responses regarding whether the law had the potential to resolve or inflame tensions between communities. Only four respondents felt there was no potential and three stated that they did not know. Of the majority who stated the law had the potential, whilst expressing some pessimism as to the likelihood of such potential being realised suggested similar remedies.

GOVERNMENT

In a similar vein, one male respondent, aged 27, saw greater representation in Parliament as a way to influence and affect the law: “ They need more Muslims in the high levels of government.”

As with the findings on respect from wider society, most Muslims (Ameli and Merali 2004a) felt that the British government did not support Muslims.

Again counter-intuitively this would suggest that levels of respect would be significantly low. Bizarrely the highest level of response for having no respect for British laws came from the people who felt that the government was actually in favour of Muslims (5.3%).

| Table 9: Support from British Government for British Muslims and Respect for Law among Muslims in Britain | | | | | | |
|---|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| I don't know | 36 52.2% | 5 7.2% | 7 10.1% | 20 29.0% | 1 1.4% | 69 100.0% |
| Yes, the British Government is in favour of British Muslims | 5 13.2% | 20 52.6% | 4 10.5% | 7 18.4% | 2 5.3% | 38 100.0% |
| Yes, without any distinction between Muslim and non-Muslim | 2 2.3% | 28 32.6% | 33 38.4% | 20 23.3% | 3 3.5% | 86 100.0% |
| Yes there is some support, but not very serious | 13 2.9% | 92 20.9% | 162 36.7% | 165 37.4% | 9 2.0% | 441 100.0% |
| No, they don't care about any minority groups | 7 2.8% | 48 19.3% | 77 30.9% | 114 45.8% | 3 1.2% | 249 100.0% |
| No, there are serious prejudicial policies against Muslims | 6 2.5% | 38 15.7% | 72 29.8% | 116 47.9% | 10 4.1% | 242 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

A significant set of respondents indicated that whilst law in their opinion could be used to relieve tensions between communities, the government’s role outside of its legislative capacity was crucial:

I can't see how they can they can't force anyone to behave towards any other it's the government and the legal system that has to change its attitudes towards minorities.

(Female, 25, Cardiff)

They can do more

(37, London)

Can do more if intentioned

(Female, 26, Birmingham)

The government's own perceptions of cohesion and partnership with communities was implicitly criticised by those who saw the possibilities of legislation and policy relieving tension if the government had the will and good faith to do so:

Yes, they can create new rules in order to reunite communities

(Male, 16, London)

Yeh – have more trust of ethnic minority communities , have gov't funded youth projects to encourage working together (or at least living together peacefully)

(Female, 18, London)

Yes. Can be relieved through more workshops. Stop threatening to monitor Masjids. Change use of language by politicians.

(Female, 22, Birmingham)

Less 'are you thinking what I'm thinking posters'! More tackling the immigration problem rather than enticing the BNP.

(Female, 25, London)

The potential for the law to become a transformative tool towards a better society was, it seems, part of an ideal vision amongst Muslim respondents. One academic elaborated on this theme:



All aspects of the British Law, the Criminal Justice System and Public Institutions need to be audited and scrutinised to ensure that any inequalities that may be present are identified and steps taken to overcome them, through new legislation and through changes in cultures, practices, and procedures. These changes can only be effective if there is recognition, understanding and respect for differences at individual and group levels in terms of differing values and norms. At a deeper level this is possible only if there is a predisposition to treat all those who form British society with dignity, which would require appropriate levels of awareness and education.

(Male, 57, Professor, Windsor)

When asked about their prediction of the future and what their expectations of the government with regard to law were, responses were however less optimistic.

WHAT FUTURE FOR MUSLIMS AND BRITISH LAW:
EXPECTATIONS OF THE GOVERNMENT

When asked if they foresaw more conflict or rapprochement between their values and British law, respondents overwhelmingly saw more conflict. Only four stated that they saw an alternative future:

More sympathy
(Male, 60, Harrow)

I see peace. no compulsion in religion
(Male, 35, Birmingham)

Slowly I believe that they will gain sympathy, because as the true message of Islam is spread, due to its Haqq, it can only become more accepted, not less.
(Male, 30, Birmingham)

So far I don't see the conflict between the two I don't see there would be any problem as I go about my usual business. It would be a completely different matter if the government banned hijab or something radical like that
(Female, 22, Edinburgh)

The last response mirrors findings in the previous volume (Ameli and Merali, 2006) in this series regarding hijab, where many female respondents saw any potential governmental diktat against hijab as a cause for protest and dissatisfaction. Many measured their affiliation for the UK in terms of the freedom they perceived to wear hijab in the UK compared to other European countries. There is also a slightly higher level of conditional support for British law amongst women, with 41.9% saying that they respect British law unless it interferes with their religious values, as opposed to 37.8% among men. However the difference is not highly significant. If hijab is understood to be a variable that may cause such a variation , it is worth noting that similar numbers of men and women felt hijab to be highly important (Ameli and Merali, 2006) and the issue could be equally determining for both.

| Table 10: Gender and Respect for British Law among Muslims in Britain | | | | | | |
|---|----------------|---------------------------------|--|---|-------------------------------------|----------------|
| | I have no idea | Yes, I respect all British Laws | Yes, I respect all British Laws because my religion asks me to do so | I respect British Laws unless they interfere with my religion | I don't respect British Laws at all | TOTAL |
| Female | 18 4.5% | 77 19.2% | 133 33.2% | 168 41.9% | 5 1.2% | 401 100.0% |
| Male | 51 7.0% | 154 21.3% | 222 30.7% | 274 37.8% | 23 3.2% | 724 100.0% |
| TOTAL | 69 6.1% | 231 20.5% | 355 31.6% | 442 39.3% | 28 2.5% | 1125 100.0% |

Hijab however did not feature highly in responses as to the location of future conflict. Again media demonisation and terrorism laws and measures were cited in much a similar way as in previous questions. The feeling that Muslims had been demonised and targeted prevailed in responses:

Greater conflict due to the misunderstandings created by media alongside with some famous personalities

(Female, 17, High Wycombe)

Tension – the enemy has gone from an organization (Al-Qaeda) to an ideology (Islamism)

The latter is defined by people who know nothing about Islam, & want to subject it to a similar fate suffered by the Christians during its reformation.

(Male, 20, London)

More sympathy is required so Muslims do not feel targeted.

(Female, 20, London)

As responses on the potential of law to transform society had indicated a cynicism on the part of the government, stating that transformation was possible if the government wanted it, a similar level of cynicism as to the government's motives and actions appeared in these responses:

Greater conflict. The government is not willing to listen. The first step would be to listen.

(Female, 25, Edinburgh)

Probably all this rate, more conflict, my reasons are based on personal view, I feel the government are attacking the Muslim community with all the 'house raids' etc

(Female, 20, Birmingham)

There will be greater conflict. The law wants full control of everyone but that not going to happen. The world will come to an end & I think, with recent events, the ball has started rolling, thing are in motion now that cannot be undone.

(Female, 20, Birmingham)

The issue of hijab came up once in this context, but again the link was with demonisation and terrorism measures. Fears are echoed in respondents' expectations of the government:

More Conflict!

I feel much more threatened. Haven't even been to city centre due to the way I am dressed. Feel I'll be targeted. Especially after learning about a few sisters being arrested.

(Female, 22, Birmingham)

When asked what their expectations of the government were with regard to law, some respondents also understood this question to mean what they thought the government would do rather than what they wanted them to do. This is peculiar to this set of responses and implies that on this issue, Muslims feel dislocation between their status as citizens who in theory can affect the make-up of the legislature as much as others, and yet feel they hold a position from which to speak to the executive on this issue. This sense of alienation fed by a lack of hope in the government was made explicit in several instances:

I don't expect any good from them if I am entirely honest!
Laws do need to be specific to different faith groups but I don't think that will happen. They want to turn Britain to the likes of France....and they are already well on their way. They are using 7-7 as an excuse for their own means which I find disgusting.

(Female, 22, Birmingham)

I have no expectations! It's a case of do as I say not as I do.
No there should be flexibility and these laws should apply to all regardless of race or ethnicity.

(Female, 25, Edinburgh)

I have lost all hope

(Male, 20, London)

One male respondent, aged 27, from Luton went so far as to say he felt the government was determined to root out all Muslims: 'They will make things worse in the near future just to get us out of the country.'

This was also reflected in responses from some community activists:

We should judge the system by the fruits of what is going on at the moment. Just look at the case of the 10 guys who have been grabbed again for deportation. There is no case against them. But it shows that if you are a Muslim and seen as "not conducive to the public good", your rights can be taken away. All the proposed legislation clearly shows that only 1 community is being targeted. They haven't done the same with animal rights activists. There have been so many miscarriages of justice that I don't think Muslims should have any faith in the system.

(Male, GP, 37, London)

How can they have faith in a system which is clearly unjust and loaded against them?

(Female, Journalist, London)

It has been argued that Muslims can have faith in the system only if they feel that it deals with them in a fair and equal way - i.e., if there are no double standards, e.g. the general provision in current law for wholly or mainly Christian assemblies in state schools or the existing Blasphemy law. The perception of many Muslims is that, at present, in comparison with the majority population, there are some aspects of the legal system which do not offer them sufficient protection, though some accommodation of the Shari'a has taken place. Therefore, with some Muslim demands met, there is a greater faith in the system now than there was previously. For some Muslims, however, anything short of full implementation of Islamic law would continue to be felt as unsatisfactory. That is unlikely to happen in Britain in the near future unless, of course, instead of the current unitary legal system, individuals are allowed to have access to their own specific legal systems, at least on a voluntary basis.

(Male, 57, Professor, Windsor)

These grassroots and academic views show dislocation from Muslim activists who are also established party political figures, and would be expected to espouse confidence in the system:

Yes, it is the only system we have and we should never lose faith. We must engage at all levels and play a pro-active part at all levels. If we personally disbar ourselves from playing a part then the greatest disservice we are carrying out IS TO OURSELVES!

(Male, 33, Political Party Project Manager, London)

I think Muslims ought to have faith in the system, but with a full intent on working with others in order to reform it. As British Muslims, as well as all others for that matter, we have little option and no alternative, the absence of faith in the legal and justice system is immeasurably detrimental not only to the individual but to society as a whole. Also, and as I stated above, I believe that the law from the conceptual point of view is fair, which leaves the practical element open to debate, discussion and to reform, which it must. Also, if British Muslims had no faith in the system, then there would be no inclination to become involved in or become part of the police force and the judiciary, which would be to its obvious detriment. Only through their involvement and presence within the system can we maintain a degree of reform and recourse that sustains a degree of credibility and trust that society needs in order to avoid anarchy and collapse.

(Male, lecturer, 36, Leeds)

This again suggests as was indicated in the first volume in this series from findings on citizenship that there is a gap in understanding between grassroots Muslims and those parts of Muslim communities which speak with and are contacted by government (see Ameli and Merali, 2004a). From the quantitative survey it was found that most Muslims felt that there was only nominal representation of Muslims within government.

Whilst a belief in the political system was endorsed in those findings, as the law largely is in these, Muslim participation is seen to be lacking and the blame for this lack is laid at the door of government. The role of the law as a means for integration whilst respecting and even facilitating religious and cultural differences was highlighted as an expectation, again with some cynicism as to government intent either to do nothing or work towards assimilation:

I feel there should be special legislation protecting against incitement, hatred and to allow protection to all religious minorities... at the same time the government should absorb all minorities into the wider society, but to also preserve identity.

(Male, 25, Leicester)

I don't think the law can get much worse with regards to anti-terrorism...but yes, I don't expect things to get better straight away or without a long term plan of action. Yes there should be legislation to protect religious minorities.

(Female, 25, London)

All minorities, Sikh, Hindu, Buddhist, Muslim need to be protected from stereotyping, and incitement of hatred and violence against them.

(Female, 33, London)

Yes I feel there should be protection for all religious minorities

(Male, 31, London)

There may be few better laws, but the worse laws will outweigh that. A specific legislation is most certainly required for the protection of religious minorities.

(Female, 17, High Wycombe)

We all have a right to live in a safe environment, so yes there should be laws protecting all.

In society it is the minorities that are often the ones that suffer & so they should not be ignored.

(Female, 27, Reading)

The laws are becoming more worse and are affecting the Muslims community. There should be specific legislation for religions in order for there to be equal society.

(Male, 16, London)

Yes there should be specific laws protecting all religious minorities. The government should forget about trying to get more control with ID cards, etc. They should start focusing on harmonizing all people of all faiths & education everyone.

(Female, 20, Birmingham)

Yes, I think that a specific legislation protecting religious minorities would be helpful.

(Female, 22, Accrington)

I expect better laws such as specific laws to protect people of all faiths.

(Male, 26, London)

Interestingly only three respondents spoke of Muslim specific law with most respondents looking for measures that would protect all or other religious communities, indicating again a more open mindset than presented in public debate:

I think there should be more clear laws in the fair treatment of Muslims so employers & general public will know about them.

(Female, 21, Manchester)

Better law to protect Muslim community

(Male, 48, Birmingham)

Better laws... it's about time. Muslims need to make British law friendlier to Muslims, i.e. by being the ones who influence new laws, by being in positions of influence.

(Male, 21, London)

The last respondent was one of the few who saw potential for transformation. His view however puts the onus for change on Muslims rather than the government.

Activists and specialists were asked whether the recognition of faith within the legal system was appropriate, they all responded affirmatively but for various reasons – from the experience of anti-terrorism measures to ensuring full representation of British diversity :



at the moment, race is too narrow a concept, especially with the terrorism threat which has meant that if you are a Muslim, then that is the problem, irrespective of your race.
(Male, GP, 37, London)

More so today than ever.
(Male, 33, Political Party Project Manager)

there should be legal protection within the legal system to prevent prejudice on basis of faith in every respect- recruitment, representation especially within employment law where Muslims are not protected.
(Female, Lawyer, 27, Birmingham)

Yes. Faith, it has been found in many surveys in Britain, is considered an extremely important part of many people's lives. For some it shapes all or, at least, several aspects of their daily social interaction - to a considerable degree it determines their relations with fellow human beings as well as with community and public institutions of society. Since the legal system sets down the parameters and boundaries within which people need to operate (indeed, regulate their behaviour) so that they can (or are constrained to) live in relative social harmony or at least without causing each other harm, then it follows that it is relevant to recognise religious needs and concerns legally, as it is faith that forms the bedrock of values and norms that informs many people's behaviour in society.
(Male, 57, Professor, Windsor)

The prevailing theme of pessimism was reflected by those who stated that they expected worse laws from the government. Whilst one saw this as located at the level of political personality, most saw it as systematic:

Tony Blair has totally lost his mind so probably will be worse laws will be introduced unless he sees a psychologist.
(Female, 39, Colchester)

If labour stays in power worse laws.
(Female, 26, Birmingham)

Worse laws.
(Female, 22, Accrington)

Worse law – laws to protect the practicing of religious faiths without any exceptions, wholly and not partially
To fulfill the principles of democracy which they claim to uphold.
(Female, 25, London)

Law will get worse.
(Male, 24, Slough)

The laws are becoming more worse and are affecting the Muslims community. There should be specific legislation for religions in order for there to be equal society.
(Male, 16, London)

I expect harsher laws aimed at Muslims specifically, people in pris-

ons who haven't been charged yet etc.....

(Female, 18, London)

Whilst there were a few suggestions that somehow Muslim representation within the government and media should be facilitated, there were few other themes discernable from responses.



Muslim representation at the political level was, unsurprisingly, cited by those activists working in political parties, who saw linkage between political activism and greater representation in the legal structure:

- By getting more Muslim candidates elected and who can shape policy around the criminal justice system.
- Widening the Legal Aid Fund.
- Actively targeting religious discrimination within the criminal justice system. For example, in Leeds Prison at the moment there seems to be real problems around religious strife between prisoners.
- Appointment of more judges who are Muslims.
- Regular engagement and discussions with the Attorney General and Muslim advocacy / other faith communities.

(Male, 33, Political Party Project Manager)

This has a lot to do with the dominant attitude of society and the prevalent perceptions, which have an indelible effect on those within the justice system. However, one important measure could be the increasing number of individuals from all races, religions and genders recruited throughout all tiers of the legal and justice system, as well as the increase in efficient interaction with all communities and groups that formulate British society, on all levels.

(Male, Lecturer, 36, Leeds)

A recurrent theme throughout the series – the onus on government to learn about the Muslim communities and to educate the general public also was expressed as an expectation although in small numbers:

Another one would be if the government learnt a bit more about the needs of Muslims.

(Female, 22, Accrington)

They should start focusing on harmonizing all people of all faiths & education everyone.

(Female, 20, Birmingham)

Sensitivity training, Education seminars, Reach-out programs (gender, age and location unknown), Speaking, meetings

(Male, 27, Willesden)

Again understanding the religion and bettering their foreign policies will make it a better place to live.

(Male, 31, Birmingham)

This last response indicates that foreign policy and the issue of ethics in governmental policy is one that has significance for Muslims. Another male respondent, aged 25, from Leicester saw this as the interface of conflict between Muslims and government: 'My values should be of justice, right, morality, and to stand up for the oppressed against tyranny. If British law exhibits that, then there is no conflict for me. It is only when double standards are created it is problematic.'

COMMENTS FROM COMMUNITY FIGURES

IHRC asked a number of Muslim activists, legal professionals and academic for their views on Muslims and law in the UK.

TUFYAL CHOUDHURY, **LECTURER IN LAW, UNIVERSITY OF DURHAM**

Now that legislation on religious discrimination is largely in place, covering both employment and provision of goods and services, I'm not sure that much more legislation is needed. In relation to discrimination there is a need for support for access to justice and enforcement of the equality legislation. At the moment there is no legal aid for legal representation in employment tribunals nor is there any enforcement body that can support cases of religious discrimination. There is a danger that people are given new rights but not the means to enforce their rights.

I think it's important for all public institutions, including all aspects of the legal system at all levels to reflect the diversity of the communities they serve. For a comprehensive study of changes that are needed in the criminal justice system please have a look at our Open Society Institute chapter on Muslims and the Criminal Justice System, by Dr Basia Spalek. The institutions have a duty to engage with all the communities they serve and ensure that they are delivering services in an appropriate manner, thus Muslims should for example be participants in local court user groups, in the voluntary sector organisations that provide support services to the legal system, in law centres, and CABs etc.

TAJI MUSTAFA **MEDIA REPRESENTATIVE OF HIZB UT-TAHRIR BRITAIN,** **LONDON.**

The Muslim community in Britain and Europe face many problems and challenges. These originate from geo-political issues such as the war on terror, as well as from the long standing and some may say endemic racism that affects many parts of these societies. Some of these problems include oppressive anti-terror laws that target Muslims in a discriminatory manner; social

inequalities; media vilification; discrimination in the work place.

These problems need to be addressed not only in a legal manner, but more importantly by changes in public opinion. Undoubtedly the two issues are linked. Negative attitudes that may exist amongst the Police, Juries, employers and others are shaped by poor media coverage of Islam and Muslims. Some of the media coverage would be illegal if the subjects of the negative coverage were Black or Asian people. Similarly it would be socially unacceptable if the coverage were about women, or homosexuals.

Specific issues that could positively affect the alienation Muslims feel include:

- a) Abandoning some of the existing and proposed anti-terror laws that do nothing to enhance security, yet heighten alienation amongst Muslims.
- b) Support the enforcement of religious discrimination law in the workplace and educational institutions to cover the hostile attitudes towards Muslim women's dress, as well as commonplace workplace bullying.

SHARMIN PIRBHAI, **SOLICITOR, MAIDA VALE.**

The 'war on terror' and the 7/7 bombings have led to an intensification of the prejudice that British Muslims are subjected to. Muslim communities experienced greater hostility and resentment and have been viewed with growing mistrust, with the result that many British Muslims feel increasingly isolated from the British public at large. What legislative measures can the Government implement in order to counter this feeling of isolation and to bring Muslims back into public life?

Crucially, the Race Relations Act 1976, which outlaws discrimination on the grounds of colour, race, nationality and ethnic or national origins, also protects certain religious groups with a common ethnic origin, such as Sikhs and Jews. This protection does not extend to Muslims, who until recently, had no protection against religious discrimination. This situation has now been partly rectified by the Employment Equality (Religion or Belief) Regulations 2003, which sets out a regime for combating religious discrimination. However, the Regulations are more limited in their scope, only applying in the field of employment, whereas the RRA also covers discrimination in education, goods and services, management and housing. Moreover, this abnormality, albeit unintentionally, sends out the wrong message, as it suggests that some religious groups are more worthy of protection than others. This is particularly dangerous in today's climate.

Legislation can also be utilised to further ensure that employers are sensitive to the religious needs of Muslims. The right to request flexible working, which applies to employees with children under the age of six, or in the case of a disability child, under 18, is now being extended to employees with caring responsibilities for adults. I suggest that the Government consider extending that right to employees in respect of religious and holy days/periods. This would allow an employee to request, for example, a variation in his or her employment contract permitting him to leave work early during Ramadan. In such a scenario, the employer would be obliged to give serious consideration to that request and only refuse it if one of the business grounds specified in the relevant legislation applied.

DR ADNAN SIDDIQUI
SPOKESMAN FOR CAGEPRISONERS.COM
AND STOP POLITICAL TERROR.

“The Global war on terror has resulted in the Muslim community being viewed as a suspect community. Terrorist attacks in London have understandably increased this fear and suspicion of Muslims but the unfortunate consequence has been the government’s usage of the “politics of fear” to increase its own powers at the expense of the judiciary and the erosion of not only civil liberties but also legal safeguards such as habeas corpus and trial by jury. Muslims are bearing the brunt of these changes and this has been highlighted by the usage of extradition to bypass legal process in the case of Babar Ahmad and Haroon Aswat, the use of Diplock court in the conviction of Abbass Boutrab, when he was not affiliated to any Republican or Loyalist groups, and the collapse of the Ricin trial but re-arrest of the suspects after 7/7. In previous times we saw miscarriages of justice by the Govt in the Guildford Four and Birmingham Six cases when Republican terrorism was being fought. The key message is that whether it is Muslims or Irish, there are no “checks and balances” over cases with a political dimension since the government uses any means necessary to incarcerate “enemies of the state”. To ensure Muslims or any other disaffected group, are not victims of state oppression there needs to be an independent, non-governmental body that oversees political cases to ensure national security is not used as a *carte blanche* to abuse powers and prevent miscarriages of justice. I would hope this would have members of NGOs such as Justice, Liberty and IHRC as well as representatives from European Commission for Human Rights, which would help to reassure the affected parties that there is impartial oversight of their cases. This would have a statutory duty, like IPCC, to oversee all political cases but have the power to hold the government to account when it is wrong.”

HAJJ AHMAD THOMSON,
BARRISTER

RENEWED PROPOSALS FOR REASONABLE ACCOMMODATION LAW REFORM⁷

Difficulties :

1. By virtue of the *Human Rights Act 1998*, Muslims in the UK have the right in theory to live as practising Muslims.
2. Muslims in the UK face hardship in that their personal law is not recognised by the secular civil courts. Marriages and divorces conducted in accordance with the Shari’a of Islam are not recognised as valid by the law of the land even though acceptable in the sight of God.
3. This leads to difficulties for Muslims, especially as regards duties and rights between spouses and divorcees, the legal status of their children, ownership of property, eligibility to state benefits and dealing with public authorities, especially when travelling abroad and when death occurs.

7

The recognition of Muslim personal law by UK domestic law has been considered elsewhere in more detail. See for example :
<http://www.wynnechambers.co.uk/pdf/AMSS-ATNotes220204.pdf>
<http://www.wynnechambers.co.uk/pdf/UMO060304.pdf>
http://www.wynnechambers.co.uk/pdf/RPM_Arbitration.pdf

4. If a Muslim dies intestate, his or her estate is not distributed in accordance with the Shari'a of Islam but in accordance with the rules of intestacy. This leads to difficulties as regards the entitlement to and ownership of shares in the deceased's estate.

Solutions :

5. One way of overcoming these difficulties will be to incorporate Muslim personal law into UK domestic law.
6. Another way to apply Islamic fiqh in a practical way is by introducing it into civil legal transactions by way of arbitration and binding arbitration agreements.
7. Both of these approaches will be greatly facilitated by establishing Shari'a courts whose qadis are conversant with the four main madhhabs (if they are Sunni) or with Jafari fiqh (if they are Shi'a).
8. There is nothing to stop the Muslims in the United Kingdom establishing their own Shari'a courts and using them to regulate their personal affairs and settle civil disputes, provided they do so voluntarily. The Jewish community established their Beth Din courts in the United Kingdom centuries ago and use them regularly.
9. In fact the various UK Shari'a Councils are the precursors of what will eventually become Shari'a courts, insh'Allah – but they need to be improved and unified.
10. The Shari'a courts will be able to deal with virtually all disputes which arise in Muslim personal law. This means that they will not only be dealing with matters of marriage and divorce, but also with matters of inheritance and matters of trade and commerce. The Shari'a courts will not be in a position to impose the hadd punishments.
11. Once Muslim personal law has been recognised by UK civil law, this will mean that in the event of a Muslim party to a dispute refusing to abide by a qadi's judgment, the civil courts will nevertheless recognise that judgment as a binding decision enforceable in a UK civil court – exactly in the same way that a binding arbitration award is enforceable in a UK civil court.
12. This means that Shari'a courts will complement and assist the existing secular courts (but not supplant them) by providing another avenue for alternative dispute resolution – and in the process will assist in securing the *European Convention on Human Rights Article 9* rights assured by the *Human Rights Act 1998* which the existing judicial system has up to now promised in theory but failed largely to deliver in practice.

The Relevant Articles and Protocols of the European Convention on Human Rights

13. As regards the religious rights of Muslims and other religious and secular groups, *Article 9* of the *ECHR* guarantees everyone living in Europe including the UK the right to *choose* their religion and the right to *practise* their religion:
 - (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
 - (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
14. Furthermore, *Article 2* of the *First Protocol* to the *ECHR* guarantees every-

one living in Europe including the UK the right to have their children educated in accordance with their religious beliefs:

- 2 No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

15. As a signatory to the *ECHR*, the United Kingdom government is under a duty (under *Article 1*) to secure the rights which the Convention seeks to uphold and protect, and it is also under a duty (under *Articles 13 & 14*) to ensure that there is an effective remedy before a national authority for *everyone* whose Convention rights are violated:

Article 1 of the *ECHR* states:

- 1 The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 13 of the *ECHR* states:

- 13 Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 of the *ECHR* states:

- 14 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

CONCLUDING REMARKS

This volume's findings have illustrated that despite much media hype – some politically driven – regarding Muslims and law (both British and Islamic), that Muslims in the UK have a sophisticated understanding of the law and legal system as they stand and their normative aspirations for both in this country. Even the open and frank aspiration and / or affiliation to Islamic law, often named as shari'a, and now vilified at the highest levels of state, is one they envision to be just and compassionate with conformity to recognisable aspirations of either Christian or secular values.

From these responses, even in the harshest criticisms of the nature of the system itself comes a sense of intellectual and emotional engagement with the issues of law, justice and equality for all.. Sadly, what is also apparent is the fading hope that the government has either the will or inclination to address the many concerns raised. These concerns raise the spectre of systemic discrimination within the system and abusive and prejudiced implementation of bad law from stops and searches to detentions without trial – all seen to disproportionately target Muslims.

In the wake of the McPherson Inquiry, the perceptions of prejudice recounted within these findings must be listened to by a legal profession and system, and also a legislature that is increasingly becoming divorced from the communities it is supposed to serve. The profound sense of hopelessness is singularly peculiar to the findings on law and reflect a serious potential for disillusionment amongst communities that feel collectively stigmatised and united in negative experience. The executive is morally bound to deal with these issues, but its current focus on treating Muslims as part of security discourse is clearly part of a deeply entrenched problem.

The government needs to show the intention of serious debate and engagement with the issues that have formed the core of this research: of religious discrimination, the profiling of Muslims by police and anti-terrorist legislation targeting Muslims, the protection of some religious minorities but not others, the vilification of Muslim belief by public figures, the increasing perception that religious practice and belief is being or will be criminalised, law being used to force assimilation rather than administer justice and equality, and finally of the existence of dual religious spaces within the law for some but not for others.

Be it the blasphemy laws or Beth Din courts or the recognition of Jewish, Sikh and to some extent Rastafarian identities by the law, arguments against similar provision for Muslims and members of other faith communities fall at the first hurdle of equality. Human rights theory and convention has the potential and the imperative to demand that such provision be accorded not just to enact equality between minority communities, but to effect equality with the majority.

The arguments – though varied – are there, for the provision of dual legal spaces that recognise religious identity in the mainstream and through making available separate systems for those who wish religious law to apply to them. The question remains as to whether a British government of whatever hue – has the courage to put human rights considerations ahead of a populist and increasingly chauvinist conception of Britishness, its law and its values.

RECOMMENDATIONS

The increasingly polarised debates regarding Muslims, citizenship and law in the UK make it imperative for the government to focus on actual issues rather than public perceptions and hysteria. Failure to do so is validating negative, inaccurate and dangerous anti-Muslim sentiments. It is also undermining the context of law as the process of restoring balance and maintaining order in society and giving succour to the fiercest, most authoritarian critics of liberal law

Young Muslims in particular show equal signs of disillusionment with governmental intentions, with faith in the possibilities of law to transform (whether as a diversified or revolutionised system) to a just, equal and harmonious society. Significantly the alienation and disenchantment expressed in these findings is also reflected by other age groups and is often expressed as being the result of current governmental policies and law. It would be a truly cynical executive that ignored this level of concern from amongst a cross-section of minority communities. It is ironic that the current government has been the most radical at law reform – challenging many centuries' old pillars and traditions of the legal establishment. Such radical change can hardly have meaning if its aim is not to secure a more effective and truly equitable body of laws and system of justice.

CHANGING PUBLIC LANGUAGE: RESPONSIBILITY AND RESPECT FROM GOVERNMENT, POLITICIANS, MEDIA AND LEGAL ESTABLISHMENT

The effect of all these groups in influencing the other need not be elaborated, however the dangers of this level of exclusivity of discussion takes on more dangerous significance given the lack of understanding this research has shown exists between Muslims and their aspirations regarding the law and those whose words and ideas frame public ideas and state policy. There needs to be an internal desire within the elites of the establishment to start a serious re-evaluation of what its understanding of Islam and Muslims both in the UK and overseas involves.

Whilst racist jokes from party members have caused indignation amongst political parties in recent years, even leading to the resignation and / or ostracising of members, the vilification of Muslims and their beliefs has been perpetuated by those same hierarchies. Muslims in recent months have been likened to Nazis by party leaders, and their beliefs equated with totalitarianism and fascism. This type of demonisation is of course reflected in the media, but the fact that it can be reflected in the legal system gives rise to the very real fear amongst Muslims and other minorities that there is little chance for Muslims to achieve just recourse or due process.

Ultimately the engine for change can only be the government and the change must involve an intense process of learning about the various aspects of a diverse community as to their beliefs, their aspirations and their values as both citizens and residents of this country and as Muslims. There must also be a commitment during and beyond this process for public language to be changed. It is with some irony that certain right-wing voices claim that political correctness reigns in public debate, particularly regarding Muslims. Government needs to not only monitor and castigate those from within its ranks who speak in such ways, but also set in motion programmes that will

help the media, legal establishment and elite institutions, understand the implications of the types of language used.

INEQUALITY IN PUBLIC ARGUMENTS: REDRESSING THE BALANCE

Debates regarding e.g. the much maligned 'shariah' have been almost entirely led by those hostile to Islam and Muslims to varying degrees. That implacable hostility is often masked by the assertion that the views expressed, be they in right wing magazines or liberal opinion pages, come across as the victory of reasoned argument and rational debate. In reality, they are the expressions of majority views dominating a public arena that is not accessible to minorities, except in token ways when they are able to speak in the language of the majority. Effectively, minority led debates and minority understandings of law and culture neither get expressed or in a majority dominated culture cannot get public space. To continue the example, 'Shariah' is not portrayed or debated as a sophisticated set of legal and moral norms pertaining to every aspect of Muslim existence, the interpretations of which are diverse. Instead it is reduced to a set of capital punishments and provide a benchmark for Muslim barbarity against which Muslims must civilise or face the wrath of an increasingly monocultural and vengeful state.

Government must immediately bring about open public space, where Muslims and other minorities feel both safe from ridicule and aspersion and increasingly prosecution, to articulate their beliefs about inter alia, law and public values. Whilst it is encouraging to see Muslim faces and voices being heard on our TV screens – it is important that those whose ideas are different from the mainstream are also heard without rancour or presuppositions of hostility. The concurrence of concerns and values may well be a surprise for all concerned. The fact that similar views are expressed by Muslims and non-Muslims but are often treated differently by media and government has not gone unnoticed by Muslims, whether those views relate to British foreign policy, sentencing for rapists or human bombing. Certainly the voices in this research that have advocated what has been hitherto decried pejoratively as 'Islamism' see their views as beneficial for all in the move towards a truly egalitarian society.

EDUCATION: LEARNING AND TEACHING ABOUT MUSLIMS AND MINORITIES

The necessity for government to educate the public about Islam and Muslims has been reiterated by respondents throughout this series. However in law-specific research it is clear that Muslims feel government itself needs to learn and needs to effect within its institutions and the legal establishment a truer and deeper understanding of Islam and Muslims. It is clear that Muslim experience and perception of the governments; and legal institutions' understanding of their communities and their beliefs is set in the context of Muslims and Islam as a project for change rather than inclusion. Government needs to stop its now almost publicly avowed social engineering of Muslims and attempt to listen to them instead.

It is clear from this research that Muslims feel that lack of knowledge about Islam and Muslims is fuelling increasingly hostile and phobic policy and legislation – particularly anti-terrorist laws and practice – that fuel community divisions, and increasingly paralyse Muslims' autonomy not just as commu-

nities but as individuals. There can be no greater indictment for a supposedly liberal state.

EVOLVING NORMATIVE LAW: THE DIFFERENCE, NOT THE TRADE OFF, IS SECURITY

As discussion around new laws and human rights abounds, particularly their impact on civil liberties, government has increasingly used security as a *raison d'être* for restrictive laws. Focussing on Muslims and law almost solely within a security debate, again raises the spectre of Muslims as a security threat in the public psyche.. In itself this transforms the law from an instrument of justice to an instrument of interest. Whilst this may be self-evident to critics of current policy, in the public realm the normativeness of societal values is replicated. If Muslims are deemed a threat by law, this is reflected in legislation which in turn confirms social stereotypes, ultimately validating racism, Islamophobia, anti-Muslim backlashes and hate crimes.

This research has shown that this double standard is understood by Muslims and forms part of the basis of their disenchantment. It should be clear that removing inequality and bias within pieces of legislation is not only a moral necessity but will help eradicate institutionalised division between communities – divisions which provoke alienation and violence on all sides.

As has been highlighted in previous reports, disparity between the treatment of different minorities e.g. the protection of some religious minorities under the Race Relations Act 1976 and not others, is a cause of inequality that needs urgent redress. However, more than simply seeking to redress imbalance in pieces of existing legislation, the government needs to commit to a long term re-evaluation of the legal system and how it serves all communities. Whilst this research has focussed on many aspects of Muslim concern from terrorist legislation to family law, other issues e.g. diminishing legal aid limiting help to asylum seekers need to be urgently addressed as causes of inequality and marginalisation for Muslims, minorities and some parts of the majority.

Furthermore, a reluctance to view law, through a critical lens can only further alienate those who see it – with some justification - as inherently biased. All parts of the state need to be seen to be committed to radical reform based on ethical considerations towards inclusiveness and justice.

SHARIAH AS A SOLUTION: RESPECTING THE INTEGRITY OF MINORITY LAW AND RECOGNISING MUSLIM PECULIARITY

The demonisation of shariah has to be addressed not just by making sure it ceases, but by way of an actual appreciation of the subtlety and importance of shariah as a focus for normative change. In other words, Muslims must not be stigmatised for their values, and facilitating anything that allows Muslims or other minorities to feel they can live as equals without compromising their conscience needs to be facilitated. Already shariah compliant banking and mortgages have been developed and whilst the exact level of their shariah compliance is the topic of some controversy there has been an acknowledgement within the financial community that making such adjustments makes sense.

Shariah ‘compliance’ within the legal system can take various forms: from recognising certain traditions related to births, deaths and marriages, to issues of financial disputes upon divorce or in inheritance cases. Also understanding the importance of facilitating religious practice for Muslims is key to having a more representative legal profession, as well as a more integrated society. The presence of visible Muslims in the legal system – as judges and prosecutors, as well as clerks and solicitors can only help normalise the idea of practising, ‘Shariah’ oriented Muslims, committed to the development and advancement of law, rather than limb amputating maniacs set on turning Britain into the stereotype of the Taliban’s Afghanistan. Currently so much stereotyping prevails that the Commissioner of the Metropolitan Police, Sir Ian Blair, was able to say, without fear of ridicule, that an extension of the detention and questioning time for terrorist suspects from two weeks to three months was justified because (Muslim) suspects, took such a long time in praying. This is not a healthy indicator of the state of our nation and its law enforcement.

DUAL LEGAL SPACE

The creation of alternate and complimentary legal systems has been decried as ‘special’ measures pandering to Muslims or other minorities. Vociferously criticised by the right in particular as well as ardent secularists, the opposition belies the fact that other minority laws are already recognised and operate in dual legal space in this country e.g. that of Beth Din courts for the Jewish community. Simply as matter of equality between minorities the issue of shariah needs to be addressed.

Beyond this however is the example of many countries including India and Canada which have managed to integrate parts of minority law into their legal system, making it available for those who wish to partake of it. Whilst again providing Muslims an avenue to decide their affairs according to their conscience, this is a way of ensuring that minority identity and expression and belief are not obliterated in the name of unanimity. Such legal space is not a parallel system of law but relates to very small matters of family and civil law. The level of particularity is minute compared to the entire legal code and serves in both the minds of respondents but also in the ontology of much critique as a way of facilitating a universal system of justice. This mode of particularity, discussed in this report in the context of Muslims is not argued by the authors to be Muslim specific, and facilitating particularity needs to be seen in the light of initial recommendations by the UN Commission on Human Rights, as a need not just for the better treatment of minorities, but the healthy development of society as whole.

GOING BEYOND DIVERSITY TRAINING: TRANSFORMING NOT POLITICISING INSTITUTIONS TO ERADICATE PREJUDICE

Whilst diversity training of personnel within the legal system and institutions in general, is ongoing, the continued proliferation of cases where court appointed social workers, psychiatrists, solicitors and barristers, even judges, base their dealings with Muslim on prejudice undermines the prospect of training fixing what are deeply entrenched phobias about minorities.

The politicisation of the police force in the wake of 7/7 and the prospect of even more rigid anti-terrorist laws with less public scrutiny raises the spectre

of deeper politicisation of the legal system at all levels. Whilst it is hoped that the British judiciary does not go down the same route as its American counterpart, the increasingly vociferous calls for compliance from government figures every time a judgement is critical of its dealings bodes ill. A stand-off seems to have developed and government must step back from what appears to observers to be an ill-advised attempt on its part to exert political pressure on a supposedly independent institution. As this politicisation generally relates to the anti-terror discourse which focuses on Muslims, the spectre of real and perceived systemic injustice against Muslims raises its head once more.

In addition to ensuring better representation of minorities within the legal system and profession, both the system and profession need the tools and motivation to change to reflect the good that these minorities bring. This is a long-term structural process and should include revision to incorporate gender as well as minorities' perspectives on effective practice and theory of law. Greater representation simply by numbers of minority and female participants in a white, male, middle class structure is not a substitute for this process. Diversity training should not be seen as transforming others to fit, but also to transform to accommodate. The latter needs to be understood as a good in itself rather than as a sop to minorities – again the normative onus of this lies with government and the messages it sends out about minorities.

INCITEMENT, COMMUNAL LIBEL AND FREEDOM: DEFINING THE BOUNDARIES OF SPEECH ACCORDING TO JUSTICE NOT PREJUDICE

For almost two decades now, free speech has been used as a 'value' to judge Muslims in the UK, a 'value' that Muslims seem consistently to fail to appreciate. Recent events in Europe, with the publication of offensive cartoons vilifying the Prophet Muhammad and demonising Muslims and Islam have again raised this caricature of the freedom hating Muslim. Public messages, even where as in the UK the government has been more reticent with its comments, tend towards invectives stating that the Muslim needs to learn that s/he must respect the right of others to insult.

The many public disparities between religious incitement measures for some communities and not others, the imprisoning of Muslims for hate speech, whilst right wing figures walk free or are not prosecuted, the insistence on insulting Muslim beliefs through powerful media and then arresting individual Muslims for offensive behaviour are all concrete examples of how 'free speech' is increasingly being exposed as the privilege of the majority over minorities.

The government needs to standardise protection for Muslims as well as other religious minorities who are not embraced by the Race Relations Act. Recent attempts at legislating against religious incitement are more likely to prosecute members of minorities, in the same way that laws against racial incitement have targeted members of racial minorities.

Further than this however, the government needs to acknowledge that such things as communal libel exist. Some countries have now started to amend their blasphemy laws, and whilst IHRC has argued for the abolition of the UK's blasphemy laws, it has done so, so that better laws that protect religious feelings of communities without restricting the core right and necessity to be critical of all political and religious ideologies, can be effected.

ENFORCING THE LAW, NOT PREJUDICE: THE ROLE OF THE POLICE

Sections of the police have attempted in the last few years to address what is clearly a negative and often prejudicial focus on Muslims – from profiling them generically as terrorists, to repeated cases of abuse of powers during stops, arrests, interviews and detentions. However the move by the police services of the UK to promote government thinking on terrorism has compromised the service even further in the eyes of Muslims. This research has shown that where this has been a good experience Muslims are happy to celebrate it, but the dominant experience has either been negative or is perceived not only to be negative, but something to be feared.

Rather than encouraging politicisation, the government needs to tackle not only the institutionalised racism that the McPherson inquiry exposed and which has yet to be eradicated, but also systemic Islamophobia. So long as the law is seen to target Muslims, frontline police officers are sent the same divisive message as the rest of the public – that Muslims are a security threat and that dealing with them means necessarily dealing with them differently than the general public. This leads to inevitable abuses, but even those officers who do not abuse their powers find themselves in a situation where unknowingly they are implementing prejudicial policy to the severe detriment of a community just as vulnerable to a security threat as anyone else.

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APPENDIX I

HANSARD FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Lord Lester of Herne Hill asked Her Majesty's Government:

Further to the Written Answer by the Baroness Scotland of Asthal on 31 March (WA 163), whether there is any justification in international law for interpreting the scope of the Framework Convention for the Protection of National Minorities as confined to the protection of "racial groups" as defined in the Race Relations Act 1976 rather than applying to "national minorities" generally, including British Muslims.[HL2328]

22 Apr 2004 : Column WA57

The Minister of State, Home Office (Baroness Scotland of Asthal): As I explained in my Written Answer on 31 March (WA 163), the Framework Convention for the Protection of National Minorities does not define the term "national minority" nor is "national minority" a legally defined term in the United Kingdom.

In choosing to apply the framework convention with reference to the definition of racial groups in the Race Relations Act (which is "a group of persons defined by reference to colour, race, nationality or ethnic or national origins"), the Government have interpreted the framework convention relatively widely. For example, I understand that some parties to the framework convention apply it only to members of certain longstanding minority groups with a domestic legal status as "national minorities."

The Government believe that this threshold ensures that the United Kingdom complies with statement of the Advisory Committee on the Framework Convention that "implementation of the framework convention should not be a source of arbitrary or unjustified distinctions", in that it is based on criteria set out in an Act of Parliament that are a matter for interpretation by the courts.

Lord Lester of Herne Hill asked Her Majesty's Government:

Further to the Written Answer by the Baroness Scotland of Asthal on 31 March (WA 163), whether they consider British Jews to be a national minority within the scope of the Framework Convention for the Protection of National Minorities.[HL2326]

Baroness Scotland of Asthal: The Government do not recognise any national minority as such. The term "national minority" is not a legally defined term in the United Kingdom, nor does the Framework Convention for the Protection of National Minorities define the term.

As I stated in my Written Answer on 31 March (WA 163), the Government therefore ratified the framework convention on the understanding that its principles should apply to members of "racial groups" as set out in the Race Relations Act 1976. This defines a racial group as "a group of persons defined by reference to colour, race, nationality or ethnic or national origins".

Case law has established that Jews constitute a racial group within the meaning of the Race Relations Act. They are therefore covered by the framework convention.

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Lord Lester of Herne Hill asked Her Majesty's Government:

Whether they consider British Muslims to be within the scope of protection of the Framework Convention on National Minorities.[HL2034]

Baroness Scotland of Asthal: The Framework Convention for the Protection of National Minorities does not define the term “national minority” nor is “national minority” a legally defined term in the United Kingdom.

The Government therefore ratified the framework convention on the understanding that its principles should apply to members of “racial groups” as set out in the Race Relations Act 1976. This defines a racial group as:

“a group of persons defined by reference to colour, race, nationality or ethnic or national origins”. Case Law has established that Muslims do not constitute a racial group within the meaning of the Race Relations Act. They are not therefore covered by the framework convention. It is of course the case that many Muslims in the United Kingdom are also members of ethnic minority communities, which are covered by the terms of the framework convention.

APPENDIX II

From *Anti-Muslim Discrimination and Hostility in the United Kingdom, 2000*, Islamic Human Rights Commission, 2000, London.

CHILD "E"

Account of Translator in the Case of Child E, a Bosnian child illegally adopted in the UK, whose natural family traced her and now have contact rights.

"I am a qualified teacher and I would like to give this evidence in reference to the case of the minor E. I feel now that I have to step in and in doing so hope to be able to absolve myself from the pressure of my conscience and to cast some light on the case, thus helping the Court in decisions making.

"In September 1997 I was asked to act as interpreter in the case, which I accepted, and that was how I got involved in it. After a couple of phone conversations with Mrs C. acting on behalf of the Official Solicitor for Supreme Court, Mrs C visited me at my home and introduced me to the case...

"According to Mrs C., although I was paid by Mrs F. the foster mother, I was hired by the Official Solicitor and was advised to act on their behalf. I would like to stress that I have been sticking to that however, when I have felt uncomfortable, about things I have become cautious, which has eventually led to this statement.

"The first contact during which I acted as interpreter, I was introduced to E. and Mrs F. at the airport. During the flight Mrs C. and I were discussing the case more in detail. At the time I did not consider anything wrong in my knowing the background of the case and discussing it with Mrs C., however, when I now look back at that I feel that I somehow was tried to be influenced in looking at the case from the Official Solicitor's point of view. I was told that the E's natural family were uneducated, orthodox rural people, that Mrs K. E's aunt, did not have a say in family's matters and that E's grandfather considered the case as a 'jihad'. I was also warned that the whole family liked to lie about what was said and interpreted by the interpreter.

"After my meeting the family, I have learned that, although they are originally from Bosnian countryside, they have been living in Switzerland for a long time, much before the war in Bosnia started, thus gaining an approachable and tolerant mentality. As for the aunt, she does have a say and her opinion is welcome within the family. The previous interpreter, according to Mrs C, explained to Mrs C that the family occasionally ate pork meat and that the male members drank alcoholic drinks. My understanding in that they do not consume these articles prohibited by the Islamic faith. I also understand that their interest in the minor E. is completely genuine and far from having any religious roots in 'jihad' On our journey to London I was able to convey my impressions about the family to Mrs C, however, I am not sure whether I managed to dispel, at least to some extent, her impressions about the family, Although these issues were rarely brought up again in front of me, comments of the similar nature were put forward later as my involvement in the case progressed and I will mention some of them...

"On one contact visit to the foster mother and the representative of the Official Solicitor Mrs. C. brought a puzzle with them, and encouraged Child E. to play with them rather than interact with her natural family. I men-

tioned later, on the plane, to Mrs. C. that I did not like how they behaved and that I felt very awkward, Mrs. C. told me that she wanted to set an example to the natural family, who needed to learn how to bring up and play with the children...”

On another visit a pattern emerged regarding farewells.

“The farewell at the airport was rather friendly. However as soon as we walked through the passport control and round the corner, no longer in the natural family’s sight, Mrs. C. and Mrs. F. burst out laughing hysterically and with relief. No longer was attention paid to Child E. and her wellbeing...”

“On the plane I sat next to Mrs. C. and we discussed the contact...She pointed out how the natural family were reluctant to accept the fact that Child E. was handicapped and how they did not pay any attention to the psychologist’s reports. I wondered why the natural family did not seek for a second opinion from another psychiatrist or psychologist if they did not believe this one. Mrs. C. explained that they had sought for a new one...she added that the present psychiatrist wrote anyway what she asked him to write. I could not believe my ears and remained silent.”

On a subsequent visit to the natural family, the issue of religious observance was once more brought up, when the translator decided to watch TV.

“There was a programme involving some well-known models in outfits that showed the models’ busts. Mrs. C. asked me how it was possible for such a devoted Muslim family to watch that kind of programme. I explained to her that they were not devoted in terms of covering their females and that it was my choice to watch that kind of programme...I felt a bit of malice in that question...It was not the first time that Mrs. C. had asked me, in the same manner, similar questions regarding a particular Muslim habit (taking off the shoes being one of them)...

“When we parted from the natural family the same laughter with relief occurred.”

The court appointed psychiatrist referred to above, wrote in his report of last year that the natural family’s British legal team, of mixed race and religion (mainly Muslim), represented ‘a third cultural / language gap.’ He continues:

“The importance of the third cultural difference is that it is difficult for the natural grandfather to learn from his present legal team, an understanding of the nuances of lifestyle of the foster family’s form of child rearing...” he added that any transfer of the child to her natural family would lead to her English culture being buried.

Mrs. C has admitted in writing that she has tampered with evidence in the case – removing names from an X-ray of the child. No action has been taken against her, despite this being a criminal offence.

ANWAR'S STORY

"I am a Muslim of Palestinian origin, and an Israeli citizen, I have been involved in matrimonial disputes since 1993 concerning financial matters and contact with my only child.

"I first appeared before Judge X. in 1995, in order to deal with personal property issues...he showed a great deal of hostility towards me...and reserved the case to himself. A few weeks later my application for contact with my daughter was heard by Judge X. My former wife is British born of an English descent, our daughter is easily recognised as a mixed race child...during the course of the hearing I stated "I wish to have the opportunity to introduce my daughter to my culture and as part of that introduction I would teach her Arabic..." Judge X. immediately reacted stating "...Spending time with a child is all about fun...McDonalds etc...not jamming her throat with the Qur'an."

"Judge X's comments defy logic. Although I am a Muslim I was not a practising Muslim, that fact that I was married to an English woman who was not a Muslim speaks for itself. Furthermore there was nothing in any of the statements or at any moment in time was I presented to Judge X. as a Muslim."

In their response to Anwar's complaint, the Lord Chancellor's Office cites Judge X's account as to why he used that phraseology, "On the specific allegation that he was a racist, Judge X. recalls that...you wished to take your daughter to the Mosque for religious education...The judge tells me that he pointed out to you that the purpose of the contact he had in mind was so that you could re-introduce yourself to your daughter...He assures me his remarks were in no way racist."

The intentions of either judge or respondent are not germane to the issue. Although discriminatory in principle, the comments by the judge are not racist or discriminatory under the law.

VOLUME

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This is a timely discussion about the impact of our laws on the Muslims in Britain, drawing on the substantial experiences of other minorities (including women and the Jewish communities) and the change that has bettered our legislation and practice. This volume looks at the problems created as a result of the recent anti terror laws as well as the impact of 7/7 and highlights the way the community itself is feeling the brunt of these measures.

Beyond the immediate impact of any discriminatory implementation and the feeling from respondents that there is immense anti-Muslim prejudice within the legal and political system, come emphatic voices of hope. Coupled with this are aspirations for a better legal system that reflects Muslim and other minority concerns. This volume highlights the need for a grassroots understanding for the promotion of better law and practice in the UK and an emphatic call for a substantially more reflective workforce which operate them.

BARONESS POLA UDDIN

Member of the House of Lords

The kernel of Islam and of the teachings of its Prophet lies in revealing and embracing the relation between the radical transcendence of God and the radical liberation of each human being. This doctrine is a priceless treasure of all humanity. In many Western countries, Muslims are now threatened by harassment, intimidation, insecurity, and bigotry. To come to their defense is a sacred duty of those who are committed to democracy under law as well as of those who believe in the universality of the message of which Muslims are the bearers. This report will be a powerful weapon in the fulfillment of this task. It shows how the rule of law can be reconciled with the recognition and with the enhancement of particularity - particularity of faith and of experience - in the United Kingdom and throughout the world. It is at once an argument of reason and an expression of hope.

PROFESSOR ROBERTO MANGABEIRA UNGER,

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