British-Muslim family law as a site of citizenship

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Abstract

British-Muslim family law as a site of citizenship

The Archbishop of Canterbury's speech on 'Civil and Religious Law in England', delivered a decade ago, attracted considerable public and academic attention. In the years that followed a 'Sharia debate' emerged, where traces of (legal) orientalism became especially visible in an essentialist portrayal of 'Sharia' as being in opposition to 'the West'. What was absent in this debate, which was conducted at the abstract level of compatibility–incompatibility, East–West, law–religion, is an analysis of the actual practices of family law of Muslims in contemporary Britain. People marry, divorce, bring up their children and deal with inheritance by resorting to a variety of norms such as Muslim law, English family law and customary law. Drawing on legal pluralism scholarship and elements of Pierre Bourdieu's theory of the field, this thesis investigates the emergence of British-Muslim family law as a site of citizenship. It is based on research focusing on solicitors offering Islamic legal services and advice in the UK and clients of such services. By focusing on the creative capacities of legal professionals as well as clients in navigating between English and Muslim family law, the thesis is an attempt to present an alternative narrative of British-Muslim family law, which may inform a different understanding to what is commonly perceived as 'informal' legal practices threatening the cohesion of citizens in a the nation-state. The thesis argues that private practice in Islamic legal services is a particularly pertinent case for analysis. This is because solicitors' day-to-day practice in dealing with cases in between Muslim and English law challenges the presumed incompatibility of 'Muslim and English' family law, 'the foreign and the native', or 'the oriental and the occidental'.

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Chapter 1. Introduction: Why British-Muslim family law as a site of citizenship?

1.1. Introduction

The growing presence of Muslims has become a central issue in many European countries including the UK. Debates about multiculturalism, identity, secularism and societal values more often than not raise the question of Islam or, rather, how Islam and Muslim law are being practiced today. While cultural and religious pluralism may be fairly easily applicable in the majority of UK government policies, Muslim law – or Sharia law – is now subjected to public scrutiny and media attention with legal pluralism appearing as a threat to modern European societies and their values. While there may not even be a concerted claim by Muslim people to formalise such legal pluralism and to apply Muslim law in the UK, the so called 'Sharia debate' gains traction through fears of foreign, alien and archaic laws putting an end to the rule of law in a 'Western' liberal understanding. Tariq Ramadan expresses this tension when he writes:

> There is a fundamental relationship between 'values' and 'laws' on the one hand, and 'culture' and 'diversity' on the other...can Europe remain consistent with its own values (democracy, equality, justice, respect, etc) and at the same time tolerate and accommodate new citizens from different backgrounds and religions? (Ramadan 2008).

This expression reveals many of the contradictions in reconciling pluralism with citizenship. The notion that values of European citizenship – such as democracy, equality and justice – are static, contradicts the prerequisites of genuine pluralism, which would consider them as dynamic, just as we accept culture as a dynamic concept. It is important to recognise that 'law' is a dynamic institution and, more than ever, is undergoing big changes, notably in relation to gender and sexuality through equality legislation which relates to family law. Ramadan's statement appears to single out the values of democracy, equality, and justice as Europe's 'own' and as lacking in others. It also invokes the image of law as being non-negotiable in contrast to culture. The main issue here is that much of the Sharia debate in the UK poses the problem as a question of incompatibility between 'two different forms of life' (Ahdar

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and Aroney 2010, p. 12). But if we conceive of the two, Muslim law and English law, as static and fundamentally different from each other, there can of course never be compatibility or interrelation.

Against the socio-political background where debates over pluralism, multiculturalism, and values continue, in this thesis, I shift my focus to Muslim legal practice in the UK as an emerging socio-legal field and as a site of citizenship. Inspired by Pierre Bourdieu's approach to the field of law, I aim to illustrate how novel legal practices can inform grounded conceptualisations of citizenship, paying attention to the legal subject's creative capacities. Today, people marry, divorce, bring up children and arrange their inheritance drawing on their understanding of a variety of norms such as Muslim law, English family law, customary law, and so on. I argue individuals practicing British-Muslim family law – as both professionals and clients – re-negotiate their belonging in the political-legal landscape of what it means to be a British-Muslim citizen and subject of law. Before delving into further detail and discussion of British-Muslim family law as a site of citizenship, I would like to, first, situate the thesis within broader scholarship and the current socio-political background.

1.2. Islamic legal services and advice provided by solicitors

The empirical focus of this thesis is on UK-qualified solicitors who provide Islamic legal services and offer expert advice as well as clients who seek their assistance for a variety of legal concerns. These services may include the drawing up of wills that satisfy Muslim as well as English legal requirements, the issuing of Muslim divorce certificates, or advice on validity of marriages.[1] By focusing on a very particular area of practice that has hitherto received considerably less attention than Sharia councils, I seek to carve out spaces in a crowded debate about the place of Muslims and in particular Muslim legal practice in the UK (for studies on Sharia councils see (Shah-Kazemi 2001; Bano 2012; Douglas et al. 2013; Billaud 2013; Bowen 2016; Manea 2016; Zee 2016). The aim is to investigate the potential for developing empirically-grounded practices which navigate or broker between Muslim and English law. People

[1] Islamic legal services discussed in this thesis relate to marriage, divorce, inheritance and advice on legal matters of Muslim requirements in English law; it does not include Islamic finances and investment services.

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are buying and selling legal services through solicitors' offices. They seek advice from specialist professionals who are able to offer consultation in both English and Muslim law. On the one hand, due to the changing make-up of Britain's citizenry, there is increased demand for Islamic wills, Islamic marriage or divorce certificates. On the other hand, those working in the legal field as professionals drive forward a process of 'legalisation' of British-Muslim practices as they develop ever more (market) solutions to the everyday problems of citizens. The fact that solicitors in particular gain added value (income as well as recognition as experts) by offering both English family law and Islamic legal services can be seen as a reflection of how British Muslims have to navigate between different legal fields, gendered spaces and subjectivities when arranging their personal lives.

Here, the figure of the solicitor differs from other providers. In some way, it is their positioning closer to 'the law' that makes them stand out. Solicitors see themselves as different from Muslim scholars, who have the authority to decide upon substantial 'religious' matters: 'what distinguishes solicitors' legal services from other [Islamic service] providers is, I think, that it gives peace of mind. They [clients] feel that going to a solicitor is binding even if we say it is not. But they get that peace of mind. It depends on what the client is looking for.... It depends on individual priorities' (Alsana).[2] Solicitors perform both services that are considered legally binding in English law and other services that are not. An example of the type of Islamic legal service a solicitor might offer and which will be considered as valid under English law is the drafting of Islamic wills; this is in fact the main and longest established activity in Islamic legal services. Islamic wills are English legal documents with the distribution element of the estate being Islamic. The flexibility of English legal rules on inheritance gives enough space to draft wills according to Islamic legal rules. It is important to note that, although qualified will writers can also draft wills, only solicitors are allowed to draw up wills *and* give advice on tax planning. The figure of the British-Muslim solicitor thus takes on the role of a broker between English law and Muslim law.

In the following chapters I will argue that British-Muslim family law is emerging as a *field of law*, which addresses everyday problems of Muslims living in the UK. It is

[2] Alsana is one of the interview participants in my study. Names of interview participants used in this thesis are not the participants' real names and all data collected in this study has been anonymised. More details regarding the methods employed in this thesis will be discussed in chapter four.

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this *legal* character of the field that makes the contribution by solicitors as expert actors and the solicitor's positioning in strong association with the law an important site of study. From such perspective, the question becomes one of interaction between Muslim law and English law and evolving forms of hybrid legal subjectivity. Conceptualising British-Muslim legal practice as an emerging field of hybrid law, this thesis seeks to challenge and transform established ideas about law, orientalism (or more precisely orientalised legal spaces) and citizenship.

1.3. Situating the research in scholarship and politics

This thesis intends to make an emphatic statement about the social construction of law through offering a counter-narrative to a discourse in which English law comes to act as the non-negotiable part of the multicultural deal, where a notion of English law – as domestic, foundational order – turns into a benchmark against an ontologically different, orientalised practice of Sharia law.[3] This orientalist discourse penetrates to varying degrees academic scholarship as well as policy circles and government, as will be outlined in the following chapters. The present study is guided by the following main research questions: (1) *to what extent can British-Muslim family law be considered a legal field?*; and (2) *to what extent does the engagement in Islamic legal services produce and sustain hybrid British-Muslim legal subjectivities?*

Paying attention to the legal subject's creative capacities in the construction of the legal field and the focus on legal practices and subjectivities in the everyday – a cornerstone of my research framework – this thesis seeks to provide a nuanced picture of what is commonly understood as 'law' by problematising the understanding of legal doctrine as static. By focusing on contemporary, localised but transnationally connected practices and subjectivities, I provide a dynamic entry point into broader and highly polarised conversations on what Islam, Islamic law, English law and being British-Muslim (in the legal field) means. Mandaville elegantly expresses a similar concern when he says, 'I consciously avoid offering an exegesis of Islam's canonical

[3] A focus on the social construction of law does not mean rendering irrelevant existing power structures in law and society. As Silbey rightly observes, 'the world, particular institutions, and practices may be socially constructed and contingent, not natural and necessary, but this does not mean that the socially constructed world is easily undone. To the defendant who goes to jail, the tenant who is evicted …the law is less pliable and less amenable to reinterpretation and reconstruction than poststructural critiques of determinacy seemed to suggest' (Silbey 2005, p. 330).

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texts…I am not in any way claiming that the classical texts tell us nothing useful about Islam. Their importance is beyond doubt. I *am*, however, claiming that we learn very little about Islam as a lived experience by going straight to the books; we learn a great deal, however, if we go to the texts *through the people who read them*' (Mandaville 2003, p. xii, italics in orginal). Thus, the aim of this thesis is not to exclude the object of legal understanding, i.e., substantial law, but 'to see the subject and object of legal interpretation as equal partners in the constitution of the legal system' (Balkin 1993, p. 107). The case of English law, in its very constitution, gives an example of such an idea of a subject-object relationship in law. In a country with a common law tradition, law should never be thought of as something static but as something organic and living. Any artificial distinction between the everyday and the abstract legal rule or system ignores that, as Valverde puts it, 'in the end, there is only one world. The convenient categories that we devise in order to travel through it – the maps that say law is over here and ordinary people are over there – are always just that, convenient, and can easily be redrawn if we decide that a change of scale or a change of perspective would be instructive' (Valverde 2003, pp. 96-97).

This thesis also aims to contribute to political debates in the UK and further afield because Muslim legal practices around family issues are increasingly associated with security concerns and are brought into the wider debate of the 'failure' of British multiculturalism. This discourse is troubling because it tends to essentialise, homogenise and orientalise (construct as alien) groups of Muslim people as a whole. Government and public discourse of the failure of multiculturalism (Davie 2015, p. 184; see also Werbner 2012; Kundnani 2012) constructs Muslim practices as deviant from a 'collective identity', as the then Prime Minister David Cameron phrased it in his speech at the Munich security conference in February 2011 (Cameron 2011). He said:

> In the UK, some young men find it hard to identify with the traditional Islam practiced at home by their parents, whose customs can seem staid when transplanted to modern Western countries. But these young men also find it hard to identify with Britain too, because we have allowed the weakening of our collective identity. Under the doctrine of state multiculturalism, we have encouraged different cultures to live separate lives, apart from each other and apart from the mainstream. We've failed to provide a vision of society to

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> which they feel they want to belong. We've even tolerated these segregated communities behaving in ways that run completely counter to our values (Cameron 2011).

There are several notable features of Cameron's widely cited speech, two of which, however, are particularly pertinent for situating this thesis in the current socio-political context. On the one hand, there is the idea of 'our collective identity', its exception being Muslim communities that appear to have become segregated under 'the doctrine of state multiculturalism' (Cameron 2011). On the other hand, the construction of the Muslim subject as 'the other' becomes linked to more than multicultural otherness but a security concern for contemporary Britain in which especially the figure of the young Muslim man becomes to stand for extremist threats, as policies as part of the government's counter-extremism strategy feed into such discourses.

These two lines of argument are linked together because the discourse Cameron uses in his speech identifies the root of extremism as a question of identity. The problematisation of multicultural policies in Britain and the essentialisation and securitisation of Muslims are interdependent developments that reflect and, at the same time, shape changes in the socio-political context in contemporary UK (see also section 8.2.). As White succinctly puts it 'we are always making ourselves, as individuals and communities, always making our language; yet, we are always being made by our language, by our past, and by the actions of others' (White 1990, pp. 24-25). Thus, multiculturalism, or what is being understood as such, 'is not a coherent representational space. Within this space there exist a number of competing articulations of the ideas and practices said to define British multiculturalism' (Thomassen 2017, p. 4). The same applies to understandings of Islam and what it means to be Muslim in Britain as these cannot be reduced to a singular meaning or definition. What comes to mean 'multiculturalism' or 'Islam', to whom and in which social and historical context are thus contested identifications rather than mere descriptions of a social reality. This is important because *how* conceptions of multiculturalism as well as Muslims and Islam are being constructed and represented in political and popular (and scholarly) discourse has significant effects. They perform

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particular realities and relations to others, they inform policies, institutions, laws, and practices, and they thus build political and ethical communities (White 1990).[4]

Cameron's speech serves as an illustration of an influential discourse that creates a binary between the West and its Muslim 'others' (see for a critique Razack 2008. Here, the role of gender and the notion of gender equality as a measure of integration and civilisation feature prominently in debates around the compatibility of Muslim practices and multicultural politics; this will be discussed in section 1.4. below). While Cameron's speech makes a distinction between extremist Islam associated with violence and the majority of Muslims who 'despise the extremists', his rhetoric nevertheless establishes a binary between 'us' and 'them', which contributes to establishing the notion of Muslims or Islam as somehow excluded from Britishness and its core values. Cameron continues saying 'let us give voice to those followers of Islam in our own countries - the vast, often unheard majority - who despise the extremists and their worldview. Let us engage groups that share our aspirations' (Cameron 2011). Thomassen, in his analysis of the speech argues that 'the space of the included is graded' because those Muslims who despise the extremists are 'at once included, part of us and yet cast as different and in the role of "them" who can share "our" values. Cameron only manages to include Muslims by branding them as different, and different from "us", thus also identifying "us" as non-Muslim' (Thomassen, p. 3). Such discourses of 'us' and 'them' not only externally 'other' Muslims and Islam in Britain but also internally essentialise and homogenise very heterogeneous groups of people and individuals under a single banner. In fact, the process of othering only functions by erasing internal differentiations. As Bano argues, current discussions in Britain on Muslim identity are often 'based upon oppositional frameworks of integrated/separated that are totally at odds with the complexity of Muslim identity found on the ground' (Bano 2008 p. 288; see also Bano 2007, p. 4). Like Bano, Saeed argues against a 'simplistic and essentialist notion' of what Islam is and also against the assumption that 'all Muslims in the West are believers: fully practising, "committed" Muslims' (Saeed 2009, p. 204). Moosa frames this diversity in the following way: 'there are many "islams" with a small 'i', and many Muslims with differences in terms of their practices and their understandings,

[4] Indeed, politics of multiculturalism or the demise of such are closely linked to social developments within minority groups (Bano 2017, p. 3). Therefore, changes in how multiculturalism is understood in public and policy discourse are of great importance for the investigation of the field of British-Muslim family law.

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since each person or Muslim community appropriates the discursive tradition differently' (Moosa 2002, p. 7). Mir-Hosseini goes as far as saying that she sees Islam as an 'essentially contested concept' as defined by Gallie 'who coined it for those concepts that have "disagreement at their core" …, evaluative concepts that involve endless disputes about their proper use on the part of their users. In other words, they mean different things to different people and in different contexts' (Mir-Hosseini 2012; see also Gallie 1956).

The conception of the failure of multiculturalism, the essentialisation of Muslim identity and the selective representation of it are, in my understanding, dynamics that are very much linked to each other. Writing in 2009, Taylor observed that '"multiculturalism" has become a suspect term in much of Europe today' (C. Taylor 2009, p. xiii). Kirwan, McDermont, and Clarke observe how in the UK, critical debates on migration and the politics of multiculturalism have brought to centre stage 'questions of membership, belonging and entitlement' more broadly (Kirwan, McDermont, and Clarke 2016, p. 765). Within the debate of the failure of multiculturalism, the representation of Muslims and Islam has become a central question. Modood states that 'there is a growing understanding that the incorporation of Muslims has become the most important challenge of egalitarian multiculturalism' (Modood 2009, p. 166). Moreover, this perceived challenge to multiculturalism is exacerbated by the idea of segregation leading to security threats. Bano notes that 'for many the politics of multiculturalism and the recognition of cultural difference has directly contributed to a rise in the politics of cultural separatism, the rise of segregated communities and the upsurge of home grown terrorists' (Bano 2007, p. 3; see also Bano 2008, p. 284). This results in a securitisation of Islam. As Brown argues 'the discourses of state agencies frame Muslim communities not simply as "problem communities" but as security concerns. As such they are placed on the margins of citizenship and their loyalty questioned. This process has been reinforced by a series of policy initiatives and Acts of Parliament in recent years' (K. E. Brown 2010, p. 171; see also K. E. Brown 2008). Pantazis and Pemberton refer to this as the construction of a 'suspect community' (Pantazis and Pemberton 2009, p. 646). Several studies and reports have documented how especially counter-extremism laws and policies contribute to a perception among Muslim communities as being under suspicion, which furthers a feeling of isolation and distrust (Liberty 2004; Choudhury and Fenwick 2011).

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The securitisation of Islam and Muslims extends into debates on family law practices in contemporary Britain. Intentionally or unintentionally, statements about the governance of Muslim family law often raise security concerns regardless of a lack of evidence for a connection of conservative (religious) subjectivities and practices with terrorism and extremism (Kundnani 2015). For instance, Manea highlights 'the political dimension' of the operation of Sharia councils in the UK, linking the issue to questions of security by saying 'ignoring it [the operation of Sharia councils] will not make it go away. It does have implications, not only for the fight against terrorism and extremism, but also for the cohesion of society and the successful integration into British society of diverse migrants of Muslim heritage' (Manea 2016, p. 182). Approaching the issue of Sharia councils in the UK from a security and counter-extremism policy point of view is highly problematic, in my view, as homogenises, stigmatises and marginalises particular sections of British society. It clearly has an effect on how people involved in the field of British-Muslim family law perceive their own position as Muslims in the UK. For instance, Rania, one of the interview participants, explained to me how she thinks 'everything to do with Muslims is looked at through the lens of terrorism… it is being perceived as a threat. Sharia councils are perceived as a threat to society too although they have nothing to do with terrorism – it's a bunch of old men!' (Rania).

The thesis focuses on British-Muslim *family* law because English family law is a particularly sensitive and culturalised area of law. Questions of family law are a site where citizenship, belonging, collective identity, self-image and normalised gender roles are being negotiated in contemporary Britain, as I shall argue below and in more detail in section 3.1.1. (see also Boshoff 2007). It is for this reason that legal orientalism plays out differently in family law compared to other areas of law, such as finance law where Islamic Finance has been introduced in 2003 without any controversies that comes close to those relating to family issues. I therefore argue there is a link between family law, wider politics and questions of gender and citizenship in the UK because 'the emergence of any new field [of law] functions both internally and externally as a way of questioning and redefining social hierarchies and power' (Dezalay and Madsen 2012, p. 443). Very broadly speaking, the focus of this thesis may be family law but the argument it makes is also a political one about the place and role of Muslim legal (and by extension, other) practices in the UK as an integral part of society rather than a somewhat foreign element that should or could at

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all be externalised and rarefied. In my opinion, it certainly neither should nor could be treated as a phenomenon that does not 'belong' in the UK. The fact that people practice hybrid forms of Islamic legal services in the everyday in a variety of professional settings is an expression of struggles for power, gender justice and social positioning and it is also evidence that these practices are firmly embedded in the fabric of contemporary Britain. Focusing on a particular area of law to explore broader political questions of citizenship in contemporary Britain is no contradiction, I argue, since law as well as politics and religion are part of the social field. In essence, thus, this thesis is looking at how socio-cultural change takes place.

1.4. Gender dynamics in the field of British-Muslim family law

It is important to note that specific gender dynamics, notions of gender and contestations of it, underlie and frame the emergence of the legal field in contemporary Britain. Before discussing in more detail specific gendered practices in the field, I would like to mention that the concept of gender is in itself a contested one (Korteweg 2017, p. 219; see also section 2.3.1. and section 6.2. in relation to conceptions of gender justice in the field). This perhaps simplistic observation is nonetheless important for understanding how this thesis employs and understands the idea of gender. Namely, rather than simply being a descriptive category, 'gender' is a contested concept. As Scott notes 'those who would codify the meanings of words fight a losing battle, for words, like the ideas and things they are meant to signify, have a history' (Scott 1986, p. 1053; see also White 1990 on the changing meaning of words and the social construction of language, pp. 22-25). The very concept of gender points to the 'fundamentally *social* quality of distinctions based on sex' (Scott 1986, p. 1054, my emphasis). On this basis, Butler argues that gender does not equal sexuality 'naturally'. Rather, this link, this neat overlap is the result of repeated performances: 'gender is the repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being' (Butler 1990, p. 33). Such understanding of gender as performance (as socially constructed) thus focuses on gender as something we do, not that we are. It is an embodied performance in everyday life (Segal 1997, p. 130).

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Furthermore, the contestations and struggles around the meaning of gender, and the particular issue of 'gender equality' in discourses on Muslim legal practices, reflect the social context and power relations operating in contemporary Britain – who becomes to represent the agentic, liberated, occidentalised subject versus the victimised, orientalised subject constrained by backward traditions? Here, the figure of the Muslim woman is contested in debates around British-Muslim family law: at the same time object of campaigns for integration and inclusion and yet excluded from (the imagination of) the body of unencumbered equal citizens. Similarly, in connection with the Sharia debate in Ontario, Canada between 2003 and 2006, Korteweg observes that 'the idea of gender equality plays a particular role in the political marginalization of immigrant communities' (Korteweg 2017, p. 219). It is these shifting dynamics and negotiations of meaning (of social categories) that form part of what makes British-Muslim family law an important site of citizenship in the UK.

Concerns regarding gender justice and the domination of patriarchal structures in Muslim family traditions form a crucial element of much of the public and policy debate around Muslim law and Islam more broadly in Britain (Kundnani 2012). At the same time, this social and political context shapes a very specific discursive framework within which the subject of the Muslim woman can emerge. For example, in the debate sparked by the then Archbishop of Canterbury, Rowan Williams's speech in 2008 Bano observes that 'unsurprisingly, perhaps, tensions were expressed via a focus on the issue of gender and gender relations, and the "subordinating" effect that Islam has upon Muslim women. Western women were presented as "enlightened" and bearers of liberal legal ideals…, while the Muslim female subject was presented as the "other", a victim to cultural and religious practices' (Bano 2008, p. 285; see section 3.1.1. for a discussion of Williams's speech). Gender relations and Muslim women's subjectivities in contemporary society can certainly not be reduced to such essentialising binaries. While maybe not as well rehearsed as dominant narratives, there are divergent, yet critical and powerful voices of women who engage in the field of British-Muslim family law and who challenge the reduction of current debates on gender to one of oppression of passive Muslim women (see also section 6.3.2.). For instance, Shaista Gohir, chair of Muslim Women's Network UK, commented in relation to the government-led review of Sharia law and the Home Affairs Select Committee inquiry into Sharia councils in Britain that 'everyone wants to listen to

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Muslim women when highlighting their terrible experiences. However when it comes to the solutions, everyone thinks they know what is best for them' (Bashir 2016).[5] Gohir's statement raises important questions regarding the experience of women with British-Muslim family law. To what extent does engagement in the British-Muslim legal field perpetuate existing structural inequalities and to what extent does it facilitate women to better their position drawing on context-specific agency? Here, it is important to consider law's constitutive character as legal provisions not simply reflect natural divisions in society but rather contribute to their constitution in the first place. Gender relations and the position of the woman legal subject (and ongoing contestations of such) in contemporary Britain therefore lie at the heart of family law. Moore calls this 'law's considerable impact on cultural reproduction' (Moore 2010, p. 4). In a performative understanding, the practices of law are part of how we develop gendered subjectivities, at the same time their performance opens them up for contestations and renegotiations.

However, the notion of 'gender' as socially, and in extension legally, constructed phenomenon, must not ignore the fact that such constructions (of for example the legal subject of the Muslim woman) can not necessarily be undone easily. For example, Bano observes that in Sharia council workings 'women were in a weak bargaining position and their autonomy and choice was to some extent being limited' (Bano 2007, p. 20). Yet, she adds that notwithstanding these disadvantages, women did not simply submit to subservient roles for them: 'Muslim women may choose to utilise [such religious arbitration bodies] - to obtain a Muslim divorce - but they also challenge the norms and values which underpin the bodies' (Bano 2007, p. 22). Following these tensions between domination and self-determination, I would like to outline how deep-rooted power imbalances in social practices and the canon of law structure the workings of the field and its laws along gendered lines. At the same time, I would also like to draw attention to some openings that have the potential to subvert the established order.

There is a – relatively – fixed positioning of the woman subject in certain Muslim legal practices and doctrine, for example the fact that daughters receive half the share of sons in inheritance law. I say 'relatively fixed' positioning because, although in

[5] Interview with the BBC, full quote in section 6.3.2. Details of the review and the inquiry mentioned will be discussed in section 8.2.1.

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principle gender roles and definitions are open to change, some legal doctrinal aspects are more difficult to amend than others. With regards to Muslim inheritance rules, for example, no case has made it to an English court so far. However, one of the solicitors providing Islamic legal services pointed out during the interview that this may well be challenged in the future. Furthermore, the opportunities for women to enter the British-Muslim legal field as (professional and expert) authorities in the position of UK-qualified solicitors offering and advising on Islamic legal services are greater than through other avenues. Findings from interviews, documentary and biographical research indicate that women are considerably better represented in solicitors' firms than, for example, on board of Sharia councils. This thesis investigates how the involvement of women solicitors can bring with it potential for change in legal practice and a more equitable and advantageous outcome for women in the process; yet more research is needed to assess the extent of this change. Solicitors can assist in negotiating more equitable and practicable outcomes in cases where different legal frameworks impact on individual subject positions. For instance, Kate managed to better the position of the woman in a dispute where the man relied on a perceived prerogative based on Muslim legal tradition that custody by default goes to the father in case of separation. She stressed, however, that it was important to find a solution that works for both parties (section 6.2.2.). Alsana also recounted how she often explains to quarrelling clients that it is an 'Islamic principle' to take the child's welfare as primary consideration in deciding upon custody. Solicitors may adopt a position of mediator or translator between different legal frameworks that is important to resolving conflicts and which will be examined further in chapter seven.

However, while moments of contestation do open up day-to-day practice, gendered legal structures play an important part also in Muslim divorce practices. The fact that, in Islamic law, wives unlike husbands, cannot initiate unilateral divorce explains the crucially important role of and demand on Sharia councils in Britain, the vast majority of their users being women (Bano 2012). Such councils host a board of scholars who may dissolve Muslim marriages on the request of women and without the consent of their husbands.[6] This prevents them from potentially being 'trapped' in a Muslim

[6] However, the authority of Sharia councils to dissolve Muslim marriages is by no means uncontested. Bowen refers to their uncertain status as 'unstable performativity' and rightly notes that Sharia councils 'make no claims to legal authority, and their religious authority is self-proclaimed, albeit based on the general principle that Muslims, as a community, should create the conditions that enable individuals to live within the limits ordained by God' (Bowen 2016, p. 89). This uncertainty opens up contestations

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marriage without being able to move on and for example re-marry. While publications on Islamic law and women's rights often highlight the static and subordinate (subject) position of women in Islamic legal rules, a focus on empirical data can bring a more complex and nuanced image that helps 'explore how multiple spaces in law, community and identity both empower and restrict women at different times and in different contexts' (Bano 2012, p. 5). This thesis aims to give an account of people's experiences and the contingencies and contradictions of the everyday, out of which and within which gendered subjectivities emerge. It is important to allow for alternative voices in order not to reproduce the same gendered power relations some critics of the practice of British-Muslim family law proclaim to fight. Patriarchy and gendered power relations are complex structures but clearly operate in specific ways in the field of British-Muslim family law.[7] However, while it is important to give an account of the power imbalances woven into the structure of legal practice (such as the lack of ability for women to initiate divorce unilaterally in Islamic law), there also is a need to look at individual stories to grasp the contested and complex nature of British-Muslim family law.

1.5. Muslim law, Islamic law, sites of citizenship…? A note on terminology

The title of this thesis is 'British-Muslim family law as a site of citizenship' and in this section I would like to clarify the specific terminology used. This sheds light on the conceptual positioning of the enquiry and gives insight into the politics underlying a particular research study as naming a field is also a normative act. Key literature in different areas of scholarship uses various terms of Muslim law, Islamic law or Sharia to refer to their objects of study. This indicates that scholars, explicitly or implicitly, conceive them as distinct, as linked yet separate phenomena. March, a political theorist, in *Islam and Liberal Citizenship* mentions that 'the present study is ... a work of political theory that seeks to analyze Islamic (as opposed to Muslim) attitudes toward shared citizenship through a methodology of comparative political ethics' (March 2009, p. 4). Vikør, in legal scholarship, conducted his study on 'Islamic' legal

by a variety of actors including dissatisfied users, the media, and recently a government launched independent review of the application of Sharia law in England.

[7] Equally, experiences with English law are gendered in their outcome. While regulations are formulated in a gender-neutral manner, they impact differently on men and women (for a critique of the presumed neutrality of the law see Scott 1996; Zerilli 2005).

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theory and history (Vikør 2005). Esposito and DeLong-Bas, writing on law and gender state 'Muslim family law provides the primary example of Islamic reform in the twentieth century. Islamic law (the Shariah) constitutes the ideal blueprint for Muslim society' (Esposito and DeLong-Bas 2001, p. xiv). They seem to suggest that Islamic law, or advocating the introduction of Islamic law, is an important element in constructing an overarching Islamic identity, or a subject position, which members of 'Muslim society' can see themselves as occupying. Finally, Dupret, a scholar of Islamic law, while not replacing Islamic law with a different term, critiques an essentialist conception of Islamic law and asserts that the question as to what Islamic law *is*, is flawed: 'the question is not relevant, because it is totally disembodied from actual practices; and it fails to address the phenomenon itself, i.e., the practice of referring to Islamic law. For the question, "What is Islamic law?" we should substitute the question, "What do people do when referring to Islamic law?"' (Dupret 2007, p. 3). For the present thesis, I chose the term 'Muslim law' over the term 'Islamic law' because rather than focusing on the code of law, it encourages the reader – and the writer – to put the emphasis on the individuals involved in creating the legal field of British-Muslim family law. However, I also at times intentionally use the term 'Islamic law' to signal a specific authority and corpus of rules that is being invoked as 'Islamic law' by the people practicing in the field. The term 'Sharia law' on the other hand is used in this thesis only in very limited instances when describing the current 'Sharia debate'. This is because the term Sharia law carries a particular connotation in certain media contexts – of being opposed, alien and a 'threat' to Western laws – that is important to consider in my analysis of legal orientalism. Using these three terms allows me to distinguish between the different analytical concepts that provide a framework for this study.

As an analytical category, the term 'Muslim law' focuses on the people practicing, or enacting, the law and therefore puts the emphasis on a continuously developing but clearly distinguishable set of practices of Muslims living in the UK.[8] It is law made through practice by Muslim as well as non-Muslim people implicated in the field of British-Muslim family law. On the other hand, the term 'Islamic law' serves in this thesis as a referent to the established body of law and jurisprudence which

[8] The distinction between Muslim and Islamic law serves analytical purposes only. For the individuals involved in the legal field this distinction is not experienced as such in the sense that it is not necessarily relevant, or meaningful, in existing legal practice.

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encompasses a whole set of normative sources of different character ranging from the Quran and sunna (Prophetic traditions) to fiqh (Islamic jurisprudence).[9] In the field of British-Muslim family law it is an important discursive tool, used by practitioners as well as clients, which functions as a legal postulate, representing a claim to authority. For example, when legal professionals call their portfolios 'Islamic legal services' rather than 'Muslim legal services', arguably they are making a claim to legal authority. The phrase 'Islamic legal services' emanates expertise, certainty and legitimacy because it invokes in the minds of its users an 'Islamic' origin, sanctioned by appeal to sacred texts, rather than a 'Muslim' origin which may carry with it the connotation of subjective law made through the everyday needs and experiences of Muslim people. The idea of 'Islamic legal services' undoubtedly conjures certainty and authority. Yet, there are a variety of schools, various traditions and interpretations both historically and contemporaneously. While Islamic Law is often portrayed as a monolithic body of strict rules and regulations (for a useful overview, see Rabb 2008, p. 528, footnote 4; see also section 3.1. below), it is much contested internally. Indeed, some Islamic legal scholars emphasise that individual Muslim legal provisions risk being distorted if taken out of the broader network of social and legal relations (An-Na'im 2002, p. 2). The need to consider social contextual differences features also in solicitors' practice. Kate, a solicitor who has been practicing in the area for years (Kate's work will be discussed in more detail in chapter six), observes that 'to an extent over the years, I have researched the difference in practicing Sharia in different cultural groups because I have worked with women from Africa, all parts of Asia, all parts of the Middle East, and there will be different interpretations depending upon where the person is from' (Kate).

Regarding the notion of a 'site' of citizenship, the way I understand it in this thesis is that a site is a confluence of specific contestations. Sites of citizenship are those areas of life that come to act as a ground for negotiating practices and meanings in society. It is where and when rights are being claimed or constituted; where and when meanings of social categories are being constructed and contested discursively; and

[9] It is important to note at this point that 'Islamic law' is a complex system and any attempt to summarise it in a brief section will necessarily be incomplete. However, it is useful to mention that Islamic law consists of Sharia and fiqh. The term Sharia refers to the text of the Quran and the sunna, the traditions of the Prophet Muhammad. Islamic jurisprudence and study, however, is referred to as fiqh, which is to be distinguished from Sharia. In their practice, Islamic jurists draw on several sources and methods of interpretation.

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where and when the boundaries of belonging within a polity are being re-drawn. For example, Mantu and Guild examine courts as sites of citizenship: 'among the variety of sites generated by authority, courts are where relevant types of citizenship contestation and negotiation take place' (Mantu and Guild 2012, p. 129; see also Çağlar and Mehling 2012). Kirwan, McDermont, and Clarke investigate the work of Citizens Advice Bureaux as 'sites of citizenship' (Kirwan, McDermont, and Clarke 2016, p. 765), which forms part of a larger research programme on the 'New Sites of Legal Consciousness', led by McDermont. Staeheli uses the term 'metaphorical sites' of citizenship that are 'of particular concern in geographic research: public and private spaces, spaces above the national, and sites beyond the global north' (Staeheli 2011, p. 395). Often, but not always, these sites of citizenship involve fierce public contestations, such as in the case of the Sharia debate in which 'law becomes the site where constructions of binary options take shape, where the clash-of-civilizations thesis finds material support', as will be discussed in chapter three (Moore 2010, p. 4). The people who engage in them may understand their struggles as relating to questions of citizenship but this is not a defining characteristic as such; others may want to refrain from referring to their practices as related to issues of citizenship as part of what I call 'strategic de-politicisation' of Muslim legal activities (discussed in section 8.2.3.). This thus opens the conceptual framework of what constitutes citizenship or sites of citizenship and delimits it from the ballot boxes or volunteering centres commonly associated with citizenship-related activities (see Tilly 2008 for the idea of an established repertoire of political performances).

This thesis argues that engagement in British-Muslim family law as a site of citizenship engenders a particular hybrid legal subjectivity located between English and Muslim family law, which goes beyond conceptions of law as limited to state law. In doing so people develop new meanings of obligations and rights that transcend divisions such as orient versus occident or British versus Muslim. To signal this hybrid yet locally and temporally distinct character of the field and its subjects, I use 'British-Muslim' family law with a hyphenated link. Although the analysis in this research is limited to the law of England and Wales, in short English law, I use the term British-Muslim family law, as it is prevalent not only in England, but also in Wales, Northern Ireland and Scotland. The term Muslim in this thesis makes no distinction between Shia or Sunni, or between particular ethnic or cultural influences except in places where this is necessary to explain the context of a certain dynamic. It

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is important to note at this point that 'the relationship between religion and community, culture and religion and ethnicity is not straightforward. Many religious communities are ethnically diverse, and just as one religious tradition may embrace many ethnicities, so also one national or regional origin can be shared by people of several religions' (Weller et al. 2013, p. 8). Also, although I refer to 'Muslims' in the field of British-Muslim family law, there are many people in the UK who would consider themselves to be Muslim but do not use any of the services provided in the field, as well as people who would use these services without considering themselves necessarily as particularly 'religious or practicing'. Individual faith and how it relates to established religions and other social frameworks is complex, and religious behaviour is subjective and reflexive, not 'automatic'. Finally, a note on the spelling of terms of Islamic law such as nikah or talaq. These are transliterated from Arabic in a simplified way to make them easy to read in an English language text (An-Na'im 2002). Wherever possible I use the Oxford Standard Dictionary for reference on spelling. Some of the words interview participants used are not covered by the Oxford Standard Dictionary, such as nikah or khul'. In these cases I use the most common way of spelling based on existing scholarly literature in the field (see as an example on usage of spelling Mallat and Connors 1990, p. 57 and 66; Mir-Hosseini 2000, p. 34 and 38).

1.6. Structure of the thesis

The following chapters will discuss in more detail British-Muslim family law as a site of citizenship from different angles. Chapters two and three set the scene for the empirically grounded parts of the thesis that follow. Chapter two looks at questions of plural legal fields in general and the specific case of Muslim family law in the UK. It introduces the main theoretical frameworks used in later analyses: legal pluralism, Bourdieu's conception of the legal field and legal subjectivity. Chapter three discusses how conceptions of orientalism, law and citizenship are important for the study of the British-Muslim legal field. Chapter four gives an account of my experiences of researching in the field, the main research methods I employed and some of the challenges and limitations I encountered.

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Chapter five brings together legal pluralism scholarship and Bourdieu's notion of the field of law to investigate to what extent the case of British-Muslim family can be conceptualised as an incipient legal field with its corresponding market. It thereby questions legal centralism for its inability to conceptualise law outside formal legal norms and processes and challenges an orientalised image of Muslim law as less able to dispense justice and provide practicable solutions to everyday problems.

Chapter six asks questions about the implications of British-Muslim family law for how we think about citizenship and explores different ways in which citizenship struggles shape the field of British-Muslim family law. It does so through a number of different entry points: different conceptions of rights in the field, the importance of gender justice and the question of agency, as well as the idea of a right to differentiated citizenship. Rather than taking as its starting point an established definition of what citizenship ought to be, this chapter's inquiry takes a grounded approach and arrives at a conceptualisation of citizenship through an investigation of practices and subjectivities in the field of British-Muslim family law.

Chapter seven is focused on the figure of the solicitor in British-Muslim family law. This focus is important for two reasons. On the one hand, solicitors as expert practitioners in both Muslim and English law are especially influential in driving forward the development of the field and its market. On the other hand, the point that a considerable number of women work as solicitors in the field of British-Muslim family law, may have the potential to address one of the major criticisms raised against the practices of British-Muslim family law through Sharia councils and mosques. That is their reinforcing of traditionalist gender relations and lack of involvement of women in decision making.

Chapter eight engages critically with ideas of transnational practices, belonging and citizenship in the 21st century and the changing role of the state in relation to them. While migration and international travel are frequent themes emerging from my research, a continuous association of British-Muslim practices with issues of migration is problematic as it perpetuates an idea of the 'foreignness' of Islam in Britain. I attempt to challenge this issue by providing a more nuanced narrative of transnational lives. My intervention is performed against a backdrop in which transnational Muslim legal practices are increasingly politicised, which impacts on

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everyday experiences of individuals engaged in the field and contributes to the emergence of particular political and legal subjectivities.

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Chapter 2. Plural legal fields: Muslim family law in the UK

The emergence of British-Muslim legal practice, which relates to something other than English law alone raises a set of challenging questions about law outside formal legal norms and processes, and about the complicated relation between law and legal subjects. How can law be thought of in a plural social context? Is legality limited to state law? Is a situation possible in which multiple legal fields operate side by side and to what extent does this produce legal hybridity? What are the characteristics of the legal subject implicated in the British-Muslim legal field? And how do gender and professionalisation operate in the sphere of state and non-state law? Animated by these questions, this thesis combines aspects of legal pluralism scholarship with Bourdieu's (1987) work on the legal field to investigate to what extent British-Muslim family law is established as a legal field (research question one, see section 1.3.). Looking at current practices in British-Muslim family law as a legal field in the making, uncovers and examines the *legal* character of these practices and, in continuation, challenges the normative stance of a legal positivist approach that maintains there cannot be *law* outside state law (Cane 2003, pp. 154-155 for a discussion on legal positivism). Related to this is also a negation of differentiated rights and creative contribution by Muslim citizens in their own right under the banner of 'one law for all'.

If framed as purely a question of religion, then the emergence of Muslim family law in the UK would not represent a challenge to the law-making monopoly and superiority of the state; and I think precisely this is one of the most powerful and important contributions a study of contemporary British-Muslim family law has to make in transforming conventional ideas about law. This chapter also puts a spotlight on the importance of including the legal subject in legal analysis and to highlight its creative capacities in establishing and maintaining the field of law. The concept of legal subjectivity allows to better understand how people see themselves and navigate through legal processes, which form part of their lives. It allows for a sense of agency within British-Muslim family law and tackles the orientalist bias inherent in the Sharia debate. The aim is to open spaces for thinking about transnational hybrid legal subjectivities that come into being, facilitated through the emergence of a legal field. In order to do so, the thesis draws on scholarship on (legal) subjectivity, legal

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professionalisation and cause lawyering to explore to what extent the engagement in Islamic legal services produces and sustains hybrid British-Muslim legal subjectivities (research question two, see section 1.3.).

2.1. Legal plurality: Legal pluralism, hybridity and gender

The contemporary socio-legal plurality in the UK inspired a variety of academic contributions in legal studies, constitutional theory and also in political theory on questions of whether to accommodate 'minority laws' in the UK, and if so, how. Existing studies have shown that when subjects migrate they do not leave their cultural and legal 'baggage' at the borders (Menski 2008). Against assimilationist expectations, second and third generations of migrants continue following normative systems other than English law alone (R. Williams 2008, p. 262).

2.1.1. Legal pluralism

Scholars in different disciplines engage in the study of legal plurality to some extent. This includes constitutional theory (Ahdar and Aroney 2010), political theory (March 2009), legal anthropology (Bano 2012), legal studies (Büchler 2011), law and religion (Sandberg 2011), studies in 'ethnic minority law' (Jones and Welhengama 2000) as well as classical Islamic law (Vikør 2005; Schacht 1964) and fiqh al-aqalliyyat (law of minorities) (Fishman 2006; Albrecht 2010).[10] The study of specifically the interaction between Muslim law and English law has gained traction over the past years. This 'interlegality' (Santos 2002; see also Bano 2012, p. 73) is however not limited to Britain and may be observed in other sites of family law outside the UK such as in relation to the Dutch judiciary for instance (Hoekema 2009), in France (Bowen 2011), in Canada and the US (Fournier 2010). Yet, each case is a unique and localised combination of specific factors and social conditions that come together at a certain point in time. From this viewpoint, British-Muslim family law is a particular *British* variant of Muslim law. From existing literature it emerges that so called 'Muslim family law' (Pearl and Menski 1998; Shah 2005) is developing in response to the time and space specific needs of people who seek to go through legal processes in the UK *as Muslims*. In the resulting interaction of different legal spheres, Menski argues, a particular hybrid system of '*angrezi shariat*' developed in Britain (Pearl and Menski

[10] Fiqh al-aqalliyyat concerns itself with legal issues facing Muslims living in a non-Muslim majority polity.

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1998; Menski 2008). Sona describes such process as a 'silent system of mutual accommodation' (Sona 2014, p. 116).

Legal pluralism scholarship is based on the idea that the legal sphere is not limited to official state law (Griffiths 1986; Santos 1987; Engle 1988; Chiba 1989; Kleinhans and Macdonald 1997; Dalberg-Larsen 2000; Melissaris 2004; Davies 2005; Shah 2005; R. Grillo et al. 2009). Griffiths in his founding article entitled 'What is legal pluralism?' describes it as 'the presence in a social field of *more than one legal order*' (Griffiths 1986, p. 1, my emphasis). Griffiths's contribution challenged the dominance of what he calls 'legal centralism', an ideology that 'is shown to reflect the moral and political claims of the modern nation state' (Griffiths 1986, p. 1). Legal centralism, closely related to the idea of legal positivism, is based on an ideology of superiority of secular state law.[11] Following legal centralism,

> law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state intuitions. To the extent that other, lesser normative orderings, such as the church, the family…exist, they ought to be and in fact are hierarchically subordinate to the law and institutions of the state (Griffiths 1986, p. 3).

Thus, the dominant concept of 'law' in the common sense equates to official state law as implicated in notions of legal modernity. Yilmaz notes how Muslim individuals' legal practices challenge this modern narrative of law and claims that 'this post-modern phenomenon reminds us that legal modernity has limits and that legal post-modernity is a reality' (Yilmaz 2002, p. 343). However, Shah questions whether the definition of legal pluralism is 'purely descriptive of a state of affairs or is it indeed a normative position taken by those who might wish to see more or less cultural diversity ... within and among legal systems?' (Shah 2008, p. 64). He prefers the former definition of legal pluralism 'being indicative of a factual state of affairs whereby *different norm systems* interplay with each other with complex results. Methodologically, this requires attention to be focused not only upon how courts and other official agencies navigate and negotiate inter-culturally within this hybridity, but also upon the situation "on the ground"' (Shah 2008, p. 64, my emphasis). I agree that

[11] Cane points out that certain approaches of legal studies that remain within the narrow confines of 'the law' avoid engagement in wider political or social questions: 'both "positivist" and "normativist" methodology is conservative in the sense that it is rooted in respect for society's established legal culture' (Cane 2003, p. 155).

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legal research must also focus on law 'on the ground', in the sense that it is a social construct – there is no law without its society, or without its legal subject. However, I think the important challenge for scholarship is to ask whether there can be 'law' outside state law, as legality of equal standing and distinct from other social normative forces such as religion or morals.

At the risk of oversimplification, what I am interested in is legal pluralism and not normative pluralism. This is because – for the purpose of establishing to what extent British-Muslim family law has become a *legal* field – it is crucially important to maintain a clear distinction between legal fields and, say the field of religion. However, an observation of there being more than one legal field within the same social context does by no means result in a clear separation of these different fields. On the contrary, the result is often a hybridisation of laws, norms, processes and professions through an interaction between and across them.

2.1.2. Hybridity

British-Muslim family law constitutes itself as hybrid because of the (transnational) interplay of different norms and frameworks. However, the interrelation of English and Muslim law should not be thought of as between two internally coherent forms of law. Rather, there is also hybridity within these two broad traditions of law. English law is a hybrid as it takes on board social and religious norms of past and present. Equally, Muslim law is made up of different denominations such as Sunni and Shia in addition to community custom or family norms. To give an example of hybridisation from contemporary legal practice in the field of British-Muslim family law, Sharia councils are providing legal rulings and advice for Muslims. Some of them derive their rulings not from one particular Islamic school of thought, as would be the case traditionally, but from all four Sunni schools, including minority interpretations.[12] By so doing, they claim, they are able to achieve the most equitable outcome in each case. This allows for more flexibility when dealing with new issues that may arise for Muslims in Britain.

[12] The Islamic Sharia council and the Birmingham Shariah Council claim to draw on all Sunni schools, Hanafi, Maliki, Shafi'i and Hanbali; no mention is made of Shia in this context (See Douglas and Sandberg, 2011, p 28-29).

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In one way or another, all social phenomena are in the end hybrid; as Hall rightly observes, 'modern nations are all cultural hybrids' (Hall 1992, p. 297).[13] While this might ultimately be true, it is still important to pay attention to the concrete processes and power dynamics through which the British-Muslim legal field is developing. Hybrid Muslim legal practices are an important part of the strategies and technologies developed by key agents to maintain a meaningful identity of being a Muslim citizen of the UK. Their hybrid character fills the gap between mutually exclusive claims to (legal) authority made by abstract notions of state law and Islamic law at the same time. Moreover, there is an important role British-Muslim family law plays in the formation of legal subjectivity: not only is the substance of the law hybrid but so too is the subject that forms part of the legal field. For my analysis, the term hybridity serves three purposes. First, it challenges assumptions of mutually exclusive, incompatible and static identities such as purely 'Muslim' or 'British' legal subject and citizen. It offers the insight that the subject of law – as imagined in its canon – cannot simply be transposed to the everyday and equated with individuals who faultlessly inhabit the spaces defined for them by law. Second, new forms of hybrid subjectivity are evolving through the legal process of British-Muslim family law, and provide sense and meaning, rights and responsibilities for the individuals involved who navigate between different normative positions. What is more, they also feed back into the substance of the legal field they relate to. In this way, legal subjects are not merely law abiding but also makers of law, rights and obligations. Third, hybrid subjectivity at work in British-Muslim family law potentially challenges existing subject positions in the legal field. This is particularly interesting in connection with gendered subject positions operating in many instances of Muslim family law (see section 1.4.).

To sum up, scholarship on legal plurality makes an important contribution as it shows that normative systems other than state law have a substantial effect on the behaviour of individuals and how hybrid legal fields and subjectivities emerge.[14] Ongoing discussions may refer to religious 'law', customary 'law', unofficial 'law' and so on, but has it been considered carefully enough whether these phenomena really exhibit a

[13] The hybridisation of British and Muslim law is, however, not only a contemporary phenomenon as will be discussed in section 3.1.2.

[14] Certainly, Muslim law as such is not recognised as forming part of the law of England and Wales. Yet, some solicitors I interviewed consistently referred to Islamic law as 'law' while others tended to change between two discursive frames using both concepts 'law' and 'religion' (see chapter seven for a discussion on the notions of law and religion in professional practice).

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specifically legal character that is clearly distinguishable from religious or customary norms? Confounding the two makes it more difficult to highlight the specific legal characteristics of British-Muslim practices that can challenge and transform centralist ideas of law, which appear untenable in practice. Such an approach also highlights power imbalances between what is considered 'law proper' and other minor normative structures. Here, a combination of legal pluralism and Bourdieu is helpful because it avoids using synonymously the concepts of law and other normative orderings.

2.2. Legal fields: Sociological approaches to law

Approaching British-Muslim family law as a legal field allows me to particularly highlight the *legal* characteristics in a normative system and distinguish them from other social norms conventionally termed custom, mores and so on (Bourdieu 1987). However, I would like to offer a word of caution at the start. One should be careful not to concern oneself too much with identifying the same traits mirroring established forms of state law within the British-Muslim legal field. This is not the purpose of the present analysis as it would be an attempt destined to fail. This would also foreclose any potentially interesting insights into alternative non-state legal practices. As Davies argues 'traditional legal theory has traditionally marginalized types of law, which do not have an institutional appearance comparable to Western law, labelling such laws as defective, primitive or merely cultural practices' (Davies 2005, pp. 107-108).

2.2.1. Bourdieu's theory of the legal field

Bourdieu (1987) brings to the study of British-Muslim family law a definition of 'law' as a 'legal field' within society as well as methodological tools of a reflexive sociology. Dezalay and Madsen are two of the most important advocates for bringing Bourdieu's scholarship closer to legal scholarship. They argue that the main advantage of this integration is to introduce the practice and notion of a 'reflexive sociology of law', which effects a 'historicization of both the object and the academic construction of that object' (Dezalay and Madsen 2012, p. 437). While the most detailed discussion of the characteristics of legal fields is outlined in his 1987 piece on 'The Force of Law', Bourdieu developed, corrected and changed the concept of the field over a longer period, which makes it a very comprehensive framework of analysis. Bourdieu maintains that the law is intimately linked with material and 'symbolic power' existing in the social world, as the legal field is created out of (historical) struggles in

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the political field. By definition, a social basis of the legal field – 'the historical conditions that emerge from struggles within the political field, the field of power' – *must* exist for a relatively autonomous legal universe to emerge and, 'through the logic of its own specific functioning, to produce and reproduce a juridical corpus relatively independent of exterior constraint' (Bourdieu 1987, p. 815).

To engage in this thesis's question of the extent to which British-Muslim family law is establishing itself as a legal field, it is important to spend a little longer on what defines legal fields (see also chapter five). According to Bourdieu, the following characteristics qualify normative systems to be interpreted as legal fields (Bourdieu 1987). Broadly, a legal field consolidates a clearly recognisable set of practices and discourses as well as corpuses of text. It is characterised by legal formalisation, which serves to establish the legal field and to distinguish it from other fields of normativity such as those commonly referred to as religion or custom. Legal language is distinguishable because it is based on neutralisation and universalisation. For example, it uses passive sentences, impersonal style, and is formulated as impartial and objective. The legal field is also characterised by professionalisation, which produces a division between professionals and lay people (see also section 2.3.2.). The legal field is the site of competition for the monopoly of the right to determine the law. The size of the profits the monopoly guarantees for each of its professionals depends on the degree to which the production of its members can be controlled (Bourdieu 1987, p. 835). Therefore, membership to the group of professionals in the legal field is limited and controlled internally. Very importantly, the development of a legal field is intrinsically linked to the constitution of a corresponding market. Professionals create the need for their own services by redefining problems expressed in ordinary language as legal problems. It is important to emphasise that legal fields function, change and sustain themselves internally through establishing a logic of practice of those involved (Bourdieu 1980). However, studying the functioning of the legal field entails looking beyond the (self-referential) viewpoint of the legal professionals themselves and their understanding of the law, to include an inquiry into the mechanisms by which our understanding of law (that of legal professionals as well as others) is formed,

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sustained and propagated, as well as a description of the material social effects of the practices of legal professionals.[15]

Bourdieu provides insights that expand and move beyond legal pluralism scholarship. Yet a legal pluralist perspective introduces productive challenges to Bourdieu's theory. For instance, most of the examples Bourdieu mentions in 'The Force of Law' (1987) come from France and his language suggests that when speaking of the legal field, he is thinking of state law and its professionals. In his earlier work on a sociology of law Bourdieu may have fallen victim to a certain methodological statism, equating the nation-state with society and not considering a situation where there is more than one legal field in a nation (see also Wimmer and Schiller 2003). Yet, Bourdieu's analysis is not limited to any particular legal system. His work describes the emergence of the legal field as a *process* and an area of structured, socially constructed and constructing practices. It is for this reason in particular that it can so readily be applied to British-Muslim family law too. As Dezalay and Madsen state 'Bourdieu's studies of the state and the role of law and jurists in this construction provide a more general analysis of how lawyers in culturally different settings have conquered key positions by constructing the force of law' (Dezalay and Madsen 2012, pp. 438-9). In fact, it would be wrong to criticise Bourdieu's work for not taking into account normative structures other than what is proclaimed as 'the law' by the materially and symbolically powerful. Because this is precisely the very crucial contribution, and analytical sharpness, that Bourdieu can bring to a legal pluralist study. Legal pluralism as a political message has immense critical and perhaps subversive potential to challenge established legal professionals' monopoly over the meaning of law but only if it manages to make its case convincingly enough that there is more than one *legal* source, or field, in the same social context. It is therefore instructive to look closer at different characteristics that are commonly attributed to law such as validity, effectiveness, compliance and sanctionability of legal norms, which are central to my argument that British-Muslim family law can justifiably be referred to as law.

[15] For this reason, the empirical study underlying this thesis included both lay people as well as legal professionals (see chapter four).

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2.2.2. Sanctionability, compliance, validity and effectiveness

Challenging the state's exclusivity in norm making and uncovering inequalities in the construction of what comes to mean law draws into question established assumptions regarding sanctionability and validity of legal norms. This is supported by discussions I encountered as part of interviews that indicate a real concern for effectiveness (referred to in interviews as enforceability) for those individuals involved in legal practice.[16] Looking at an area of non-state law, the following questions arise. How is non-compliance and sanction effectively regulated in non-state legal fields in the area of family law? How is family law enforced in the state law realm?

Regarding the question of sanctions, Allott rightly maintains that sanction is not necessarily the defining characteristic of a particular legal norm; rather it is a possible way of promoting compliance (Allott 1980). However, he does not exclude that there may be other means of ensuring compliance. Paternoster and Simpson, for example, provide evidence from the area of corporate crime that in many cases informal sanctions have a greater deterrent effect than formal legal sanctions (Paternoster and Simpson 1996). Other studies show that 'regardless of what kind of social control is attempted it is usually not its formal punitive features that make a difference, but its informal moralizing features' (Braithwaite 2002, p. 106). Non-formal sanctions can include negative publicity, shame, public criticism or personal embarrassment. Formally administered sanctions could be fines, compensation orders or prison sentences. Interestingly, there is also important evidence that 'formal sanctions often trigger informal sanctions' (Parker and Braithwaite 2005, p. 133). Akhtar notes that means other than state sanctions also ensure compliance: 'British Muslim communities are living a legal plural reality. Whether the "laws" are imposed by informal bodies such as Shariah Councils, or self-regulated through individual religious convictions, they are powerful rules which are *potentially more coercive than state law*' (Akhtar 2013b, p. 390, my emphasis). While non-formal sanctions are important and effective aspects of the functioning of the legal field, the relationship between formal and informal elements is complex and impossible to define in the abstract.

[16] The idea of effectiveness is closely related to the notion of enforcement but I think it is more useful to think about the effectiveness of a legal norm rather than its 'enforcement' which is associated with a particular situation of non-compliance in which sanctions, or other means of enforcement, become necessary. Van Hoecke calls it the 'efficacy of the law' and poses the sociological question of 'the normative validity of legal rules and their actually being followed' (Hoecke 2002, p. 24).

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Regarding questions of validity and effectiveness, Allott maintains that 'legal norms are such, not because they are 'binding'... but because of their source, their context, and their aim. They are seen as essentially *persuasive*' (Allott 1980, p. viii). A legal norm is thus a norm that is associated with the legal field (and not any other field). Validity of a norm depends on it being understood as such by its subjects. Effectiveness of a legal norm depends on compliance with it by its subjects. Compliance with, and hence effectiveness of, a legal norm might be aided by threat of sanction but, crucially, does not depend on it. While a legal norm also has the power to shape social practice (law as constitutive), it will only be complied with if it is to some extent fit for its social context. In his inaugural lecture on 'Muslim Jurists' Quest for the Normative Basis of Shari'a', Masud argues that a 'basic element in a legal system is its acceptability amongst the people. For this reason, public participation in law-making and law reform is inevitable' (Masud 2001, p. 13).[17] In response to questions regarding the sanctions available within British-Muslim family law, which are comparable to those administered by the state, it is also important to remember that there is a clear tendency within the English legal system to outsource or privatise some of its legal activity, together with other areas of state government, which may be an indication for a change in the role of state-administered sanction within family law (on the issue of legal privatisation, see section 5.1.).

The concern with validity, effectiveness, compliance and sanctionability of non-state law invites a closer look at law in practice and illustrates the discrepancies between theory of law and legal subjects' enactment thereof. A conceptualisation of law not as an ideal, but as a social construction and social conception, provides an essential framework for understanding how British-Muslim family law is being established through British-Muslim contemporary practices and the development of a corresponding market. An analysis of the legal field in that sense can demonstrate that these practices are justifiably called 'law' rather than customary or religious practice. Here, Bourdieu's approach is crucially important for highlighting the legal characteristics of British-Muslim family practices. However, the framework of the legal field is limited to a certain extent when investigating subjects and subject positions because it offers a more structuralist approach rather than foregrounding the

[17] Masud also claims that 'in Muslim societies today, the construction of the Shari'a is no longer an intellectual exercise conducted by specialists... In Muslim communities that live as minorities, new constructions of the Shari'a and Fiqh have emerged' (Masud 2001, p. 13).

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legal subject's creative capacity, which plays an important role in constructing the legal field. For the present study, therefore, the theory of the legal field is most suitable when supplemented by an investigation of legal subjectivity. This provides a more nuanced perspective without risking to over-emphasise the unconscious levels of decision-making prioritised in Bourdieu's work (Atkinson 2010, 2014).

2.3. The role of the legal subject in the field

Investigating the field of British-Muslim family law touches upon the question of what happens to the people involved in the legal process and to the subjects that are implicated in its constitution. Yet, in legal scholarship the formation of the subject has thus far been under-researched compared to analyses of legal systems. The term 'legal subjectivity' in law is conventionally used in the juridical sense of 'legal personality' as being able to have rights and obligations within a legal system. The legal personality is divided into two categories, natural persons who are individuals, and judicial persons, such as corporations, which can be made of several individuals. There is a range of literature on legal subjectivity that, however, has very little in common with 'subjectivity' as understood in social theories (see for instance Martin 2011). In the sections below I explore how scholarship can bridge the gap between social and legal understandings of subjectivity.

2.3.1. Subjectivity and the field of law

Dezalay and Madsen suggest exploring the more 'subjective level (i.e. the structuring level) of the field in combination with an analysis of the structures of the field' (Dezalay and Madsen 2012, p. 441). From this point of view, the idea that the dynamism of law emerges because of the tension between different legal orders is flawed as it ultimately privileges the external referent and not the subject as unit of investigation. Kleinhans and Macdonald rightly argue for a *critical* legal pluralist perspective, which is premised upon the fact that there are no pre-existing normative orders simply because normative orders cannot exist outside the creative capacity of their legal subjects (Kleinhans and Macdonald 1997, p. 40). There is now a body of social as well as legal scholarship (see for example Balkin 1993; Kleinhans and Macdonald 1997; Moore 2010; Bouclin 2013) that brings about an understanding of legal subjectivity based on social and feminist theories, following traditions instigated by Foucault (1980, 1982, 1998) and later Butler (1990, 1997, 2004).

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Before discussing in more detail how I conceptualise legal subjectivity in this thesis, it is useful to turn to the works by Foucault and Butler for a brief, and necessarily simplified, account of the development of the concept. This thesis does not provide a full explication of the works by Foucault and Butler as there is so much that can be said about their theories. Rather, I work through their writings with a focus on investigating the emerging legal subjectivities in the incipient field of British-Muslim family law. For this investigation, it is very important to consider how both Foucault and Butler, albeit with their own distinct approaches, challenge perspectives that see subjectivity and identity as naturalised and fixed. Rather, their extensive work describes how the subject is to be conceptualised differently as an effect of power relations (Foucault),[18] or as a performance that leaves open possibilities to disrupt dominant narratives of a naturalised subjectivity (Butler). Works by Foucault and Butler are most useful as in essence they describe how categories of existence, as fundamental as the assumed natural distinction between men and women, are subject to revision in and through social struggles. Prompted by their work, other authors such as hooks challenge the belief that sexual difference is central in the determination of human subjectivity, and contest the marginalisation of the effects of other social relations like 'race' (hooks 1992). McLaren argues that Foucault's scholarship on subjectivity lays out 'a new way to think about subjectivity that breaks from the traditional philosophical dilemma of viewing self and sociality as mutually exclusive' (McLaren 2002, p. 59). Scholarship drawing on Foucault's ideas shows the genealogies of how subjects become constituted through and dominated by practices and discourses of power. It is for this reason, as Mouffe argues, that 'we have to conceive the history of the subject as the history of his or her identifications, and there is no concealed identity to be rescued beyond the latter' (Mouffe 1992, p. 28). Put differently, subjectivity is nothing we are born with.

Critiques of Foucault's conception of the subject as overly deterministic arguably neglect to some extent the inherent complexity and multi-layered character of

[18] Foucault summarises 'there are two meanings of the word "subject": subject to someone else by control and dependence; and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to' (Foucault 1982, p. 781). Furthermore, 'one of the prime effects of power [is] that certain bodies, certain gestures, certain discourses, certain desires come to be identified and constituted as individuals. The individual, that is, is not vis-a-vis of power; it is I believe, one of its prime effects' (Foucault 1980, p. 98).

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Foucault's work (see for example a critique by McNay 1992).[19] McLaren elegantly puts this complexity of relationships between power, disciplines, discourse, and subjectivities into words: 'disciplines, discourses, and power are each themselves complex; power is relational, discourses are polyvalent, and disciplines are multifarious. Subjects thus produced are likewise complex…both dominated and resisters, both constrained and enabled by various disciplines, practices, and institutions' (McLaren 2002, p. 59). Still, Foucault's approach comes with certain limitations that are important for the framing of the present study. Dezalay and Madsen's argument, in developing Bourdieu's field theory, is to focus as much on the subject driving the field as the structures determining behaviour and processes specifically within the field of law. Foucault, however, in his work on sexuality conceptualises the subject in a much less agentic way. The focus on abstractions of power addressing the body seems to prevent, as Segal argues, 'any theorising at the level of…specificities of social relations and cultural process or values' (Segal 1997, p. 211).

Butler's work further develops the idea of the emergence of the subject in a different direction, while taking inspiration from Foucault. She introduces the idea of subjectivity as being performative. Butler writes, 'the force of the performative is thus not inherited from prior usage, but issues forth precisely from its break with any and all prior usage. That break, that force of rupture, is the force of the performative' (Butler 1997, p. 148). Thus, a performative approach to legal subjectivity or political subjectivity leaves more room for a creative or transformative potential of individuals' practices. As Isin comments in relation to the concept of performative citizenship, 'a performative perspective on citizenship as making rights claims across multiple social groups and polities reveals its creative and transformative possibilities' (Isin 2017, p. 501). The concept of performative citizenship raises an important question regarding the agency of the subject and to what extent such is possible given that Foucault remains doubtful about the subject's capability to act freely. What is key here is how the subject's agency is conceptualised. This thesis understands agency in a way that allows me to highlight the creative capacities of the legal subject that can contest existing power structures, however, this is not understood as a capability to act

[19] McNay argues that 'Foucault's notion of the body is that it is conceived essentially as a passive entity, upon which power stamps its own images. Such a conception of the body results in a problematic one-dimensional account of identity' (McNay 1992, p. 12).

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completely freely. Indeed, such agency of the legal subject is not unrestricted or autonomous. Any form of agency is to some degree implicated in power structures manifesting themselves in discourses, norms and practices.

In relation to the question of Muslim women's agency, which is one of the key defining characteristics of debates around Muslim legal practices in the UK, it is important to mention that the structures within which agency remains contained are influenced by systemic gender inequality to a considerable extent. This aspect forms part of the conceptualisation of individual agency; however, postcolonial feminist scholarship does so in a nuanced way. Mahmood argues for a notion of agency not simply as resistance against existing social norms but as a 'modality of action' (Mahmood 2005, p. 157; see also Mahmood 2001). Korteweg uses the phrase 'embedded agency' to communicate a contextualised sense of agency (Korteweg 2008). Agency is thus not to be understood as in opposition to power but rather as embedded in it and within specific social and historical contexts. Butler argues for an understanding of power 'as forming the subject as well, as providing the very condition of its existence and the trajectory of its desire, …power is not simply what we oppose but also, in a strong sense, what we depend on for our existence' (Butler 1997, p. 2). This corresponds with Foucault's conception of power as relational. While law was never the central focus of Foucault's scholarship (Hunt and Wickham 1994, p. vii), the insights he provides regarding the process of subject formation and his alternative conception of power as not limited to coercion or legal sanction are instructive in theorising legal subjectivity in the context of British-Muslim family law.

Bringing together the ideas developed by Foucault, Butler, postcolonial feminism and performative citizenship is very helpful in sharpening how this thesis understands and employs the concept of legal subjectivity. A focus on legal subjectivity in this thesis is an inquiry into different forms of legal understanding, the contributions that individuals make to these forms of understanding, and the effects that legal understanding has on us, which in turn will determine again the forms of our legal understanding. Experience with the law, or engagement with the law, is an activity of understanding; it is something we do with and to the law, and through this activity, we ourselves are changed. Allott sees law in a similar manner, calling it a '*communications system*' (Allott 1980, p. viii). Balkin notes that a 'concern with the legal subject is ... a concern with how our processes of understanding affect and help

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constitute the cultural objects [such as the law] we comprehend' (Balkin 1993, footnote 1). Linked to this is an understanding of law as constitutive. It implies that law provides a framework of cultural references within which subjects act as meaning-making, at the same time enabled and restricted in their scope by the particular structures of a field (Moore 2010, p. 5).[20] The aim is thus not to exclude substantial law – or law 'proper' – from the analysis but rather to consider as equally important for the functioning of the legal field 'the subject and object of legal interpretation' (Balkin 1993, p. 3).

In this thesis, I employ two different but related concepts of subjectivity and subject position that allow me to articulate different aspects of 'subjectivity' at work in British-Muslim family law, while following common usage in recent political sociology and political theory (Woodward 1997; Mansfield 2000; D. Hall 2004).[21] The first is 'subjectivities' of individuals (whom I interviewed as part of this research project) or of one individual with differing views. Subjectivity, as a sense of self, is the way in which actors locate or place themselves in relation to others (subjects as well as systems). This web of relations, characterised by its underlying power structures, constitutes a field in which and through which a subject can be said to perform his or her subjectivity. Each individual is not limited to a single subjectivity. As I have argued, subjectivity is plural, multiple and social. Second, subject positions are the places that people occupy in this web of (power) relations. The web of relations is multiple, plural and intersecting. Subject positions do not equate to a particular individual; they are the positions we take up or see ourselves as occupying. Subject positions are taken up by subjects by bringing various subjectivities into play. So, for example, a woman using a Sharia council would be bringing into play the subjectivities such as Muslim, woman, wife, or others. Put differently, a subject position is the place people occupy with their own self-understanding, their subjectivity. In British-Muslim family law, hybrid legal subjectivities challenge the legal positivist expectation that there is a pure legal subject.

[20] The notion of law as 'constitutive' refers to how 'both feminism and critical race theory (CRT) have emphasized law's power to shape the meaning of social relationships and social institutions and, indeed, to define personal identity' (Cotterrell 2004, p. 2).

[21] Although related, the idea of subjectivity is preferable to the concept of identity for two reasons. First, it avoids engagement in identity politics where groups' rights are based upon fixed constructions of identity, and second, it helps get a sense of the self and its relations to the social world. The idea I aim to convey is that it is not about how to have an identity but how people position themselves within a social context.

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What is more, this web of relations is structured, as mentioned above, by changing power relations. Here it is important to note that 'women's positions within this network tend to perpetuate the domination of women and discourage women's resistance and feminist solidarity' (Allen 1999, p. 132). However, Mouffe draws our attention to the fact that women occupy various, different subject positions available to them within each specific context (Mouffe 1993). Furthermore, Mouffe's intervention is not simply an observation that there is in fact a plurality of subject positions; rather 'this plurality does not involve the *coexistence* of a plurality of subject positions but…the constant subversion and overdetermination of one by the others' (Mouffe 1993, p. 77, emphasis in original). This opens up spaces of contestation of the power imbalance the woman subject is constructed within. Through the intersection with, for instance, professional subjectivities of women solicitors, a different subject position is arguably emerging for women practicing in British-Muslim family law. I say arguably at this point, as more empirical evidence will be necessary to strengthen first indications in this study that the involvement of women solicitors in the field successfully challenges the perpetuation of the subordination of women's subject positions in legal practice (see chapter six and seven).

To summarise briefly, just like sexuality does not equate seamlessly and naturally to gender, individual human beings do not equate to legal subjects. Scholars such as Butler (1990, 1997, 2004) and Foucault (Foucault 1980, 1982, 1998) have credibly challenged any naturalised view of gender or the individual human. These lessons can be drawn on, I argue, for investigating how practices in, and use of, Islamic legal services engender particular subjectivities and how they facilitate a gendered process of professionalisation in the field that performs boundary-setting between professional and lay subjects, men and women legal subjects.

2.3.2. Professionalisation, gender and solicitor-client dynamics

The various ways of engagement in British-Muslim family law form productive sites of legal subjectivity. In everyday life, people engage in activities and conversations, seeking advice, buying and selling Islamic legal services. This constitutes legal subjects who, on the one hand, feel entitled to expect such services, and on the other,

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now feel obligated and 'responsibilised' by the judgments rendered.[22] Put differently, these practices and discourses engage a new subjectivity of obligation to follow the laws set out therein. However, the subjectivities that are being constituted in these encounters and processes are not singular but differentiated, emerging along, but not fully determined by, power relations such as professional-lay and woman-man. By engaging with legal services people are responsibilised to act in ways that constitute what it means to be a client or a solicitor, a woman or man legal subject.

The dynamics of professional-lay power relations are of particular relevance to the incipient field of British-Muslim family law and its corresponding market. A concern with professionalisation, or the question of who has the power to determine discourse and social practice, is in many places present in works by Foucault. He is concerned with professional discourses and power relations constructing our understanding of 'normality' and 'perversion' (Segal 1997, p. 206). The different modes 'by which, in our culture, human beings are made subjects' contain, among others, the mode of differentiation or what Foucault calls 'dividing practices' (Foucault 1982, p. 777). This process of division objectivises the subject and creates intelligible categories such as the sick and the healthy or the mad and the sane, as examples given by Foucault. The concept of objectivation – the coming into being of a subject through differentiation and through the recognition of 'the other' – is also present in the dynamic of professionalisation. The emergence of professionalised subjectivities in British-Muslim family law affects who can speak on behalf of the 'law' (Bourdieu 1987, p. 839), which brings with it important discursive *and* material power to set the terms (and terminology) of social relations within the field.

As will be discussed in chapter five, the emergence of a field is inseparable from the establishment of a market linked to it. In this 'market' individuals take up different subject positions. On the one hand, there are those subjects who need the law, whose position is one of service seeker, or client. Conventional wisdom may hold that professionals simply respond to these needs for service. The emergence of the legal field is, however, not purely 'demand-driven'. Solicitors, by virtue of their interests in

[22] A brief note on responsibilisation of citizens is necessary at this point. Burchell introduces the idea of a new form of 'responsibilization', which encourages citizens to freely and rationally conduct themselves in new ways (Burchell 1996, p. 29). It is closely related to what Rose describes as neoliberal governmentality or governance at a distance (Rose 2007). The subject of government is given new obligations and duties. Rather than being governed directly, people are appealed to as free and independent citizens to take responsibility for their own acts and choices.

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creating a professional market, in order to convert their social capital into economic capital, also form an interest in this legal subjectivity (Bourdieu 1987). While various ethical, religious or social activist motivations are certainly important in how subjectivities of solicitors emerge in British-Muslim family law (see chapter seven, Prabhat and Hambly 2017, Boon 2001), they also see the market in which they are operating as in their interest (see also Shamir and Chinski 1998). Whether or not expressed in these terms by the individual solicitors themselves, the subject of the legal professional can therefore not be conceptualised as 'interest-free' (Bourdieu 1998). Historically, Abbott demonstrates how explicit self-regulation by solicitors through the establishment of ethics codes, and here particularly the idea of 'disinterested service', is essential for the realisation of corporate interests. Abbott elegantly points out that 'if service claims assert status by asserting functional importance or necessity, claims of disinterested service augment this assertion by purifying it of ulterior goals. They remove the ambiguity of motive inherent in service for profit or personal gain' (Abbott 1983, p. 867).

To use an idea that Butler developed in *Excitable Speech* (1997), solicitors practicing in British-Muslim family law 'hail' the legal subject that is to be their client. 'One comes to "exist" by virtue of this fundamental dependency on the address of the Other. One "exists" not only by virtue of being recognized, but, in a prior sense, by being *recognizable*' (Butler 1997, p. 5, emphasis in original).[23] People who (consider to) use Islamic legal services are hailed as particular legal subjects through the fact that they are offered these legal services. It is a dynamic that has been observed in legal practice in a similar manner. As Prabhat and Hambly observe, 'specialists may diagnose problems so that they fit their specialist expertise rather than fit with the client's broader needs for a solution' (Prabhat and Hambly 2017, p. 1517). This is not to suggest that legal professionals in British-Muslim family law engage in a sophisticated, large-scale conspiracy of domination. As Scheingold describes in detail, legal education and professional socialisation in the case of American lawyers influence behaviour in a more subtle way that leads lawyers to adopt 'a distinctive approach to problem solving…that influences the way lawyers think about societal issues more generally' (Scheingold 1974, p. 152). While protection of the profession through legal education and control of paths to access are crucial to its long-term

[23] Lloyd notes that the interpellation of the subject is not limited to speech and also 'works through other practices and institutions' (Lloyd 2007, p. 117).

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sustainability, it is important to note here that especially in marginal legal specialisations (such as Islamic legal services or immigration law), practitioners are not necessarily doing so (primarily) for market reasons. It is wrong to assume that solicitors would choose to specialise in Islamic legal services purely for conscious self-interest; on the contrary, it is always a mixture between doing *good* and doing *well* (Scheingold and Sarat 2004, p. 96; Scheingold 2001; see also Menkel-Meadow 2013). Furthermore, 'choice' of specialisation in the field is also determined by other factors. Paths to access are not even for all subjects, some will find more obstacles on their way. Agency and power in the legal professional context are distributed unevenly. One of the important factors here is gender in projects of legal professionalisation. Sommerlad writes in 2002 about the position of women solicitors in private practice in England and Wales in relation to the 'changing nature of professionalism', and concludes that women continue to be marginalised within the legal profession, in terms of working in less 'prestigious', less well paid or 'women-friendly' areas of practice (Sommerlad 2002, p. 213 and Schultz 2003a, p. xi). For example, family law is an area of specialisation where women are over-represented (Sommerlad 2002, p. 225). 'Marginal', in legal practice, 'denotes practice which may not afford high status or earnings within the general field of legal practice' (Prabhat and Hambly 2017, p. 1516). However, Sommerlad also contends that the statistical data her findings are based on, subsumes very different life experiences under one single category of 'women solicitors' and thus excludes variations such as in class and ethnicity from analysis (Sommerlad 2002, pp. 213-16; see also Schultz 2003a on diversity of women lawyers). Nevertheless, the finding that more women 'choose' to get engaged in the field as solicitors (see chapters six and seven), needs to be set within this context of structural disadvantage. In the process of professionalisation, we observe legal and professional subjectivity emerging that is differentiated along gender and other boundaries. Thus, the very process of professionalisation does not erase existing social inequalities but, in fact, remains structured to a considerable extent along lines of gender, ethnicity and class.

While internally heterogeneous and contested, professional subjectivities evolve from a powerful position in contrast to non-professional subjects. However, this is not to say there exists a settled balance in these power relations in favour of legal professionals, or a certain segment of them. Far from it, the legal field is characterised by complex power relations and ongoing competition 'between various modes of

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production and reproduction of law' (Dezalay and Sugarman 1995, p. 5). Indeed, McCann argues for a greater focus on power structures in operation with regards to sociological questions of rights consciousness as 'developing greater focus on power would add a political dimension to go along with the sociological dimension' (McCann 2012, p. 481).[24] The image emerging is complex. From the viewpoint of private practice, for instance, 'the intensification of the links between capital and law and hence the subservience of the practitioner to the client' is part of a wider trend in legal practice (Sommerlad 2002, p. 217), with globalisation of the legal profession driven considerably 'by client demand rather than an inherent desire to supply global services' (Flood and Lederer 2012, p. 2513). This suggests that the subject constituting itself as client of legal services has considerable power over the shape of professional subjectivities and practices evolving in the field.

Because of the lack of regulation and the marginal character of the field of British-Muslim family law, power relations in the client-solicitor relationship are perhaps more fluid than in other areas of practice and conventional ethics associated with professionalisation in law (disinterested service, neutrality and partisanship) are subject to revision. That these conventional ethics of lawyers are not an ontological feature of the profession is also demonstrated in another way by research on activist lawyers, also referred to as 'cause lawyers' (Scheingold 1974, 2001; Sarat and Scheingold 1998; Boon 2001, 2004). This 'category' of professionals is particularly interesting in the discussion of client-solicitor relationships because they unsettle the traditional subject positions of professionals based on neutrality and partisanship as their practices and subjectivities undermine these principles (Sarat and Scheingold 1998; see Moliterno 2009, pp. 1561-68 on the traditional position of lawyers). Such activist legal professionals

> deny neutrality, it is said, because they select their clients for the cause they represent. They deny partisanship because they make a moral imperative, furthering the cause, rather than the interests of their client, the main aim of representation… Such practises are anathema to the traditional ethical

[24] McCann understands power as relating to 'instrumental capacities of individuals, but also to the power of institutional arrangements, relationships among groups, and discourses and ideas that shape possible agendas' (McCann 2012, p. 481).

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> paradigm, for their challenge to established rules and their underlying basis and rationale (Boon 2004, p. 250).

In other words, cause lawyers are unsettling the boundaries between the legal and the political and in doing so reveal their artificial construction in the first place (see Scheingold 2001, pp. 385-89 regarding the distinction between law and politics in the legal profession). While they must remain to a considerable extent within the mainstream boundaries of the legal profession in order to be *legally* intelligible or recognisable (Sarat and Scheingold 1998, pp. 6-7; Butler 1997), it is at the margins of law or the legal profession that practices of boundary (un-)setting can be observed. Similarly, Prabhat and Hambly find that when 'practitioners [at the margins] invest time and energy towards specialization, this can lead to developments in knowledge and innovative practices' (Prabhat and Hambly 2017, p. 1527). This leaves open the possibility of creative, innovative interventions in legal practice which will be explored in more detail in chapters six to eight.

To summarise, combining Foucault, Butler and Bourdieu with scholarship concerned with legal subjectivity and agency, allows me to communicate the complexity of the process Butler refers to as 'subjection' in relation to the emergence of British-Muslim family law. This is an attempt to outline this thesis's premise that the becoming of the subject capable of agency is neither simply the result of individual motivation nor of structural regulation. Rather the process of production and contestation of particular legal subjectivities are part of a shifting mobilisation of distinct social groups (Connell 1995) – legal subjects are produced by the contexts and at the same time produce the contexts they appear in.

2.4. Conclusion and outlook: Implications for conceptualising citizenship

To sum up, this chapter sought to address existing difficulties in conceptualising law outside formal legal norms and processes governed by the state (legal pluralism and legal fields); and to address a structuralist understanding of law which does not pay sufficient attention to the crucial role of the legal subject in the construction of legal fields (legal subjectivity). The field of British-Muslim family law is rich in legal formalities, processes, documents, legalised language, authorities and so on. This makes, I argue, the citizen's interaction with these services a particularly productive

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and complex site of legal subjectivity. To better understand this process, it is necessary to add to the analysis of the legal field, an inquiry into the role of the legal subject, or legal subjectivity. While agency is never free from power, the concept of legal subjectivity I use in relation to British-Muslim family law makes space for understanding how individuals engage practically in creating the law, both as professionals and non-professionals. This is because it incorporates a sense of agency within this particular socio-cultural context in which people resort to different normative sources to arrange their lives and legal family matters.

If citizens' interaction with law draws on various sources not limited to state law, several important questions arise in terms of our conception of citizenship as a settled legal institution. Is it possible to understand the development of British-Muslim family law as a new practice of citizenship that challenges (the effects of legal) orientalism? Can we empirically sustain the claim that citizenship is an exclusively national identity? To what extent is citizenship instituted in state law or in practice? The following chapter discusses how the emergence of hybrid, and often transnational, forms of legal subjectivity also have implications for how we think about law and citizenship (especially in its legal form).

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Chapter 3. Orientalism, law and citizenship

At least since the lecture by Rowan Williams, then Archbishop of Canterbury, on 'Civil and Religious Law in England' in 2008, questions of Muslim law in the UK have attracted considerable public and academic attention. In the resulting 'Sharia debate', traces of orientalism become especially visible in the portrayal of Sharia as the 'other' and in an essentialist understanding of 'Sharia' as being in opposition to 'the West'. This perception, or this dynamic of legal orientalism, is found also in English courts where mentions have been made of 'the gulf between our statute law and Sharia law' (*Radmacher v Granatino* (Rev 1) [2009] EWCA Civ 649, [2009] Fam Law 789 [52]). This thesis, however, argues that emerging British-Muslim family law includes practices that belie an essentialist perception of opposition between Sharia and the West, the oriental and the occidental, and the foreign and the native. These dichotomies between oriental and occidental forms of life not only apply to the legal realm but are equally constructive in broader terms of imagining a shared community of Western subjects in contrast to their oriental counterparts. The emergence of British-Muslim legal practices therefore has implications for how we think about citizenship and belonging in Britain and the role that 'law' comes to play in relation to citizenship.

3.1. Orientalism and law in contemporary and colonial context

To unpack the relationship between citizenship, law and orientalism, let us first explore the particular relation between orientalism and law. The ontological categories of orient and occident structure the dominant understanding of law, and they produce an effect best described as 'legal orientalism'. Ruskola defines it as 'the ways in which "the Orient" – as well as "the West" – have been produced through the rhetoric of law' (Ruskola 2002, p. 193).[25] The relation between orientalism and law is dealt

[25] An example of this rhetoric can be found in the following quote from Bozeman: 'the evolution and establishment of Western forms of political organization would be incomprehensible were one to ignore either the existence of law, or the consistent efforts of successive generations, beginning with those guided by the Roman jurists, to abstract law from other categories of thought and from such normative controls as custom and religion. But this has not been the case in either Africa or Asia where human groupings have been held together effectively in comprehensive orders dominated by respect for religion, etiquette, the stabilizing function of war and conflict, or the superior wisdom regularly imputed to selected men' (Bozeman 1971, p. xi).

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with mostly in comparative legal theory with particular empirical focus on, for example, Chinese law (Ruskola 2002, 2013), Islamic law (Strawson 1995, 2003; Kroncke 2005), Latin America (Acuña 2012) or Burmese law (Huxley 2008) but also more generally in studies of postcolonialism (Nader 2004, 2009; Haldar 2007). Legal orientalism represents a perspective, or ideology, in which the ideal of modern state law is constituted as superior to other forms of normativity and as founded on the universal, secular and ideologically neutral principle of 'the rule of law' (see Nader 2009, p. 67 for a critical discussion of the rule of law). Ruskola (2002, 2013) takes Western scholarship's engagement with Chinese law as an example to demonstrate the workings of legal orientalism. The point of entry into his argument is the (historical) orientalist claim that China 'lacks an indigenous tradition of "law"' (Ruskola 2002, p. 181). Nader notes that 'a comparable condition of legal orientalism exists in the relation to Islam and its law' (Nader 2009, p. 63). This analysis resonates with the case of British-Muslim family law because there exists the notion of a lack of legal subjectivity of equal value to Western legal subjectivity. As will be discussed in more detail in the following section, legal orientalism pervades a broad range of scholarly literature as well as public discourse. It has a specific history rooted in colonial encounters. In recent years, and especially after 9/11, 2001 and 7/7, 2005 it has become prominent in the often heated discussions about the place of Muslim law in the UK, dubbed the 'Sharia debate'.

3.1.1. Orientalised discourse in the contemporary 'Sharia debate'

In current debates, claims for the accommodation of, or even serious engagement with, Muslim law are often perceived as conservative at best, if not non-progressive or 'anti-citizenship' (Matless 1996).[26] Just how charged the image of Muslim law in the UK has become is illustrated by the reactions to the 2008 speech by Rowan Williams, then Archbishop of Canterbury. Williams was clearly aware that any discussion of this issue is linked to difficult and politically charged questions noting that 'among the manifold anxieties that haunt the discussion of the place of Muslims in British society,

[26] Contention arising from the emergence of non-state legal practices are not limited to the UK. Ikegame notes that 'innovative non-state legal practices have sprung up in many parts of India…This new approach to legal interpretation within religious communities in India has a clear resonance with what is currently emerging in the UK and elsewhere…these non-state legal activities are often challenged as anti-constitutional and undermining the rule of law and secularism' (Ikegame 2015, p. 107). Another example comes from the European Parliament Research Service (EPRS), where a briefing note entitled 'Understanding Sharia' was produced because 'recently, reference to the Sharia has become an important component of identity politics both within and outside the Muslim world. It is therefore necessary to understand who interprets the Sharia and on what basis' (EPRS 2015, p. 1).

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one of the strongest, reinforced from time to time by the sensational reporting of opinion polls, is that Muslim communities in this country seek the freedom to live under sharia law' (R. Williams 2008, p. 263).

This anxiety, I argue, is linked to an orientalist idea of Muslim law, or Sharia, as a threat or the ultimate 'other' to Western civilisation based on an essentialist understanding of both 'Sharia' and 'the West' (Barbero 2012), and a popular image of Sharia law as a violent, aggressive threat that intensified post 9/11 and 7/7 (Malik 2012, pp. 9-10; see also Moore 2010).[27] The idea of Western law as rational, secular, fair and equitable is produced and upheld especially in contrast to Muslim law seen as less able to provide justice in modern liberal democracy. One can find traces of such orientalising discourse in current English legal practice.[28] For example, in *S v S* in 2014 Judge Munby approved a divorcing couple's agreement mediated under the Institute for Family Law Arbitrators (IFLA) Scheme (introduced in 2012), which marked a new direction in family law cases by giving great weight to agreements mediated outside court in divorce cases. However, at the same time, the judge clearly drew a line between English law and Muslim legal practice when saying

> … in seeking to achieve a fair outcome, there is no place for discrimination between husband and wife. My observations in this judgment are confined to an arbitral process such as we have in the IFLA Scheme. Different considerations may apply where an arbitral process is based on a different system of law or, in particular, where there is reason to believe that, whatever system of law is purportedly being applied, there may have been gender-based discrimination (*S v S* [2014] EWHC 7 (Fam), [2014] Fam Law 448 [27]).

Without expressly saying so, Judge Munby implicitly appears to equate Muslim law as discriminatory between husband and wife, unable to provide an arbitral process of equal quality to English law, or the IFLA scheme more precisely. As in the judgment quoted above, issues of gender equality play an important part in the current discourse around Muslim family law in the UK in the sense that Muslim law is often criticised for social conservatism, for perpetuating traditional gender roles and inequality. For example, the 'One Law for All' campaign argues that many users of Sharia councils

[27] For a critical reading of the presumed civilisational clash between Islam and the secular West see also *Regulating Aversion* (Brown 2009) and *Is Critique Secular?* (Asad et al. 2009).
[28] See Jivraj and Herman on how orientalism operates in child welfare cases in English courts (Jivraj and Herman 2009, p. 307).

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do not do so voluntarily but 'are from the most marginalised segments of society with little or no knowledge of their rights under British law. Many, particularly women, are pressured into going to these courts and abiding by their decisions', and that being 'governed by Sharia law…leaves large numbers of people, particularly women and children, at the mercy of elders and imams' (Namazie 2016). Following a similar line of argument, Baroness Cox justifies her campaign to introduce a Private Members' Bill, the Arbitration and Mediation Services (Equality) Bill (Arbitration and Mediation Services (Equality) Bill [HL] 2015; short, Equality Bill) as a response to discrimination of Muslim women in Sharia law (see chapter eight for a more detailed discussion). This promotion of conservative gender roles and gender inequality contributes considerably to framing Muslim law as non-progressive and anti-citizenship (Sabsay 2012). Bano emphasises the importance of gender and orientalism in this discourse, 'Western women are often presented as "enlightened" and the bearers of liberal legal ideals such as equality and non-discrimination while Muslim women are presented as the "other", victims of cultural and religious practices' (Bano 2012, pp. 13-14).[29] At this point, it is useful to note again that family law is a specifically sensitive, gendered and culturalised domain of law (Estin 2009, pp. 451-52; Malik 2012, p. 6; see also section 1.4.). It is within the current Sharia debate in Britain that normalised gender roles and notions of collective identify are being negotiated and challenged.

The locus of the contemporary Sharia debate extends beyond the court room and statutes of law. Public understandings of Muslim law are also heavily influenced by representations in popular culture – mediated through the use of popular and social media, television reports and so on – which mostly produce distortions in the representation of Sharia (Morey and Yaqin 2010). Rohe and Peters remark that 'the debate on Sharia very often suffers from a remarkable lack of precision' and that 'such [extremist] understandings of Sharia, from both sides of the spectrum, are far from representative of the general Muslim population; nevertheless they contribute to the blunt rejection of Sharia by the Western public' (Rohe and Peters 2014, p. 263). Whatever the specific site of discourse – contemporary or historic – the common characteristic is a discourse of 'ontological difference' that creates, by default, irresolvable questions (Said 1978, p. 259). While the Sharia debate is a specific

[29] The issue of constituting the Muslim woman as victim has been discussed widely in scholarship (see for example Hirschkind and Mahmood 2002; Bracke 2012).

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phenomenon in current practice and discourse, the history of colonialism and its relation to Muslim law remain relevant for contemporary debates around legal orientalism. It is therefore necessary to shed light on the role of orientalism in scholarly engagement with Muslim law in colonial history.

3.1.2. Orientalism in the colonial context

A look at the history of British engagement with oriental laws exemplifies how legal orientalism not only structured a particular European gaze, but in fact *created* Muslim law in (European) text, discourse and scholarship (Strawson 1995, 2003; Hallaq 2009). Strawson offers an 'exploration into the legal Orientalism that has been the principal medium through which the West has encountered other legal systems' (Strawson 2003, p. 354; see also Strawson 1995). Edward Said's seminal work on *Orientalism* in this context laid the foundation for such an inquiry in the cultural sphere (Said 1978). Today, 'few would disagree that the laws of the non-western world were as much an invention of orientalism as other aspects of non-western culture' (Tan 2012, p. 5). A startling example of the 'creation' of Muslim law is the translation and editing of the authoritative Islamic legal text known as *al-Hidayah al-Marghinani* – a very influential 12th century Hanafi legal compendium written by Burhan al-Din al-Marghinani – into English by Orientalist Charles Hamilton in 1791. Hamilton considered those aspects of Islamic law pertaining to prayer, fasting and pilgrimage as being of a 'religious' character and therefore excluded them from what he understood to be a 'legal' textbook on Islamic law (see also Masud 2001, pp. 12-13). Strawson observes that 'the idea that these obligations might be equal in legal significance to matters of contract no doubt offended a mind of the European Enlightenment' (Strawson 2003, p. 367). Hamilton's omissions exemplify how boundaries are set of what is considered legal and what is religious (see also Ikegame 2015). Admittedly, a clear separation of the secular and the religious in the British context is clearly complicated by an established Church in England. Yet, it is Hamilton's preconceived understanding of what 'law' should look like (contain) that rendered certain parts legally unrecognisable, or legally invisible to him.

Legal orientalism operates not only in a benign manner in the sense that it blinds an otherwise open mind. The disavowal of legality of certain aspects of Muslim law is intentional too and serves concrete political projects. When Standish Grove Grady, a Reader in Law at the Council for Legal Education between 1869 and 1872, decided to produce a revised edition of Hamilton's interpretation of *Hidayah al-Marghinani*, he

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further omitted the entire section on siyar, similar to what is called public international law.[30] Strawson says 'Hamilton understands that the *siyar* has a foundational significance in Islamic jurisprudence which has implications for any understanding of Islamic law. The character of *siyar*, dealing as it does with power in the public sphere, is, however, problematic in the context of colonial legitimacy' (Strawson 2003, p. 371). Strawson indicates that one of the reasons for omitting siyar may be that in a colonial context it would have been received as a political challenge to British rule. By not taking into account its public law elements, Muslim law is relegated to governing solely private matters between individuals but not between individuals and the state. The result is a limited sense of Sharia that emerged during the colonial period of the nineteenth and twentieth centuries (An-Na'im 2002).

The private law issues covered in Grady's work cover family law (marriage, fosterage, divorce, foundlings), charities, contracts, commercial law and wills. The sections on criminal law issues include punishments, abominations, offences against the person and fines. In a way this influential edition drew the boundaries of what was to become Muslim law in Western scholarship, and represents a milestone in what Hallaq described as the development of 'Anglo-Muhammadan law' (Hallaq 2009, pp. 374-37). In 1964 Schacht, one of the most widely-read scholars in Islamic law, published his *Introduction to Islamic Law*. Interestingly enough, his work follows closely the approach of Grady in arguing that 'worship and ritual, and other purely religious duties as well as constitutional, administrative and international law have been omitted' (Schacht 1964, p. 112). Most of Western scholarship on Muslim law has indeed remained within the same scope and dealt with Muslim law mainly as private law.

To sum up, the European-orientalist gaze limits the remit of legality in Muslim law. It is not, however a phenomenon of the past but applies to socio-legal scholarship on Muslim law today. When we speak about Muslim law in Britain today we think about family law, and occasionally about finance law. Our view is limited to, firstly, areas that resemble and mirror aspects of life governed by English law and secondly, areas that fit within the broader socio-political context. Let me explain what I mean by the first point. Muslim family and finance law are dealt with in current scholarship by

[30] The Council of Legal Education provided the course on Islamic law to be taught to colonial officials and lawyers.

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resorting to corresponding norms in English law. The remit of English law is determined by its modern conception of law as secular, rational, state instituted and separate from religion.[31] Muslim law on the other hand includes norms on what English law considers 'religious' aspects of life. Moving to the second point, Muslim law in Britain exists as a minority legal practice in the current socio-political context but is not formally recognised by the English legal system, nor is there a concerted effort to achieve legal recognition. Public law aspects of classical Islamic jurisprudence therefore seem to have little relevance to the study, debates and policies regarding Muslim law in Britain, which continues to designate the position of Muslim law as one pertaining solely to governance of private law. In historic and contemporary discourse, legal orientalism produced, and continues to produce, notions of Western law as ontologically different and superior to its oriental counterparts. Such occidentalised conception of 'law' influenced the creation of Muslim law in Western texts. The present thesis argues that the same constitutive dynamic of orientalism applies to the idea of citizenship. This relationship thus brings together citizenship, law and orientalism into one analytical framework.

3.2. Orientalism and citizenship

Muslim *legal* practices are arguably different from other practices of citizenship due to the special relation between law and citizenship. The particular importance of law to citizenship (and vice versa) is visible already when we look at modern notions of citizenship, where citizenship is concerned with the rights-bearing subject, its corresponding obligations and the belonging of the subject to a (nation) state with clearly defined geographical borders. These relationships of rights, responsibilities and belonging are governed through state law and the principle of the rule of law enshrines equality between citizens of the same polity (Jenson 2007, pp. 4-5). Law is therefore a crucial element in the constitution of the modern occidental Western subject, or the citizen, whose construction relies on the oriental subject as its

[31] Haldar expands on the idea of rationality and secularity as basic tenets of Western legality when he says that 'legal rationality…cannot, by definition, co-exist with any other system of thought; to do so would risk contamination by the irrational. The universality of rational (secular) law is therefore based on the debasement and eradication of a whole range of heteronomies that belong to, and determine the laws of, other "inferior" cultures: carnal desire, theological determinism, clairvoyancy, magic. Thus just as Edward Said claims that Western civilization defines itself against the East, so too does Occidental legality' (Haldar 2007, pp. 14-15).

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counterpart. The important relationship between the three notions of citizenship, law and orientalism will be further addressed by unpacking the relation between citizenship and orientalism in the following section.

3.2.1. Contrasting conceptions of citizenship

There are many different definitions of citizenship. The notion of citizenship can encompass very different ideas – as legal status (synonymous with 'nationality'), as identity or characteristics of the figure of the citizen, as a claim to particular rights whether established in law or emerging, as particular practices or what citizens are expected to do, or as imaginary ideal. I agree with Staeheli that citizenship 'takes on different aspects and significance for people in different contexts; and it seems to be defined as much by what it is *not* as by what it is' (Staeheli 2011, p. 393). Rather than offering a universal definition of citizenship, I find it useful to conceptualise citizenship for the purpose of this thesis by contrasting two differing approaches to citizenship: 'modern citizenship' and 'citizenship as political subjectivity'. The difference between these two lies at the heart of my argument that British-Muslim family law is a site of citizenship and yet not easily recognisable as such because of the dynamic of orientalism.

Modern citizenship is based on the tenets of state, law and territory. It 'focuses on citizenship as a universalizable legal status underpinned by institutions and processes of rationalization that enable and circumscribe the possibility of civil activity' (Tully 2014, p. 9). The concept of modern citizenship developed intensely in between the 19th and 20th century. Broadly speaking, it is based on the following principles: It is seen as membership in a state as a bounded territorial entity where geographic boundaries distinguish states as jurisdictions, membership boundaries distinguish citizens from non-citizens, and citizens have rights and responsibilities enshrined and safe-guarded by national legislation (Isin 2016). For instance, Behnke rightly notes that 'citizenship and nationhood are implied in the territorialization of the modern state-system' (Behnke 1997, p. 243). Heater illustrates this idea of the state as the essential infrastructure of modern citizenship, when he says 'a citizen needs to understand that *his* role entails status, a sense of loyalty, the discharge of duties and the enjoyments of rights not primarily in relation to another human being, but in relation to an abstract concept, the state' (Heater 1990, p. 2, my emphasis). The gendered phrasing in Heater's quote points toward a central characteristic of modern citizenship. The citizen imagined in its constitution is a male subject (Cavarero 1992).

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This ‘androcentric bias’ as Meier and Lombardo refer to it (Meier and Lombardo 2008, p. 482), has been highlighted and criticised by feminist scholarship as women were formally and informally excluded from citizenship, its rights and participation in the public sphere (Pateman 1988; Young 1989, 1990; Lister 1997b, pp. 38-42). Out of a particular strand of feminist scholarship, a call for *differentiated citizenship* emerged as a critique of the universalism assumed by notions of modern citizenship, as will be discussed in more detail in section 3.2.2. below (Young 1990; Walby 1994; Lister 1997a, 2001).

Furthermore, the dominant understanding of modern citizenship relies heavily on an orientalist idea that citizenship is an exclusively Western, occidental phenomenon, and that its presence in Western society is a crucial marker of difference between enlightened Western civilisation and its oriental counterpart (Isin 2013, 2015; see also Kundnani 2012; Meer 2014). Heater, for example, follows in this orientalist tradition. He traces the origins of the figure of the citizen back to ‘fifth-century Athens and Republican and Imperial Rome, Renaissance Florence and Revolutionary Paris [that] provided the most powerful energising forces for the development and consolidation of the citizenship idea’ (Heater 1990, p. 343). This is set into stark contrast with ‘underdeveloped states [in which] citizenship means little to large portions of their populations…political consciousness, where it exists at all, is a resigned acceptance of manipulation by local leaders or of sheer and utter impotence’ (Heater 1990, p. 343). Orientalism thus centred Europe by ‘distinguishing itself from other “cultures” through a series of presences and absences. Europe was the space of presence of such things as capitalism, law, science, medicine, and of labour and of concepts or processes such as rationality, the state, secularism, and bureaucracy’ (Isin 2015, p. 3). Orientalism effects a division of the world into ‘two “civilizational” blocs, one having rationalized and secularized and hence modernized, the other having remained “irrational,” religious and traditional’ (Isin 2005, p. 33; see also Brown 2009; Asad et al. 2009). An orientalist dynamic operates intensively also in other spheres such as the state, democracy, sexuality, and of course ‘culture’ as Said illustrated in his seminal work *Orientalism* (Said 1978). However, the spheres of citizenship and law are the two most relevant to the study of British-Muslim family law as a site of citizenship. Because the modern conception of Western citizenship depends on the figure of ‘the citizen’ as a civic, rational, secular and male subject independent of clan, family,

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religion, the effect of orientalism is that understanding the development of British-Muslim family law as a new practice of citizenship is not an obvious conclusion.

At the same time, however, a lot of scholarly energy has been invested to loosen up the conceptual boundaries of citizenship in favour of less territorialised, more dynamic ideas of citizenship (Isin 2002, 2012, 2017); more vibrant, contested interpretations of the concept (Barnes, Auburn, and Lea 2004; Desforges, Jones, and Woods 2005; Staeheli 2011; Clarke et al. 2014); something that comes closer to what some scholars call 'lived citizenship' (Kallio, Häkli, and Bäcklund 2015); and away from the formal relationship between individuals and the state (Werbner and Yuval-Davis 1999). In a similar vein, Tully, for instance, argues that citizenship is not merely 'a status given by the institutions of the modern constitutional state and international law, but negotiated practices in which one becomes a citizen through participation' (Tully 2014, p. 9). Within this broader tradition of a dynamic and relational notion of citizenship, Isin defines citizenship as political subjectivity understood as the right to claim rights. He argues that

> before there are any rights, there is the right to be political and that the right to be political can only exist by exercising it…Without struggling as political subjects, we cannot have dignity, justice, peace, freedom, speech let alone economic, social, cultural or sexual rights... It is [dynamic] social and political struggles that connect and combine demands and claims and articulate them through available sources (legal, illegal, social, cultural, religious or other) (Isin 2012, p. 109).

Isin (2013) emphasises the importance of 'acts of citizenship' not only to be creative and inventive but also to be transformative or to rupture conventional scripts or repertoires of how to be political. However, the idea of rupture does not necessarily equate to a momentous change in action and interplays in complex ways with the idea of reproduction of existing social relations (Bassel and Lloyd 2011). This broader understanding of the idea of rupture also relates to Mahmood's work that critically interrogates political subjectivity and the assumption that 'human agency primarily consists of acts that challenge social norms and not those that uphold them' (Mahmood 2005, p. 5; see also Saeidi 2010). Empirical examples from the field of British-Muslim family law (discussed in chapters six to eight) show that individuals also practice citizenship in a more routinised everyday manner that can be less

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noticeably disruptive, or strategically de-politicised, and still bring about a steady shift over time. Although these everyday practices and emerging subjectivities may not result in dramatic rupture, this thesis argues that they are equally powerful and effective in ensuing change of law, which is what I consider to be part of the repertoire of citizenship. This arguably has implications for how we conceptualise citizenship as political subjectivity constituted in the everyday – something I would like to discuss in more detail in the following section.

3.2.2. Citizenship in the everyday

As scholars in the field point out, citizenship is as much about political activism as it is about the 'ordinary' – or in this case the everyday enactment of British-Muslim family law. Neveu argues 'approaching citizenship processes "from the ordinary" is a fruitful perspective from which the political dimensions of usually unseen or unheard practices and sites can be grasped' (Neveu 2015, p. 150). Neveu thus argues for 'the inclusion in citizenship studies of sensitive dimensions, of vigilance and care' and emphasises 'the need to reflect more in depth on figures of continuity or ruptures between daily activities and political subjectification' (Neveu 2014, p. 86). Also, Staeheli highlights the importance of 'experience and subjectivity' in how we understand citizenship because 'the practices of citizenship – the daily repetitions that are part and parcel of the relationships that construct and disrupt citizenship – are important to the lives of people and to the potential of citizens to act. It feels unsatisfying to seem to overlook citizens in favour of citizenship' (Staeheli 2011, p. 399). In a similar vein, Lewis refers to 'practices of the everyday' as the 'links between citizenship and ways of life – that is, the ordinary, taken-for-granted ways in which people organize their lives as individuals, members of households, work colleagues and members of communities of identity and/or interest' (Lewis 2004, p. 21). She highlights the *ordinary* involved in these practices, especially in relation to constituting 'belonging' and the 'associational and identificatory aspects of being a citizen' (Lewis 2004, p. 21). Another area of research concerned with citizenship and the notion of the everyday focuses on how the idea – or the 'keyword' – of 'citizenship' is narrated, discussed, understood and endowed with meaning *in everyday conversations* or professional practice (Clarke et al. 2014). Studies in this area include for example Citizens Advice – 'one of the most significant large organisations to have the word "citizen" in its name in the UK' (Kirwan, McDermont, and Clarke 2016, p. 765). Other approaches investigate how 'citizenship is…imagined

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and re-imagined by *ordinary* citizens in a variety of ways' (Miller-Idriss 2006, p. 541). These are very useful studies, as they point to the importance of the everyday and ordinary practices and discourses in attaching meaning to the concept of citizenship and in negotiating the scope and content of what citizenship practices and subjectivities become to be.

The everyday aspect of citizenship is important because the ordinary, routinised practices of lay people or the 'practice' of professionals negotiate the role and place of British Muslims in society, as I shall argue in chapters six to eight. Put differently, family law has become a significant site of citizenship where constructions of the British-Muslim subject take shape. Opting for Islamic legal services through a solicitor or a Sharia council represents more than inconspicuous routine legal practice and becomes part of the debate around citizenship and Islam in the UK. Here the term 'everyday' serves to distinguish routinised, institutionalised family law practices from more rupture-like political practices such as demonstrations and protests, conventionally associated with citizenship's repertoire. However, those everyday, routinised, processual practices are equally political in that they challenge and potentially change established forms of family governance. Similarly, McCann finds that activist, or 'cause lawyering' brings about incremental change by contributing to 'a redefinition of the discursive terrain' over time (McCann 1994). Furthermore, Isin and Nyers point out that, 'although it mediates between citizens and polities, citizenship does not always take the form of demands on government' (Isin and Nyers 2014, p. 3-4).

The idea of 'demands' being made also raises the question of intentionality in the concept of citizenship as political subjectivity in the everyday, specifically in the field of British-Muslim family law. Let's take a closer look at the quote from Isin and Nyers. They point out that

> when people mobilize for legalizing same-sex marriage, rally for social housing, protest against welfare cuts, debate employment insurance, advocate the decriminalization of marijuana, wear attire such as turbans or headscarves in public spaces, leak information about the surveillance activities of their own governments, seek affirmative action programmes, or demand better health-care access and services, they tend not to imagine themselves as struggling for the maintenance or expansion of social, cultural, or sexual citizenship rights.

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> Instead, people invest in whatever issues seem most related and closest to their social lives, and dedicate their time and energy accordingly, and governments respond or fail to respond to these demands (Isin and Nyers 2014, p. 3).

It is interesting that the quote above gives examples of what can be considered citizenship practices seeking the fostering of particular social, cultural, or sexual citizenship rights but that are not necessarily understood as such by the people involved in these practices. All the examples listed, except for one, make use of verbs linked to active rights claims or fulfilment of duties such as 'mobilize', 'rally', 'protest', 'debate', 'advocate', 'leak', 'seek', or 'demand'. The one exception is the verb 'wear' in connection with the wearing of turbans or headscarves. Wearing attire would not necessarily be associated with active claims for citizenship rights in many cases. Think of a woman who starts wearing the hijab. Is it only an intentional move if the interviewer starts asking why? Is what one 'wears' not saying what one is until there is a reaction from others, a point of 'reflection'? Is it intention the moment the woman puts on the hijab, or when a researcher asks or someone abuses the woman in the street? Things may not be explicitly intentional, or conscious, in the moment. Nevertheless, within the broader socio-political context they may represent – or more precisely may be interpreted as representing – a rights claim. This is true for opting for a nikah marriage only as it is for wearing the hijab. Just as the wearing of the Muslim veil entered the political arena, practices taking place in the British-Muslim legal field have become considered political even if they do not conform to longer established repertoires of political activity such as balloting or demonstrating (Tilly 2008). In this context, I argue, citizenship is enacted or realised through asserting the right to differentiated citizenship in a given space, even if this assertion is not explicitly articulated as an intentionally political claim.

The example of the wearing of hijab illustrates how differentiated citizenship constitutes itself also along gendered lines as. Brown highlights how gendered difference informs the idea of bared skin in public being representative of women's equality, freedom and agency. She argues that 'sexual difference is already written into this assumption, of course, since the equation of freedom with near nakedness in public is itself a gendered rather than generic sign of freedom: rarely is it suggested that men in loincloths are free whereas those in three-piece suits lack autonomy and equality' (Brown 2012, no page number). Questions of gender equality, choice and

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agency in Muslim practices in the secular 'West' surface in relation to issues such as dress, for instance, which at first sight may be considered ordinary or everyday matters. Also in its everyday practices therefore 'the seemingly gender-neutral concept of citizenship was and is profoundly gendered' (Lister 1997a, p. 71; see also Volpp 2017, p. 154). Young eloquently summarises what a feminist perspective brings to the notion of everyday citizenship when she says that 'what was originally experienced as a private, personal problem in fact has political dimensions, as exhibiting an aspect of power relations between men and women' (and differently structured power relations, one could add) (Young 1990, p. 153). A focus upon the everyday of family law brings into the frame feminist scholarship that has contributed to challenging this notion of a divide between the spheres of 'the public' and 'the private', which is crucial for investigating British-Muslim family law as a site of citizenship (Pateman 1989, Lister 1997a, 1997b). A feminist approach to citizenship also emphasises the operation of power relations within families and the role of the family in shaping social life, including citizenship, which was for so long, a male subjectivity (as discussed above in relation to modern citizenship). Importantly, to take up the perspective of citizenship in the everyday is to challenge the reproduction of the patriarchal divide between 'the public' and 'the private', where the politics of subordinate groups such as women is thought of as belonging to the informal or domestic spheres. This is because – similar to legal pluralism scholarship's impetus to challenge legal positivist and centralist conceptions of law – a focus on citizenship in the everyday requests a redefinition of the 'political' itself as not limited to the formal, public sphere (Lister 1997b). Moving beyond the dichotomy between public and private, which has been criticised as androcentric and Eurocentric (Hill Collins 1991), the perspective of the everyday avoids the problem of reproducing the this divide (even if approached critically) because everyday life includes both public and private aspects.

At this point it is necessary to discuss how I use the term 'everyday' and how it does not necessarily fit easily as an empirical category. To clarify, although life events such as marriage, divorce or dealing with death may be major milestones for an individual, these events nonetheless constitute highly routinised practices but not necessarily in the frequency of literally 'every day'. However, the focal point of the everyday is important for how legal subjectivity relates to citizenship. This is because the key defining moments are routinised, traditionalised practices that are to some extent

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socially and legally pre-scripted. All of them form part of many people's life cycles, however, they are not necessarily perceived as something ordinary. For solicitors and other legal professionals who work with cases of Muslim marriage, divorce or inheritance on a frequent basis, this notion of everyday legal practice may be more appropriate and meaningful for describing their work in their own terms. Indeed, the idea of the everyday applies equally to legal professionals and non-professionals (McCann 2012, p. 475). Still, interviews with solicitors in particular showed that due to the incipient nature of the British-Muslim legal field, many solicitors continue to see cases involving questions of Muslim law in Britain as non-standard cases of work. As Mousa put it, 'people don't yet expect to get Islamic legal services from solicitors. This is why it is only gradually increasing. But I think the younger generation, [when] they go through the same problems, the first thing they will do is go to the Internet. Because they are professionals themselves in their lives, they want their matters to be handled professionally' (Mousa). This quote exemplifies how, on the one hand, practices of marriage, divorce and inheritance are recurring over generations and, on the other hand, how established traditions of dealing with family matters need to be creatively adapted to the changing social context of the British-Muslim legal field. This thesis thus contributes to a broader, less literal, notion of 'the everyday' and its relevance for our understanding and study of citizenship. I argue for conceptualising the everyday to include routinised practices that are so only when looked at from a viewpoint of large-scale social or generational trends. These practices, repeatedly performed, imbue citizenship with collective meaning of belonging and association.

3.3. Conclusion and outlook: Challenging orientalised spaces and the implications for methodology

To sum up, the effect of legal orientalism is that Muslim law – or Sharia – became to represent the ultimate 'other', inferior to its counterpart of Western law. Looking at the history of colonialism demonstrates how legal orientalism constructed Muslim law as carrying less legality and confined it to 'private' matters of family, in the sense of being removed from interaction with the state. An approach to studying practices of British-Muslim family law through the lens of citizenship as political subjectivity also entails bringing into the frame the workings of orientalism with regards to conceptions of citizenship. Bringing together notions of citizenship, law and orientalism reveals

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how Western conceptions of citizenship build on a distinction of 'Western' civilisations from its oriental counterparts in the sense that the oriental subject is perceived as incapable of developing a civic identity and rational law like the Western subject, and remains hence 'underdeveloped' (Sabsay 2015). The aim of this thesis is to engage critically in ongoing discussions around the question of the place and position of Islam and Muslim legal practice in the UK, which continue to fuel the 'Sharia debate' in the media, policy circles as well as scholarly work. In *Shari'a in the West* (Ahdar and Aroney 2010), the editors state that 'the accommodation of Shari'a in the West would seem to be a litmus test – possibly *the* litmus test – of whether anything more than a modus vivendi between these two forms of life is going to be possible' (Ahdar and Aroney 2010, p. 12).[32] Rendering the problem as one of searching for compatibility between 'two different forms of life' forecloses the answer. However, a methodological perspective focusing on practices and subjectivities would argue that practices of British-Muslim family law are what sustain the legal field more than a self-referential exegesis of abstract ideas of law. From this perspective, the modus vivendi becomes the litmus test, the field where hybrid legal practices and subjectivities may evolve.

I therefore argue for researching citizenship as political subjectivity in the everyday, which focuses on processual dynamics and negotiated practices of living together. It is about exploring the more routinised practices and subjectivities of 'those who constitute themselves as political subjects not in terms of the dominant figure of the citizen and its orientalizing perspective but as a challenge to them' (Isin 2015, p. 5), albeit not necessarily in a visibly disruptive manner. Yet, such a methodological approach does not mean ignoring socio-political and historical structures and backgrounds to a particular site of citizenship. This is because the resulting character of political repertoires, institutions and their histories make up the opportunity structures within which, against which or in the shadow of which, new practices and fields are emerging (discussed in more detail in chapter five).

The aim of this thesis is to investigate British-Muslim law as hybrid practice and subjectivity drawing (amongst other sources) on Muslim as well as English law that potentially counter the orientalist paradigm of insurmountable incompatibility

[32] Although *Shari'a in the West* (2010) focuses mainly on constitutional legal questions, this positioning of Sharia and the West as 'two forms of life' risks reproducing essentialist readings of Islam and the West in other areas of study too.

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between these two (legal) worlds. To do so, the study adopts an empirically grounded socio-legal perspective of Muslim law with a theoretical framework that allows space for the political and the legal subject and its creative role in establishing the field. The following chapter discusses the research methods used in gathering and analysing data as well as the overall methodological approach of the thesis.

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Chapter 4. Methodology and methods of research in the field

This chapter gives an account of the research process and the methods used in gathering and analysing the data. It covers more general methodological considerations applicable to my study, the role and place of the researcher, details of how the data was collected through various avenues and how it was analysed, as well as the limitations and ethical implications of this study and the challenges I encountered during the process. To explore the field of British-Muslim family law as a site of citizenship, it was necessary to formulate a combined methodology to cover the analytical framework needed to address my research questions. This resulted in a mix of two 'main strands' of methods. First, the research project employed qualitative interviews, which are best suited to explore emerging subjectivities produced and sustained through the engagement in Islamic legal services (research question two). Second, the study also included documentary and biographical research to explore to what extent British-Muslim family law can be considered an emerging legal field (research question one).

4.1. Methodological considerations

An approach to studying British-Muslim family law through the lens of citizenship entails bringing together Bourdieu's concept of law as a legal field and its market with a focus on the role and creative capacity of the legal subject. The British-Muslim legal field is rich in formalities, documents, legalised language, and differently positioned authorities. To understand how interaction with Islamic legal services is productive of legal and political subjectivity, it is necessary to engage in an analysis of the role and experiences of people engaged in British-Muslim family law, as will be discussed in the section below.

Exploring emerging subjectivities (qualitative interviews)

The research is explorative in character in the sense that it investigates variations and similarities in the subjectivities and subject positions produced through the engagement in Islamic legal services. Its focus is on solicitors and clients in the field of British-Muslim family law as a *site* of citizenship where hybrid legal subjectivities

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and belonging are being negotiated (see a discussion of sites of citizenship in section 1.5.). Similar to existing research on people working in specific sites of citizenship, such as Citizen Advice, the design of my research derives from the idea that there is a 'relationship between contexts or settings' and 'a "structure of feeling" in which citizenship is implicated'; and that 'citizenship can be connective – but it needs appropriate settings, relationships and practices to sustain it' (Kirwan, McDermont, and Clarke 2016, p. 776).

For this reason, the research design takes a qualitative approach to studying the emergence of the British-Muslim legal field and the subjectivities implicated therein (for examples of qualitative empirical legal research approaches see Sarat and Felstiner 1989, 1995; Genn 1999). Qualitative interviews play an important role in my research study because this method is best suited to addressing the question of developing legal subjectivities as it gives insight into the *subjective* level of experiences over quantifiable research data (Weiss 1995, pp. 2-4). Using this methodological approach implies an understanding of social knowledge not as objective truth but as 'inter-subjective', being constituted by and at the same time constituting its 'knowers' (Kvale 1996, p. 11). The aim is to investigate different personal experiences with Islamic legal services and their legal formalities, process, documents and language. Following other studies in empirical legal research (Thornton 1996; Sommerlad 2007; Prabhat and Hambly 2017), the qualitative interviews used in the present study allowed me to gather data on 'individuals' perceptions or views and on the reasoning underlying the responses [and] individuals' experiences' (Webley 2010, p. 937). In recognition of the fact that the legal field is a social space structured by unequal power balances, it is relevant to take account of an individual's subject position in the social field through which they enters the field of British-Muslim family law, i.e. as client or professional, woman or man, legal academic or religious scholar, solicitor in a start-up business or as part of a global law firm, and so on. Therefore, it is important for this study to include 'ordinary citizens' *as well as* 'legal professionals' in order to provide a nuanced picture. As Cotterrell argues, 'law in popular consciousness is often shown to be entirely different in character from law as professional knowledge and practice' (Cotterrell 2004, p. 5). I would like to mention again at this point that this study is not based on a distinction between lay and professional as an impermeable one. I agree with Valverde that 'in the end, there is only one world' (Valverde 2003, p. 96); and it is us who draw the

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lines around categories of people – which can be done and undone. This has implications for the methodology of the study. It necessarily leaves room for openness of boundaries in my research. For example, I consider the 'professionals' of British-Muslim family law as not limited to registered solicitors in the UK but to include a broader cast of people who acquire authoritative status in the field by virtue of symbolic capital, which draws on more than English law. Therefore, I argue that scholars on the boards of Sharia councils are part of the professionals in British-Muslim family law, who may inhabit a position of authority in the field without holding an English law degree, and so are solicitors working in the area who are non-Muslim nor have a specialist degree in Islamic law but have acquired specialist working knowledge.

The people I interviewed as part of this study participated in the creation of the knowledge I am working with. I chose the term 'interview participant' over 'interview subject' as co-production of knowledge is an important concern in the methodology of this study. Knowledge is never purely objective and is always subjective as well as partly produced during the actual research process. This means that by engaging in an interview with me, interview participants as well as myself as the researcher engage in a process of knowledge production as we exchange ideas and thoughts. This knowledge is referred to as '*inter view*' knowledge as it concerns an inter-personal engagement in the moment of a conversation within the framework of the formal research interview (Kvale 1996, p. 2). We are reminded of the interdependence of human interaction and knowledge production (Kvale 1996, p. 14). There is an alternation between the knowers and the known, between constructors of knowledge and the knowledge constructed, hence the interview can be described as a site of knowledge construction (Mason 2002; Vähäsantanen and Saarinen 2012). This is the dual aspect of the interview as it involves both personal interrelation and '*inter view'* knowledge. Choosing the them 'interview participants' points to a relationship, which is conceptualised as more equal than a researcher-subject relationship indicates.

Exploring the field and its market (documentary and biographical research)

As mentioned above, this thesis argues for researching citizenship as political subjectivity in the everyday, which focuses on subjective meanings and negotiated practices of people engaged in the field. Yet, such a methodological approach must include an investigation into the formal, material and contextual aspects of the field

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and its market within which emerging subjectivities are situated and reflected. In order to engage with the material 'traces' and contextual aspects of an incipient legal field and its corresponding market, this thesis also draws on documentary and biographical research in its methodology. Based on Bourdieu's theory of the field of law (see section 2.2.), a legal field is characterised by legal formalisation, professionalisation – and I argue materialisation – which serves to establish and distinguish it from other fields (see chapter five for a more detailed discussion). Legal formalisation is also crucial for the constitution of a corresponding legal market. Professionals generate the need for their own services by turning problems formulated in ordinary language into legal problems. Here, legal language plays a central role in legal formalisation. However, it is not only verbal discourse that is a crucial element in the construction and maintenance of the legal field. I argue that the written documentation of legal language serves to strengthen the particular position of the legal field as more permanent, reliable, impartial, and objective than other social fields, an analysis of which can provide valuable insights. As May observes, 'documents provide an important source of data for understanding events, processes and transformations in social relations' (May 2011, p. 208). Documents produced in the field are of interest in that they give insight into different strategies for navigating English and Muslim law and they give a sense of the direction of the development of the field and possibly new practices emerging. For this reason, documentary analysis – as a social method – forms part of the second main strand of research in this thesis.

Documentary sources in the field are data-rich and best suited study the more contextual aspects of the emergence of the British-Muslim legal subject. These sources include websites of solicitors, their online profiles as well as reconstructions of professionals' CVs and documents produced by solicitors as part of case files. This documentary and biographical information forms part of the site of British-Muslim family law, especially as it relates to the formation of a 'market' of legal services. The development of such a market is linked to processes of professionalisation, specialisation and materialisation of practice. Here, data on how firms and professionals present themselves can be found on websites, specialist online discussions, and online profiles. Reconstructions of professional CVs provide insight to relevant training, career trajectories as well as distribution of expertise and services across the field. Data on the formalisation and materialisation of specialist legal practice and the interaction between English and Muslim law can be found in case file

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documents produced by solicitors and document templates used in their professional practice.

The combination of interviews with documentary research has been used in various studies in social research (Punch 2014, p. 158). Sommerlad's study on the position of women solicitors in England and Wales combines semi-structured interviews with content analysis of trade press to investigate the social production of the gendered lawyer (Sommerlad 2002, p. 214).[33] In his study on transnational lawyering, Flood engaged with personal stories of lawyers, combined with documents composed by lawyers, and public documents (Flood 2012b, p. 176). Documentary data may include hard-copy as well as online documents retrieved via the Internet. For example, Flood and Lederer note that an analysis of websites gives an insight into how firms position themselves within the market and towards their potential clients (Flood and Lederer 2012, p. 2513). Thus, interview data can be enriched – and data analysis can be sharpened – by contextual information provided in documentary and biographical sources. Conversely, documentary data becomes potentially more meaningful when analysed together with the social dynamics they are produced in because 'an understanding of the social production and context of the document affects its interpretation' (Punch 2014, p. 197).

It is important to note that the documentary and biographical research conducted, like the interviews with participants, followed a qualitative and not a quantitative approach. The aim of this thesis is not, for example, to arrive at a definitive number of legal practitioners working in the field of British-Muslim family law, or to conduct a market survey about services on offer, their scope and pricing. Rather, conducting documentary and biographical research is important in this study to understand the contextual, material aspects of how people may come to perceive the field, its dynamics and actors. The way this study approaches documentary analysis is to understand these sources as 'traces' of social reality that, while never providing the *complete* picture, can give insight to the practical workings of British-Muslim family law and complement data generated through interviews with participants (Webb et al. 2000). There is an important methodological tension that has been commented on in

[33] In another study by Sommerlad, in addition to qualitative interviews and focus groups, 'promotional material supplied by participating firms, the websites of a sample of top twenty firms and the trade press (such as Lawyer2B), including posters to discussion forums are also drawn upon' (Sommerlad 2011, p. 78).

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various places. On the one hand, documents can be thought of as providing an accurate reflection of a particular understanding or perception of a case (May 2011, p. 158). On the other hand, documents can be conceptualised as simply representing 'the practical requirements for which they were created or, in other words the purpose of the document' (Webley 2010, p. 939). How much documents can tell the researcher about social practices and meanings depends on the extent to which the researcher is able to embed documentary evidence within the social dynamics of its production. Thus, in this thesis, both main strands of methods interact; they were not employed in isolation and knowledge was co-produced with interview participants.

The question of knowledge co-production and relationships between the interview participants and the researcher also points to how researchers conceptualise their own position, or role, in the research project. An approach of knowing people through their own accounts 'can be fair, democratic and not patronising, as long as this approach… is applied to the researcher as well as the researched; as long as researchers are not seen as neutral vehicles for representing knowledge in an uncontaminated way… it is legitimate as long as there is no special objective status that excludes us from being theorized as the same kind of subjects as our informants (albeit in a different position from them)' (Hollway and Jefferson 2000, p. 3). In the next section, I would therefore like to discuss in more detail my situatedness or position as researcher in the field of British-Muslim family law.

4.2. Situating the researcher

There is a risk of the researcher potentially becoming a 'catalyst for providing if not law then learned legal discourse' on any emerging legal field, which has a negative impact upon the researcher's ability to perform an objective inquiry of the field in question (Dezalay and Madsen 2017, p. 33). I think that the problem lies less in the fact that objective inquiry by the researcher is made difficult. In fact, as argued above, the role of the researcher can never be fully objective in any case. Rather, the problem Dezalay and Madsen are drawing our attention to is an uncritical adoption of the political agenda of key actors in the field by the researcher: 'any sociological inquiry into law that is situated too close to the orthodoxy of law runs the risk of being trapped by this logic of domination' (Dezalay and Madsen 2012, p. 436). In this case,

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the researcher comes to perform an implicitly complicit role in the political project of one group of actors in the legal field, when the researcher 'takes sides' in choosing to portray the emerging field in a certain way and not another (for a similar argument in the case of India's religious personal laws, see Parashar 2013).[34] In British-Muslim family law, for example, there is an on-going debate about whether Muslim women in the field should register their nikah contract under English law and how precisely this could be achieved. Proponents of registration such as Aina Khan under the umbrella of the 'Register Our Marriage' campaign argue for civil registration of religious marriages to be made mandatory.[35] Interviews conducted as part of my research, however, raised questions regarding the broad desirability of such a legal intervention. In these on-going debates, academic research may contribute to providing weight to one side of the debate and thus further their position. Here, the researcher's intervention in the field has the potential to legitimise one particular point of view or perception of the field.

On the one hand, it is impossible to abstract my own experiences, position and agenda as a researcher from the research process and its outcomes because 'in much qualitative research the researcher is the data collection tool, as well as the one who analyzes the data' (Webley 2010, p. 935). On the other hand, I can contribute to a more 'objective' debate around issues of British-Muslim family law by clearly stating the politics underlying the present thesis. The aim of doing so is to allow others to engage critically with my findings by reading my interpretation of the field in light of the position and background I am writing from. The political project underlying this study becomes more explicitly formulated by framing it through 'citizenship studies' at a Department of Politics and International Studies, which recognises a more activist stance of the researcher and a responsibility of the researcher to actively engage in the political fabric of current social issues.

[34] Parashar argues that 'legal scholars need to accept responsibility for the significant power they wield as discourse formers and acknowledge the power of naming legal practices' (Parashar 2013, p. 5). See also Malik who highlights the role of scholarship in the construction of 'minority legal orders' as 'law': 'one reason that the term "law" or "legal system" is now often applied to non-state norms and communities is because of the emerging body of scholarship on legal pluralism, law and anthropology and socio-legal studies. These academic fields have plausibly argued that the term "law" does not necessarily depend on state recognition for its validity' (Malik 2012, p. 21).

[35] Briefing note for 'Register Our Marriage (ROM) campaign on Unregistered Religious Marriages' by Aina Khan (11 February 2016); on file with author.

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As a researcher, I am to some extent complicit in contributing to the establishment of the field of British-Muslim family law. Specifically as a researcher of socio-legal studies, I take up an ambiguous position in the sense that I cast myself at the same time as a protagonist and an opponent of legal discourse. I am a protagonist to the extent that my own position in the field and position as expert researcher depends on me mastering legal language, concepts and dealing with networks of legal professionals and clients on whom most of my data collection relies. On the other hand, I am an opponent of that same legal positivist discourse that distinguishes law from other social fields and has a vested interest in endowing it with an elevated status removed from more 'messy' politics, culture and society. Therefore, if a sociological study of law remains too closely positioned to formal law, it is at risk of losing the critical distance (Bourdieu 1987, pp. 818-19).

To rupture this close link between the object of study and the researcher, Bourdieu advanced the methodology of 'reflexive sociology'. Reflexive sociology – as Bourdieu termed his approach after first calling it a double rupture – is based on a 'break with *ordinary* conceptions of the world and the break with *scholastic* conceptions of the world' (Susen 2016, p. 62). The importance of this methodological move becomes apparent when we consider that many studies based within a university environment remain structured to a large extent by established disciplines; this makes it more difficult to maintain the critical distance called for by Bourdieu. As Shah puts it succinctly: 'I write as a legal pluralist, although I am probably better described as someone trying to overcome my own positivist training' (Shah 2008, p. 64).

This very research project equally is situated closely to established forms of legal knowledge. As an undergraduate student of Arabic and Middle Eastern studies, I was taught Islamic law as an introductory module. Continuing into post-graduate education, I completed a Masters degree in law, with a pioneering programme specifically focusing on 'migration and ethnic minority law'. While being now based in a Department for Politics and International Studies and by using sociological approaches such as Bourdieu's legal field as well as a broader framework of citizenship studies for my research, I notice how I have been socialised into certain legal doctrines and how an established understanding of legality – be it English law or Islamic law – has become naturalised in my writing, reading and interpreting. Such legal training teaches students to read legal texts in a particular way, navigate through

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sources of official legal knowledge such as databases or case reports, use professional legal terminology and so on. Inevitably, this legal socialisation influences how I approach the legal field in my research project and it is important to stay aware of my own situatedness.

4.3. Data collection

As mentioned above, the study employed two different 'main strands' of research that allow for addressing the two research questions and to provide insights from different angles in the emerging field. These two strands involved different methods of data generation and collection. First, I chose to give great weight to collecting data through qualitative interviews, accompanied by a research diary, to explore emerging subjectivities produced and sustained through the engagement in Islamic legal services (research question two). Second, I employed documentary and biographical research to investigate to what extent British-Muslim family law can be considered a legal field (research question one) and to provide complementary data to qualitative interviews. The documentary research drew on a variety of different documents both in hard-copy and via the Internet.

However, these different research methods were not applied in isolation. They complemented and challenged each other and captured different dimensions of the field and its subjects. They were taking place at the same time and did not follow a chronological order. I found it useful to go back and forth between the two different strands of research. This is because, for example, I was able to explore questions that arose from the documentary research with solicitors who have 'practicing' knowledge of the same issues. For instance, when the Law Society's practice note on Sharia compliant wills generated headlines in the media, it was possible to analyse both comments made in specialist online discussions and data gathered from interviews where I asked solicitors about their personal experiences with Islamic wills to investigate potential overlap or differences. As Nielsen notes in relation to empirical legal research, 'the very process of research necessarily involves gathering information in a variety of ways' (Nielsen 2010, p. 953; see also Webley 2010). Following this approach, the flexibility of my research design provided added richness to the analysis of the field of British-Muslim family law.

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4.3.1. Qualitative interviews

An initial review of existing literature (chapters two and three) concluded that the legal subject that is implicated in the concept of the British-Muslim legal field has been under-researched. To explore this potential new insight, I decided to focus on subjectivities and how they construct and are constructed in the legal field by using the method of qualitative interviews. I conducted eighteen interviews in total. In line with the focus on legal professionals' role in this process, the interview participants were mainly either solicitors offering some form of Islamic legal services and clients of such services, as well as a small number of other actors in the field such as a scholar sitting on the board of a Sharia council and people who considered using a council or a solicitor, but had not done so yet at the time of the interview. The interview participants included eleven professionals (solicitors and one scholar sitting on a Sharia council board; eight women, three men), and seven clients of solicitors (five current and two prospective clients, all of them women). I conducted interviews with solicitors sometimes specialising in slightly different areas of law (Muslim inheritance, Muslim divorces/marriages, forced marriages, child welfare) and in varying career settings (independent start-up, solicitors in large firms, junior and very experienced people). The interviews took place over several years with the first scoping interview with a solicitor offering Islamic legal services taking place in late 2012. The majority of interviews were completed in more intense periods in 2013 and 2015. I conducted interviews in a variety of locations in the UK and one interview over the phone. The locations of face-to-face interviews included London (five), Milton Keynes (four), Luton (two), Birmingham (two), St Albans (one), Manchester (one), Leeds (one), and Glasgow (one). In all interviews either a voice recording was made or notes were taken during the interview. A transcript of the interview, where recorded, was produced shortly afterwards. In one case an interview was conducted in Arabic and a working translation into English was produced for purposes of data analysis.

The interview format remained open to a large extent. As subjective experiences and meanings needed to be described in detail, the interview design had to give space for reflection by the interview participant as well as space for contradictions and open questions. Guiding questions prepared in advance and tailored to the specific subject position of the individual in the legal field (i.e. legal professional or lay) were used only to keep the flow of the interview in a direction that would allow me to address

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the meanings of British-Muslim family law as it is relevant to different areas of study as derived from the literature review. These were (1) legal plurality: plurality of normative systems available to individuals; (2) legal fields: personal professional trajectories and practices in British-Muslim family law; (3) legal subjectivity: personal experiences of using Islamic legal services both by clients and providers. The following types of questions prompted interview participants to address each of these broad areas of research:

(1) Questions asking about the importance of the English legal system, Muslim law and other normative systems such as customs to get an idea of the role they play in people's lives.

(2) Questions asking about personal, educational networks and career paths as well as detailed descriptions of legal processes in order to learn about possible new legal market practices being established.

(3) Questions regarding personal experiences with solicitors' firms, Sharia councils, or online will writing services, and motivations and outcomes of cases including questions about friends or family members who use similar services. The questions focused on personal experiences of using Islamic legal services and explored how the interview participant felt at the time.

In order to allow me to reflect on my own position as a researcher, especially during the more intense periods of interviewing, a research diary also formed a part of my research methods. Before and after each interview I gave myself about fifteen minutes to reflect on my position as interviewer; my expectations of the interview; what I was hoping to get out of the interview; what went well and what went badly; unexpected answers or turns in the interview; the need to change questions, set-up or the terms I used; and any other observations. I studied the research diary in connection with each interview once I was analysing the data collected. For example, on one occasion two women at very short notice decided to attend the interview together rather than attending each on their own. In the research diary after the interview I noted how my initial reservations about the set-up proved to be right. The flow of conversation was difficult to follow at times as both were good friends, and although knowing each other well neither of them was able to speak as freely as during the other one-to-one interviews. As a result, the data gathered was not as useful and detailed as in other

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settings, a limitation that was easily addressed by making sure that future interviews were scheduled as one-on-one and in a setting comfortable for the interview participant and myself. However, other limitations, restrictions and challenges proved to be more complex, which will be discussed in section 4.4.

4.3.2. Documentary and biographical research

Documentary research in the present study is of importance as it provides information on the contextual and material aspects of the field, which makes it possible to depict different dimensions of British-Muslim family law, in addition to those generated through interviews. McCann argues for both analyses of contextual data as well as subjectivities of people engaged in a particular field. This is because 'if changes in subject position and context significantly alter consciousness and action regarding rights, then careful analysis is necessary to help explain the transformation' (McCann 2012, p. 480). Bourdieu (1987) conceptualises the legal field as having several main characteristics, which are discussed in more detail in chapters two and five. In the emergent field of British-Muslim family law, the processes of legal formalisation, professionalisation and materialisation are of particular interest. Through particular research methods gathering relevant data, this study investigates the 'traces' of these processes of field and market construction. Through documentary and biographical research it was possible to collect data from a wide range of sources, both hard-copy and via the Internet. They included legal professional websites that form part of the private market, biographical data contained in online profiles and reconstructed CVs of solicitors, case file documents produced by solicitors as well as specialist online discussion posts. As Punch notes, 'the Internet offers new approaches and new challenges to the conventional research practice of locating existing knowledge' (Punch 2014, p. 283). At this point, I would like to note that comments made in online discussions can provide an enriching perspective to the subject matter and complement findings from qualitative interviews. In the situation of an interview with a researcher, participants may choose to express their views more carefully or more strongly. Everything said to the researcher is performed for the specific situation and interlocutor. Comments made in online discussions are equally performative, albeit in a different way compared to an interview setting in that they are performed for a less specific audience. This variation in frameworks can provide the researcher with insights to the field from different angles.

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In order to enable qualitative-interpretative analysis, data collected from websites, online profiles, legal documents and specialist online discussions was collected in the form of either print from Internet sources or photocopy of hard-copy documents to preserve the text and, where applicable, images for analysis. Particularly because of the fast-changing nature of the Internet, it was important to file hard-copy prints of all sources collected through the Internet.

Documentary research

While the data was gathered from a variety of sources, what they have in common is that all the documents were *not produced* specifically for the purpose of research. They thus form part of what is referred to as unobtrusive methods of social research (Webb et al. 2000; R. Lee 2000). Although this research project did not specifically *generate* this data, the documents still are of relevance because they, on the one hand, can be 'read as the sediments of social practices' and, on the other hand, 'have the potential to inform and structure the decisions which people make on a daily and longer-term basis' (May 2011, pp. 191-92).

I collected contents of eighty-seven websites of solicitors that offered some form of Islamic legal services and expert advice according to their website. These services included Islamic wills, Muslim divorce services and advice, and services and advice relating to Muslim marriages. Only websites of solicitors registered and operating in the UK were included. Websites of will writers, websites of solicitors mentioning only Islamic finance and wealth planning services were not included as these services fall outside the scope of this study. Data collected from websites included the webpages that made reference to Islamic legal services but not other sections of the website (solicitors often list a variety of different services they specialise in). The detail of information provided on websites varied with some cases only listing particular areas of practice (for example listing Islamic wills but not going into any further detail of what the services entails) and others going into great detail about the services they provide, the background to why these are useful and necessary and how their services differ from other providers. Search terms included: Islamic legal services, Muslim solicitor(s), Sharia(h) law and solicitor(s), Muslim/Islamic/Sharia(h) divorce/will/marriage and solicitor(s). Online discussion posts as part of the Law Society's Law Gazette on the Internet were collected in relation to the interaction

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between English and Muslim law and especially in relation to the Law Society's practice note on Sharia compliant wills, which generated a lot of debate.

While the Internet facilitates the collection of documentary data there are important issues of validity and reliability (R. Lee 2000; May 2011; Punch 2014). The finding that a number of websites of solicitors' firms advertise particular services does of course not mean that this information is indeed fully correct or that the information is up to date. With information obtained from the Internet, its validity and reliability are in many cases difficult to establish. However, given that the market of private legal services in the UK is a competitive one and online presence is an important tool to reflect a firm's positioning in the market, it can reasonably be expected that websites are being kept up to date as much as possible (see also Flood and Lederer 2012, p. 2513). Yet, listing an expertise, professional track record or profile on the Internet may not fully reflect practice on the ground. Also, not all solicitors advertise (all of) their services on the Internet. These limitations to the validity, reliability and completeness of data gathered from online sources need to be taken into account when drawing conclusion from data analysis.

Documentary data was also collected through documents produced by solicitors at five different firms for their work on case files (both hard-copy and soft-copy). These documents were thus not gathered from Internet sources. These case file documents are important because they give insight to how English and Muslim law are being made to interact in text and written material beyond spoken language. For instance, Islamic wills combine in their text English standard legal phrases as well as Islamic phrases and position them within the document. Examples of Islamic wills and other documents and how they contribute to the materialisation of the field will be discussed in more detail in chapter five. The data collected consisted of anonymised case file documents and document templates relevant to Islamic legal services used by solicitors' offices in their everyday practice and included: Nine personalised Islamic wills and one generic Islamic will template; a talaq (divorce initiated by the husband) certificate template and a khul' (divorce initiated by the wife) certificate template; personalised divorce documentation including a statement of intent to divorce by talaq drawn up by a solicitor together with a talaq certificate, two khul' certificates, three letters requesting Muslim divorce issued by a solicitor on behalf of a female client, one faskh (marriage dissolution) certificate; two personalised prenuptial agreements;

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as well as another form of custom-made agreement between parties consisting of a document outlining the agreement between husband and wife about the Islamic upbringing of their children in case of divorce (where the husband is Muslim and the wife is Christian). As mentioned in section 4.1., this study approached documentary research as social research beyond the content of the very document itself. Therefore, where possible and relevant, I recorded any information of the situation within which the document was drafted, such as any specific requirements of the client(s) or particular challenges of a case where a solicitor told me about such details. This then also fed into the analysis of the documents.

For both case file documents and data gathered from the Internet, the data collected consisted mostly of text. However, where images were relevant to answering the analytical question of interaction between English and Muslim legal spheres in representations of solicitors' practices or documents, these images were preserved. For example, images were used on websites presenting 'Islamic legal services' in a particular way or the structure of solicitors' documents sometimes included Islamic calligraphy images. Preserving such lay-out and images in print rather than purely a copy of its textual content was useful for the interpretative analysis of documentary data.

Biographical research

The legal field is also characterised by professionalisation and to some extent specialisation, which produce a division between professionals and lay people and a segmentation of the professional field (discussed in more detail in chapter five). A useful avenue of data collection to investigate the question of professionalisation in the British-Muslim legal field is biographical research. While biographical methods are generally a 'wide field of different approaches and research strategies' (Zinn 2004, p. 3), the present study included a limited extent of biographical method specifically relating to professional practice in the area of British-Muslim family law (see also Chamberlayne, Bornat, and Apitzsch 2004). The study's approach to data collection follows Dezalay and Madsen, who argue that biographical method allows for tracing individual key actors' personal trajectories as an embodiment of the emergence of a legal field: 'to break with the functionalist view of law... we suggest instead to study the actual agents of law, not simply as the operators of transnational law but also, and

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specifically, as the entrepreneurs building transnational legal fields' (Dezalay and Madsen 2012, p. 444).

I collected thirty-two written biographies from online profiles of solicitors, barristers and scholars to trace their development and career paths. I also recorded biographical data during ten interviews with solicitors by asking questions about their professional education, career trajectory and future plans. All biographical data recorded through the Internet and interviews was of professionals working in the UK. I maintained an overview document noting links and connections between professionals in the field using data from social networking sites, interviews, and events. The data collected through methods of biographical and documentary research provided me with information about the workings of the field from different perspectives, acting in complementarity to data gathered through qualitative interviews.

4.4. Limitations, ethics, challenges and the unexpected

There are a number of limitations and potential biases regarding the scope of the research project. To start with, there is a bias towards a particular ethnic 'community' in this study. The single largest group of my interview participants were British Muslims with Pakistani family backgrounds (nine out of eighteen interviews). The group of British Muslims with Pakistani family backgrounds refers to those participants who, when asked to describe their backgrounds, made some reference to their background being British Muslim and Pakistani. Other participants I interviewed described themselves as 'white British', as 'British Muslim with Bangladeshi origin', or as 'white British Muslim' and for three participants I was unable to gain necessary information or they did not want to make a statement. This bias towards British Muslims with Pakistani family background might, on the one hand, be the effect of my snowballing technique of gaining access to interview participants, while on the other hand it could be the case that British Muslims of Pakistani background inhabit a particularly strong position in the field of British-Muslim family law, potentially because of a long association between people who identify themselves that way and the UK.[36] However, I would like to avoid essentialising the notion of community.

[36] With 38% of Muslims, the Pakistani ethnic group represents the largest ethnic group among Muslims according to the 2011 census for England and Wales (Ali et al. 2015, p. 24).

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Each case and each person, each subject is implicated in various different ways in her ethnic and religious community, her interest groups, her personal networks and so on. It is therefore a difficult task, and not necessarily very meaningful, to generalise issues of engaging with a particular 'group' of people carrying particular predefined (and even self-ascribed) labels such as 'Muslim', 'Pakistani', and so on (see Hall 2000).

The ethical dimension of conducting research on sensitive topics is important when speaking to people about their personal experience of events such as divorce, marriage, dealing with death or the upbringing of children; or when speaking to people in a legally or financially precarious situation. I aimed to minimise risks to their emotional, psychological, social and physical well-being by following a number of key safeguards outlined by the British Sociological Association's (BSA) Statement of Ethical Practice (2002). These included obtaining free and informed consent and responsibility for emotional and social well-being, anonymity and confidentiality. Yet, not all risks can be alleviated and I especially found the protection of anonymity a real challenge because of the Internet. I have taken all precautions reasonably possible to protect the anonymity and confidentiality of my interview participants. However, the Internet still renders participants vulnerable to exposure, especially when initial communication takes place via platforms such as LinkedIn or email. In order to break the link between data and identifiable individuals, data was anonymised at the source of the interview, pseudonyms were used throughout, other identifiers were changed or removed where possible, and temporary Internet files and recordings were deleted. Furthermore, interview participants were able to reject the use of a tape recorder. In these cases, I took detailed notes during the interview.

As far as possible, I sought to ensure that consent to participate in this study was freely given and based on clear information about the aim and process of my research. I emphasised the option of exiting the process at any point without having to give a particular reason. Before starting any interview, I explained my research project in a level of detail and language appropriate to the context. In the main, I sensed that I needed to explain the research project in different ways when speaking to solicitors and participants who were not legal professionals. My research information sheet was either printed or emailed to the interview participants but, more importantly, people wanted me to talk them through the research and also hear more about my own story. Showing empathy and the commitment to share parts of my own personal story

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contributed significantly to creating a relationship of trust. Speaking about divorce or other potentially traumatic life events may be uncomfortable or even distressing for any individual. I was aware that the participation in this study may result in emotional distress during the research interview or after, or negatively impact the participants' social well-being. In particular some of the women I spoke to were vulnerable individuals in terms of their legal rights or status, financial standing or domestic situation – for example undergoing a divorce, moving home, seeking to apply for social benefits, or trying to sort out challenging childcare arrangements. To the greatest extent possible, I attempted to keep the balance between encouraging conversation and reflection on behalf of the interview participant and being careful not to push them into speaking about issues they did not want to discuss or details that they did not wish to share.

The biggest challenge in collecting empirical data proved to be access to interview participants. While I had anticipated some difficulties in this respect at the outset, I had thought that my personal and professional networks in the field would allow me to fairly easily extend these contacts into a wider and more diverse pool of interview participants. In 2013, the people I interviewed were selected through snowballing. It was of utmost importance to gain the trust of my interview participants through personal recommendation by somebody they know. In every case when I tried to establish contact without prior introduction by a trusted 'connection' or contact, I experienced much greater difficulties with access. For this first set of interviews I did not receive as many positive responses to invitations to participate in the study as I had anticipated. At that time, I used mainly email contact and occasionally hard copy letters, to invite solicitors to become part of the study. In 2015, I started using the business-oriented social networking service 'LinkedIn' to identify interview participants. This time, I received many positive responses to my requests. The possible downside was that I potentially excluded professionals not actively using this social networking service, but given the relative popularity and success of this means of networking, LinkedIn proved the most effective tool in securing access to interview data for my study. Their accessibility as providers of Islamic legal services using a professional networking site is in itself a sign of the very emergence of a field of law.

Finally, I would like to mention that there is a particular challenge in researching British-Muslim family law because it is an incredibly fast-moving field. Since I

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started my research project in 2010, the role of solicitors has become prominent with Islamic legal services departments opening at big law firms such as Slater Gordon and Duncan Lewis Solicitors (formerly Russell Jones & Walker who launched their Islamic legal services in June 2011) and as part of a number of smaller start-up businesses. The Law Society's attempt at publishing a practice note on Sharia compliant wills was an indication that interaction of English and Muslim law has become more relevant for the practice of solicitors in the UK. The fast-paced emergence of British-Muslim family law as a distinct field of discourse and practice effected policy responses, for example, in the form of Baroness Cox's Equality Bill and an independent review into the application of Sharia law in England as part of the government's counter-extremism strategy. Not only the world around me but also my position as researcher changed as a result of these dynamics and I see things very differently to when I first put together my PhD proposal in the sense that I see the emergence of professional legal practice as an important development of British-Muslim family law and a crucial site of hybridisation.

4.5. Data analysis

As part of the data analysis, data compiled from qualitative interviews, documentary and biographical research were contrasted against each other to investigate various strands of thoughts and ideas. The data was analysed with regard to whether there are patterns and similarities in accounts that point to emerging British-Muslim subjectivities and an emerging legal field of British-Muslim family law. The analysis followed a qualitative-interpretative line, which is best suited to address the study's research questions. For example, a similar qualitative approach has been taken by Isin who conducted documentary research in archives containing records of Ottoman *waqf*, which is an institution that constitutes a form of Islamic endowment. In his qualitative-interpretative approach to analysing these historic documents the aim was to 'consider how the responsibilization of subjects gained expression through the waqf, and how, in turn, the waqf became critical for forming legal personalities and legal positions of responsible subjects' (Isin and Lefebvre 2005, p. 12).

Qualitative interview data

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As a first step in the data analysis process, the interviews were transcribed from the audio recordings. As a second step, I coded the interview data using coding terms based on main themes emerging and an assigned colour scheme for ease of navigating the transcription documents. I decided against using a digital coding and analysis software as the database was of limited size. At first, I read through the transcriptions quickly to get an overall impression of the individual interviews as well as the relations between them. Subsequently, I went back to each interview transcription to go through a detailed line-by-line thematic coding process. This allowed me to draw out those themes and patterns that I found emerging most prominently across the different interviews. While I conceptualised each interview as an explorative study on its own, my analysis also traced differences or similarities between interview participants' accounts.

During data analysis the research used language and text (transcriptions complemented by Internet-based data gathered from specialist online discussion posts) to study the variations of subjective meaning of British-Muslim family law and the formation of hybrid subjectivity. Language here is understood as referential (in the sense of communicating or conferring meaning) as well as constitutive (creating meaning) (see Dunne, Pryor, and Yates 2005, pp. 36-38).[37] Analysing data from the qualitative interviews, I concentrated on the descriptions by people of processes, experiences, or feelings. These personal accounts recorded in the interviews communicated a particular meaning, which I interpreted based on my own knowledge and experience. This means that my interpretations of the stories I listened to may not necessarily have adopted the same position. This is because the thesis aims at providing a critical and alternative narrative to hegemonic discourses on Muslim family law in the UK rather than giving voice to the voiceless. This is in any case impossible because, as Riessman rightly points out, researchers 'do not have direct access to another's experience. We deal with ambiguous representations of it – talk, text, interaction and interpretation' (Riessman 1993, p. 8). This qualitative-

[37] On the difference between language as referential or constitutive, Dunne, Pryor, and Yates explain that 'postmodernist positions use discursive notions of power, where language becomes significant in understanding subject positions. Rather than seeing language as referential, as a mirror on social reality in direct realist readings, there is a recognition of people as both products and producers of the discourses through which their subjectivity is constructed. Rather than seeing the self as caught in deterministic and hierarchical power structures, attention is focused on the way in which discourses (systems of knowledge and practices) subjectify individuals in localized contexts' (Dunne, Pryor, and Yates 2005, p. 38).

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interpretative approach to interview data meant that stories and accounts of lived experiences by my interview participants were not taken at face value (Hammersley and Atkinson 2007, p. 231). Hollway and Jefferson argue that 'neither selves nor accounts are transparent... Treating people's own accounts as unproblematic flies in the face of what is known about people's less clear-cut, more confused and contradictory relationship to knowing and telling about themselves' (Hollway and Jefferson 2000, p. 3). This had implications for my data analysis. Interview participants may not necessarily explicitly refer to a particular theme but I see it as my role as researcher, through interpretative effort, to navigate through different, sometimes contradictory accounts in order to draw out crucial points in the discursive and material construction of the legal field and the subjectivities implicated therein. For this reason, the researcher cannot abstract himself or herself from the data collection and analysis process as the researcher produces interpretations of accounts collated.

Documentary and biographical data

As a first step, I used Excel spreadsheets as data grids to record the information gathered from websites, biographies and case file documents produced by solicitors in order to aid data analysis. All documents were numbered in hard-copy and anonymised where they contained information that would have made interview participants identifiable. The grids provided the following structure as detailed below.

Website data were analysed using the following grid headings: document number, types of services offered, location(s), how are solicitors' identity and market position rhetorically constructed, (how) is imagery used for positioning, tensions or gaps in the way the solicitors represent themselves, core themes emerging.
Internet profile biographies and reconstructed CVs were analysed using the following grid headings: document number, area(s) of specialisation, education, professional experience and location(s), how is professional identity rhetorically constructed, tensions or gaps in the way the professional represents him/herself, core themes emerging.
Case files documents produced by solicitors were analysed using the following grid headings: document number, who produced the document and why, how is legal terminology rhetorically used, tensions or gaps in what the document tells the reader,

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core themes emerging, any notable or outstanding features, comments on context of the case.

As a second step, I analysed the entries in the grids along three main lines of qualitative-interpretative inquiry. I would like to note here that specialist online discussion posts were analysed along similar lines of inquiry as data from qualitative interviews, focusing on themes and patterns emerging most prominently across the different contributions and any differences or similarities between accounts. As mentioned in section 4.1., this thesis does not conceptualise documentary and biographical sources simply as impartially reporting social reality. Rather, it is premised on the idea that they also construct social reality and that researchers use their 'own cultural understandings in order to "engage" with "meanings" which are embedded in the document itself…[which] cannot be read in a "detached" manner' (May 2011, p. 199). There is no neutral outsider who could function as arbiter over the definitive meaning of a text because 'language does much to shape both who we are…and the ways in which we observe and construe the world' (White 1990, p. xi). It follows that documents and biographical resources are of interest for what they include as well as for what they exclude, or for the questions they raise. The analysis of the documentary and biographical data was thus organised around three different conceptual layers and categories of questions. I read through my comments several times and, if necessary, went back to the full text in hard-copy to remind myself of a particular detail.

(1) What is the content, structure and presentation of the document?
(2) To what extent does the language of the document follow the characteristics of legal language? How are discursive strategies employed to communicate meaning (specialist terminology, passive or active narrative style, how is text and imagery used)?
(3) What does the reader learn about the social dynamics, potential social change, production of subjectivities and subject positions? To what extent do English and Muslim legal norms interact in the production of the document?

This qualitative-interpretative approach to analysis allowed me to consider the meaning beyond the immediate content of a document and to investigate the particular process and social dynamics underlying a document's production.

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The data analysis followed the guidelines of the British Sociological Association (BSA) on how to handle interview and documentary data for analysis and discussion. The study offered anonymity as far as possible (see limitations above). All data on personal details in both soft-copy and hard-copy files were deleted. Names in chapters discussing research findings are not the real names of people I interviewed and personal information, such as location of residence or professional practice has been altered or removed where necessary to ensure anonymity.

To sum up, this chapter describes in more detail the research process and the methods used in gathering the empirical data. The discussion and analysis in the following chapters (five to eight) draw on the data collected using a mix of methods that I found best suited for exploring the field of British-Muslim family law as a site of citizenship from a variety of angles. Chapter five looks at British-Muslim family law as a legal field, its structures and embeddedness within wider socio-legal contexts. Chapter six investigates citizens' rights claims and pursuit of justice in the field. Chapter seven then focuses on the figure of the British-Muslim solicitor and their professional practice. Finally, chapter eight explores different forms of belonging and the role of the state in transnational lives.

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Chapter 5. British-Muslim family law as a legal field: The embeddedness, structures and processes of legality

> *The relatively open-ended definition of a field as a network of objective relations provides a broad conceptual ground for analyzing both the social continuities and the construction of new practices (Dezalay and Madsen 2012, p. 439).*

This chapter discusses to what extent British-Muslim family law is a *legal* field in its own right, by using data from websites, legal documents and biographical research in addition to interview data and by putting the specific field into context with wider socio-political developments. While the subsequent chapters make the case for looking more closely at the individual accounts of people involved and practicing in the legal field, it is nonetheless important to provide an account of the field's structures and processes because an over-emphasis on individual accounts makes a critical interrogation of the power relations underlying the field more difficult. Such an error, in Bourdieu's words, 'inclines one to recognize no reality other than those that are available to direct intuition in ordinary experience…. [however] the visible, that which is immediately given, hides the invisible which determines it' (Bourdieu 1990, p. 125). However, rather than deciding whether structural-procedural or subjective aspects bear more importance, I critically adapt the analytical approach of reflexive sociology to enrich my research on legal subjectivity.

This chapter is inspired by Bourdieu's theory of the field of law and its associated concern with social structures and power relations that interrelate with subjectivities in the legal field. It thus sketches out the background within which the field is developing. Bourdieu conceptualised the legal field through its embeddedness within the social world (see section 5.1.); its tendency of professionalisation leading to a division between professionals and lay persons (see section 5.2.); and its interdependency with a market of professional services as a crucial driver of the legal field (see section 5.3.). The chapter addresses these different aspects of the legal field in the subsequent sections, connecting them to specific examples from my research British-Muslim family law.

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5.1. Embeddedness in the social world: Privatisation and formalisation

The development of British-Muslim family law is a story about different social, political and legal challenges and opportunities that opened up historically because of specific needs in everyday practices of Muslims and their offspring who settled in the UK. They influence significantly how, in what form or shape, British-Muslim family law has been evolving over the years, however not without friction (see Bowen 2016 for an analysis of 'British Islam'). For example, policies of multiculturalism or 'ethno-religious communitarianism' (Meer and Modood 2009) facilitated the development of a decentralised model of dispute resolution based on Muslim family law practices. In the 1970s and 1980s, Sharia councils began to develop offering services mainly to women by liaising with their husbands to grant Muslim divorces, or in other cases to issue divorces by the council itself (Bano 2012, pp. 83-87).[38] This embeddedness within its socio-political context means that the field is a distinctively *British* variant of Muslim law, in the sense that UK politics, policies and law on a national and local level affect the legal experiences of Muslims living in Britain. In more recent history a multicultural approach to societal governance – while not uncontested – opened spaces mainly for cultural and ethnic recognition in what Modood calls 'politics of recognition' (Modood 2005), but this also includes (limited) scope for formal minority legal accommodation.[39] In fact, Bowen argues that 'nowhere in Europe or North America is the legal system closer to "recognizing" Islamic judgments than in England' (Bowen 2010, p. 411).

Following Bourdieu we can analyse the British-Muslim legal field's links to other fields. Related fields are in fact mutually transformative and English law and Muslim law in the UK interact. Indications for this *embeddedness* can be found in English statutory law and case law, as well as in Muslim legal practices. A list of examples from statutory law demonstrates this well (Menski 2008, pp. 56-59 for more details), with notable landmarks being the Slaughter of Poultry Act 1967 and Slaughterhouses

[38] Experts in the field note that the number of Sharia councils is much smaller than stipulated and their role and authority more contested than the attention to their workings would suggest. The number of 85 councils cited in an influential report by Civitas has been challenged by other estimates suggesting that the number is more likely to be around 12-15 councils (Bowen 2016, p. 61). Bano, in her work, refers to 30 organisations that were identified as appearing to undertake Sharia council work (Bano 2012, p. 63).

[39] This is not a phenomenon limited to Muslim law or the contemporary context. In fact, already since 1753, marriage concessions have been made to Jews and Quakers and they remain exempt from certain rules regarding marriage solemnisation under the Marriage Act 1949.

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Act 1974 that allow Jews and Muslims to slaughter animals according to kosher and halal methods. The Adoption and Children Act 2002 introduced 'special guardianship' that offers an alternative to full adoption (Menski 2008, p. 57) and while this was not the officially stated rationale, it creates flexibility as Muslim legal rules prohibit the practice of adoption (Joseph et al. 2005, p. 1). The Finance Act 2003 opened the way for Islamic finance. Also English case law records give an interesting insight into how English judges are responding to Muslim law as the demographic in the UK is becoming more diverse. One significant example is *Radmacher v. Granatino* (2009), which represents an important judgment in the increasing recognition of prenuptial agreements more generally. It also confirms how aware English judges have become of the issue of Muslim mahr. In the judgment, Islamic prenuptial agreements were excluded to not create a test case that could be extended to claims for recognition of Muslim marriage contracts. Lord Justice Thorpe maintained that 'the gulf between our statute law and Sharia law is wide indeed…This is not to apply foreign law, nor is it to give effect to a contract foreign to English tradition'.[40] Similarly, Muslim family legal practices have been influenced by English law. This is illustrated by the example of Mousa who began working with the local Sharia council while he was training to become a solicitor. According to him, he learned a great deal from the scholars at the council and, at the same time, he was able to teach the learned elders 'a thing or two about English law', which would ensure that the council applied fair process and worked in accordance with principles of English law. By making the council's procedures more standardised, coherent, transparent and closer in function to English law, they become more easily 'translatable' to the English legal processes. Mousa explained, 'that's why I always said to the Sharia council, let's make your practice as professional as possible, so whenever… you get a letter from a solicitor you know exactly what to do' (Mousa). He described that the rules and regulations he introduced to the Sharia council were based on adaptations of the textbooks he studied as a law student.

The development of Sharia councils and private law practice offering and advising on Islamic legal services can be viewed as in line with more recent policy that results in, sometimes conflicting, multiple drives for 'privatisation' in family law in contemporary Britain. Since the late 1990s, there has been a shift in the resolution of

[40] *Radmacher v Granatino* (Rev 1) [2009] EWCA Civ 649, [2009] Fam Law 789 [52]-[53].

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civil and family disputes from the public realm into private settlement or alternative dispute resolution mechanisms (Genn 2012, p. 1); policy now explicitly encourages citizens to resolve their disputes outside of the courts through alternative methods of dispute resolution, such as mediation.[41] An important factor in the drive towards privatisation has been the significant cuts to the scope of civil legal aid through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The decision to restrict access for individuals to legal aid to family law cases involving evidence of abuse has not only changed courts' and solicitors' practices significantly but also disproportionately affected women, and especially those of ethnic minority background and pushed them 'into informal community arbitration systems, including faith-based tribunals' (Committee on the Elimination of Discrimination against Women 2013, pp. 3-4). However, a push for privatisation in dispute resolution is not matched by a similar trend towards privatisation in policy on living arrangements. Although the last decades have witnessed significant liberalisation of the law on marriage, the legal standing of 'cohabitees' is not being improved, although there is a clear trend towards fewer marital unions (Rogers 2009).[42] English law does not protect unmarried couples in the same way as married couples, especially in terms of financial protection.

As mentioned above, the emergence of private practice offering Islamic legal services may well be an indication for an increasing interaction between Muslim legal practices and formal English law. Statements by Aina Khan (as cited in Grillo 2015), a leading solicitor in the field appear to support this study's findings that 'there has been a growing demand for family law services' (Grillo 2015, p. 111). She traces this back to changes in the social structures as 'the old system of family support and solving problems within the family is collapsing…and people now feel no shame in going to [English] law to seek justice' (Grillo 2015, p. 111). Yet, there is added complexity in the case of British-Muslim family law. While cohabitation without (civilly registered) marriage appears widely acceptable for many citizens in the UK, this may be less the case for Muslim couples who choose a Muslim marriage – with or without civil registration – before they start living together. The seeming trend of Muslim couples

[41] Part 3.3(1) of the Family Procedure Rules applicable in England and Wales stipulates that 'the court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate'.
[42] For example, legal barriers against same-sex marriage were lifted in 2014 in a move that brought family arrangements further beyond the Christian inspired ideal of a marriage between one husband and one wife, which forms the basis for present family legal rules (Hamilton 1995).

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undergoing a nikah only without registering their marriage under English law is deemed a problematic form of cohabitation as indicated through a number of policy initiatives. For example, the Law Commission's 2015 scoping paper *Getting Married* on reforming English law on marriage, implicitly problematises Muslim marriage practices by stating that '(1.33) the third major set of reasons for reform relate to the perceived rise in religious-only marriages… (1.34) The practice of religious-only marriage has been highlighted particularly in respect of Muslim couples, although the variety of practices across Muslim communities should be noted' (The Law Commission 2015, p. 17).

I argue that a discussion of British-Muslim family law must be set within these contradictions of how privatisation is interpreted in relation to citizens who marry and divorce according to Muslim law. On the one hand privatisation through alternative dispute resolution is being encouraged but on the other hand, privatisation of 'informal' dispute resolution or non-registration of nikah contracts is being problematised. This takes place through increasing scrutiny of Sharia councils' practice, critical coverage in popular media, individual high-profile interventions in the political debate as well as through family law reform in relation to marriage (see chapter eight for a more detailed discussion). While it is uncertain which direction future policy developments will take, I contend that the contemporary policy engagement in the field suggests an increasing interaction between Muslim and English law. The issue of conflicting drives for privatisation serves to show how I see British-Muslim family law as consisting of socio-legal practices that are informed by and in turn modify existing norms of English family law as well as Muslim legal practice. Furthermore, I argue that with the field's embeddedness in the broader socio-political context also comes an increased formalisation – and materialisation – of practices.

Formalisation is a process that is central to the establishment of a legal field. This process is brought about discursively by *translating* ordinary matters into legal issues and highlights the importance of language (and text) in law (White 1990, p. 24). Dezalay and Madsen call this the 'powerful sociolinguistic mechanisms' of law (Dezalay and Madsen 2012, p. 450). Formalisation thus takes place through the vehicle of legal language and the symbolic power to name, which acts performatively in the field because through legal language, social reality is turned into legal reality. In

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the words of Bourdieu, symbolic power is the power to transform the world 'by transforming the words for naming it, by producing new categories of perception and judgment, and by dictating a new vision of social divisions and distributions' (Bourdieu 1987, p. 839). Legal language is distinguishable because it is based on neutralisation and universalisation; it uses passive voice and impersonal style, and is formulated as impartial and objective, which serves to construct law's universality and neutrality. Formalisation in Bourdieu's work focuses on the performative power of legal language to mould social reality. The notion of a 'materialisation of practice' – as I prefer to call it – builds on this but goes a step further by insisting on the importance of the physical medium through which legal language is brought to its subjects. Legal documentation is a formidable tool to create and sustain authority because law is 'the world of text' (Masud 2001, p. 5). However, the idea of materialisation of practice goes beyond the idea of legal language and text (Goodrich 1990). It contributes to an existing body of scholarship that seeks to understand how law 'engages our full range of perceptual, sensory, and imaginative human experiences' (Bouclin 2013, p. 1165; Bently and Flynn 1996). By materiality of law, I mean the certificates, papers, contracts, copies, will documents, witness signatures and so on that all signify material outputs. People often do not realise they are engaging in a legal field until they 'enter' an institution or 'sign a piece of paper'. Still, it is important to mention that formalisation and materialisation in the field is by no means all encompassing. For instance, there are very many Muslim marriages being concluded without any involvement of institutionalised authorities. As Vora mentions in relation to nikah ceremonies, these often take place 'within the bride's home and …this is very much the norm within their cultural tradition' (Vora 2016, p. 135).

The example of Islamic wills, offered as a service by a number of solicitors, illustrates well how impartialised and objectivised legal language comes into play in British-Muslim family law. When drafting Islamic wills, solicitors use standard templates that can be amended to each case, but all documents share certain universal provisions and are crafted in a style that uses terminology associated with the legal field rather than phrases used in the vernacular. Islamic wills are closely associated to non-Islamic terminology as they must include certain wording in order to be enforceable in English law ('Abdal-Haqq, Bewley, and Thomson 1995, p. 31). This is followed by the so called Shahada, which is the profession of Muslim faith. The anonymised wills I analysed all include statements similar to the following: 'I HEREBY REVOKE all

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former wills and testamentary dispositions heretofore made by me and declare this to be my last Will', followed by a version of the Shahada such as 'I testify that there is no deity except Allah, He is One and has no partners, and I further testify that Mohammed (may the peace and blessings of Allah be upon him) is Allah's servant and Last Messenger'. Similarly, the standard heading for English wills is combined with a standard Islamic heading starting with 'Bishmillah ir-Rahman ir-Rahim Last Will and Testament'. The legal language of clauses, paragraphs, and references to legislation sets the scene in a manner that communicates neutrality and routine to the reader of an Islamic will document. Its passive formulation and formulaic phrasing helps translate major legal-political governance questions into 'technicalities'. For instance, the question of interaction and authority between English and Muslim law is set in sub-clauses to the will towards the end of the document. One of the Islamic will documents analysed stated:

> (a) The standard provisions of the Society of Trust and Estate Practitioners (1st Edition) shall apply with the deletion of paragraph 5 and subject to the following amendments:… (c) The interpretation and application of Shariah Law shall be at my Trustees' absolute discretion provided that its application does not breach English Law, in which case my Trustees shall apply such modifications as are necessary to comply with English Law.

These examples show how solicitors are using templates and standardised versions of Islamic wills in their practice; yet, these documents remain flexible in the extent to which they comply with Islamic legal principles. In some cases clients opted for an Islamic will but, as one of the solicitors explains, they have done so 'only half and half', meaning not a fully Sharia compliant will, in order to save on inheritance tax or in order not to leave their inheritance to their brothers and sisters in the case of them only having daughters.[43]

The question of the materiality of law emerged as a theme in my research in the following way. Practitioners and clients whom I interviewed repeatedly stated that one of the biggest concerns for them in practice was the perception of the nikah certificate as being some sort of a valid contract of marriage under English law. Some women may well be aware that their nikah marriage is not equivalent to a civilly registered

[43] Under Muslim law, siblings automatically receive a standard share if their deceased brother or sister had a daughter or daughters only.

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one in the UK, other women are clearly not aware of this fact. Nonetheless, the fact that they possess a written document, signed by the parties, agreeing to an exchange of money, or other conditions between them, often forms the basis of their assumption that this written statement can be enforced within the English legal system.[44] An example of the role that legal documents or 'contracts' play in British-Muslim family law was told by Aida, who works for a large international company in England. At the time of the interview, Aida was planning her own wedding including a nikah ceremony. She recalled attending the nikah ceremony of her relative whose wife had only recently chosen to adopt Islam as her religion. Aida was very surprised when the bride went to read through the nikah document before signing it. Reflecting on the incident, Aida stipulated that the bride's decision to read the contract was probably based on a certain social norm that recommends reading any text before signing it. Presumably, most other brides, to whom the 'usual' ceremony would be more familiar, would have performed their role differently. On this occasion, the contract became the material object of law (regardless of whether it was a binding contract under English law) with which actors engage and which at the same time produces the subjectivity of actors. The act of adding one's signature is one of the learned practices during which an individual's legal subjectivity is being performed. Moments like this open up the possibility of doing things slightly differently and so intervene performatively in what is considered the act of 'signing a nikah contract'. In fact, Butler's approach to performativity understands each performance as a slightly different enactment of its predecessor, which means that an act is never the same (Butler 1990).

To sum up, the processes of formalisation and materialisation are crucial for an incipient legal field to establish itself in its own right – and so are the actors driving (and driven by) these processes. However, exactly *who* has the power to define what is law and how to practice it is determined through a socially produced distinction between legal professionals and lay persons. Professionalisation thus becomes another

[44] Muslim-only marriage contracts (nikah) are not recognised in English law and are considered non-marriage. In English law a marriage can be valid, void or non-existent, i.e. a 'non-marriage'. However, there is no precise definition of what a 'non-marriage' stands for in English law. Probert notes that 'while the concept of non-marriage is not to be found within legislation, the Marriage Act 1949 does provide the framework for determining what the minimum degree of compliance to create a valid or void marriage must be and, by inference, when it is necessary to categorise a ceremony as resulting in a non-marriage' (Probert 2013, p. 314). A common misconception across all societal groups is that there is something called common law marriage; this however does not exist (Probert 2008).

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defining characteristic of the field of British-Muslim family law, which the following section engages with in more detail.

5.2. Professionalisation: The multiple positions of professionals and their distinction from lay citizens

The term professionalisation or profession, in the vernacular, suggests a neutral description of a factual situation. The group of people described as professionals are clearly distinguishable from other actors, such as lay people, or differentiated within the profession as experts or specialists in a certain area (Prabhat and Hambly 2017). These distinctions are presented as uncontentious or uncontested or in fact 'un-contestable' as they merely describe a social reality. However, who is allowed to become part of the group of professionals and who cannot is the result of underlying, historical and present struggles for power to admit or exclude potential members of the group (Sommerlad 1994, 2011). Johnson argues that professionalism should be understood as a 'type of occupational control rather than an expression of the inherent nature of particular occupations' (Johnson 1972, p. 45).

> 'Profession' is a folk concept which has been uncritically smuggled into scientific language and which imports into it a whole social unconscious. It is the *social product* of a historical work of construction of a group and of a *representation* of groups that has surreptitiously slipped into the science of this very group. This is why this 'concept' works so well, or too well in a way (Bourdieu and Wacquant 1992, pp. 242-43).

This development is also called the 'professional project' (Johnson 1972); and Sommerlad speaks of 'closure' that serves either to prevent 'rival professional groups from practicing the monopolised skills, or to exclude other groups on the basis of non-conforming factors such as class and race'; this includes 'gendered closure' in which a profession remains to be thought of as conducted by men even with formal barriers removed (Sommerlad 1994, p. 31). Witz notes that especially in the 'old' professions such as the medical profession (and the law, I would like to add), the professional project is a specifically gendered one, preventing women from transgressing the boundaries of the professional field and maintaining gendered division of labour (Witz 1992). The study of any profession therefore needs to pay attention to the importance

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of gender for projects of professionalisation, the dynamics of which have the power to both perpetuate existing subordination of women in the field and, to a more limited extent, challenge these (Sommerlad 2006, 2007).

Studying the *dynamic* of professionalisation, however, is different from studying a profession. 'Rather than analyzing power from the point of view of its internal rationality, it consists of analyzing power relations through the antagonism of strategies. For example, to find out what our society means by sanity, perhaps we should investigate what is happening in the field of insanity. And what we mean by legality in the field of illegality' (Foucault 1982, p. 780). In the same vein, the argument I am making is twofold: First, in order to understand better the character of 'law' (and its subjects) it is not useful to remain constrained within self-referential frameworks that limit an analysis of a legal field to those that call themselves 'lawyers' from within the dominant discourse. Second, Foucault encourages an analysis not of the object qua object – studying law as law – but rather as a political phenomenon imbued with power relations. It follows that to study British-Muslim family law is an exercise of studying the contours of law by investigating the (ever-) contested (but always historically specific) margins of legality, which is never simply a technical exercise but an interrogation of political struggles for power – and legal and political subjectivity – within a particular polity in a particular historical moment. Referring to Dingwall (Dingwall 1976), Sommerlad rightly notes that 'professions are nothing "out there" to be found' as a neutral and settled category of subject positions (Sommerlad 2002, p. 214). On the contrary, the social phenomenon of professionalisation produces, and in turn is produced by, certain professions understood as 'complex social constructions loaded with normative meanings' (Mather, McEwen, and Maiman 2001, p. 177). The guise of professionalisation works 'too well' in Bourdieu's words because it is in the professionals' interest to present their profession in an idealised manner as a group of people who are united simply because they perform a set of defined tasks. These tasks can be understood as formal descriptions of work as well as general 'cultural' markers and discourses that become attributed to a particular profession. In relation to cultural markers of legal professionals in the UK, Sommerlad gives the example that the association of solicitors' practice with working long hours is a key 'disciplinary engine in the process of differentiation, the hierarchical ordering of that difference and the general naturalisation of things as they are (including male power)' (Sommerlad 2002, p. 220;

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see also Schultz 2003b). There are other mechanisms that contribute to women's subordinate professional status, affecting negatively women's career progression but also serving a symbolic function of exclusion (Sommerlad 1994), which will be discussed in chapter seven.

As part of the growing professionalisation in British-Muslim family law, I argue, it is possible to observe a particular distinction between professionals and lay people and a multi-positioning of actors to increase their authority within the field. Formal designation of work relies on institutionalised paths to access in the early stages of professionalisation, and specialisation in the later stages of the process, as will be discussed in more detail in the next section (see Scheingold 1974 on legal education).

5.2.1. Professional-lay division

In English law, the professional-lay division is highly structured. Established paths of professional accreditation (mainly through a university degree but also through specific practice recognised by the Solicitors Regulation Authority) determine the paths for becoming, for example a solicitor, barrister or judge. These established paths of education are key to maintaining the English legal profession in a coherent fashion over time.[45] Writing in the Journal of Legal Education at the end of their five-year editorship, Menkel-Meadow and Tushnet conclude that 'that despite exogenous changes in social, political, and economic life, legal education remains remarkably resistant to change' (Menkel-Meadow and Tushnet 2008, p. 476; see also Boon, Flood, and Webb 2005). These ways of education, paths to access, and definitions of competences form the institutional process on the basis of which the legal field is becoming autonomised and legitimised (see a similar argument on the influence of legal education and ideology on the behavior of legal professionals in the United States in Scheingold 1974, pp. 151-53; and for Australia in Thornton 1996, pp. 73-105).[46] It ensures control over the (by definition limited) number of so-defined 'professionals' and distinguishes them clearly from lay people. The legal field is the site of competition for the monopoly of the right to determine the law. The size of the profits the monopoly guarantees for each of its professionals depends on the degree to

[45] Similarly, a variety of professional legal authorities have also been created in the history of Islamic law such as the Islamic jurist, the mufti and to a lesser extent qadi (Hallaq 2003, pp. 244-250; see also Hallaq 2001). Hallaq explains that the *mufti* 'knew what the law was, and how interpretation and legal methodology worked. The judge *qua* judge, on the other hand, did not, since his function was largely limited to the application of doctrine' (Hallaq 2003, p. 248).

[46] White compares the trained mode of legal understanding to a language, that is 'a set of ways of making sense of things and acting in the world' (White 1990, p. xiii).

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which the production of its members can be controlled (Bourdieu 1987, p. 835; see also Abel 2003). Therefore membership in the group of professionals in the legal field is limited and controlled and regulated internally (Freidson 2001). This process of distinction takes places on the one hand through formalised educational processes and accreditation, as mentioned above. On the other hand, 'informal' social dynamics contribute to the professional field's autonomy and distinctiveness. For instance, one of the main drivers of emerging autonomy is self-regulation from within the profession that is invoking higher professional values (the question of ethics and professional standards will be discussed in chapter seven in more detail). This internal control includes the regulation of behavior through ethics and other informal controls, in addition to formal access control (Abbott 1983, pp. 867-68). To ensure continuity it is the task of the organised profession to police and regulate its boundaries with other fields such as politics, religion or lay practices. Moments of rupture, while not overthrowing the 'professional project' as such, bring to light how this reproduction of professional authority works (Johnson 1972). The particular case of cause lawyers rupture this boundary as they transgress it in their practice, which is motivated and guided by political and social causes beyond the strict remit of the realm of law (Scheingold 1974, 2001; Sarat and Scheingold 1998; Boon 2001, 2004; see also section 2.3.2. on cause lawyering). However, these challenges to the logic of professionalised legal work made from within the group of established legal professionals do not result in an undoing of the professional project. On the contrary, Sarat and Scheingold argue that even cause lawyers, considered as deviant from the mainstream, ultimately contribute to the maintenance of power in the legal profession. This is because 'lawyers committed to using their professional work as a vehicle to build the good society help legitimate the legal profession as a whole' (Sarat and Scheingold 1998).

The discourse of internal coherence of the legal profession is challenged, however, in a context of increasing specialisation of practice within the field (Boon, Flood, and Webb 2005). To conceive of internal specialisation simply as part of a process of professionalisation, overlooks inherent contradictions and complexities between the two (Moorhead 2010, p. 227). This is because 'professions generally announce undivided *oneness*… [and this structure] is likely to be threatened if special interests burgeon within it and demand specific attention and resources' (Prabhat and Hambly 2017, p. 1514, italics in original). Prabhat and Hambly provide the useful notion of

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boundary setting to examine both processes of professionalisation and professional specialisation, extending this dynamic to those groups referred to as 'paraprofessionals' (subsidiary practitioners with the authorisation to advise on specific areas), who are 'at the boundaries of the practice; present inside but still quasi-outsiders' (Prabhat and Hambly 2017, p. 1514). This is an important intervention as this thesis argues for an investigation of actors beyond those who are commonly accepted to be part of the legal 'profession' in the field of British-Muslim family law. The group of people known and represented as legal professionals, such as solicitors, plays a specific role in creating and maintaining the dynamics of the field, but also other actors, professionalised due to their access to specific knowledge and symbolic capital in the field such as scholars on boards of Sharia councils, participate in the professionalisation of the field through dynamic boundary setting.

In British-Muslim family law, I argue, the boundaries between professionals and lay persons are *in the process* of being negotiated in the context of specific pressing issues, for example regarding the authority to issue Islamic decrees in Sharia councils in Britain, or in online fatwa forums.[47] This is exemplified by Shaikh (Dr) Haitham Al-Haddad, who also sat on the board of the Islamic Sharia Council (ISC) in Leyton until 2014. He explains that marriage dissolution (faskh) can be performed by a person only 'once being recognised as an Islamic judge... However, the judge has to be appointed either by the leader of the Muslims, or by the Muslim community, or at least recognized as being an Islamic judge by the vast majority of the Muslim community. Merely being an *imam* neither suffices nor authorises him to dissolve marriages' (Al-Haddad 2010, spelling and emphasis as in original). Discussions like these arguably are an expression of the present struggle over authority to determine the rules in the field of British-Muslim family law. Clearly, there must be a considerable number of *imams* who are claiming this authority since Al-Haddad is addressing them in his statement. While in the English legal system paths to access and definitions of professionalism remain open to further change and contestation (Mather, McEwen and Maiman 2001, pp. 3-7) and studies have demonstrated a certain 'weakening of the profession's capacity to control entry into legal training' (Sommerlad 2011, p. 73; see also Sommerlad and Sanderson 1998), professionals in the field of law have played an important role in reproducing traditional authority and

[47] See Bowen (2016) on the contested authority of Sharia councils.

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maintaining the status quo (Sommerlad 2011, p. 98). What is more, the status quo is much more settled compared to processes of professionalisation in the British-Muslim legal field. Paths to access and the distribution of social and symbolic capital in the field depends on formal routes as well as strategic positioning of actors in related fields. Furthermore, in an incipient field with more fluid boundaries, the scope of individual actors' intervention is greater. Flood and Lederer as well as Dezalay and Madsen call on researchers to move away from exploring the self-referencing legal system, to studying the actual actors in the legal field (Dezalay and Madsen 2012; Flood 2012; Flood and Lederer 2012, p. 2514). This is important for the study of British-Muslim family law as it helps shed light on how actors position themselves within and across related fields.

5.2.2. Multi-positioning of actors

The process of professionalisation not only produces a division between professionals and lay people, but also effects multi-positioning of actors within the group of professionals. By using the idea of multi-positioning (Dezalay and Madsen 2012, p. 444), I draw attention to the fact that Bourdieu's theory of the field is relational, which means that an actor's social position within certain fields relates to their position in other fields (Bourdieu 1986b). This is an important point in my argument that professionalisation as a process in the British-Muslim legal field – while producing a distinguishable group of professionals – does not result in homogenising them as a singular group of legal professionals. Rather, it encourages actors to strategically position themselves within and across different yet related fields to increase their influence in British-Muslim family law and to handle the uncertainty involved in practicing in an emerging, fluid, and changing environment (Flood 1991).[48] In their study of transnational lawyers, Flood and Lederer provide examples of how individual professionals draw on their knowledge and experience in multiple areas to carve out strategic niche positions for themselves in the legal market. Flood and Lederer used the career of one particular cosmopolitan lawyer as an example. They argue that his role can be understood 'at the most mundane level [as] mixing together different legal cultures'. However, 'at a more subtle level of complexity, [the lawyer in question] brought about a refocusing of the institutions in play from being atomized elements to

[48] Flood argues that legal practitioners have to manage different kinds of uncertainty, one of them being in situations that involve handling not 'law per se' and where 'book learning' is not an option (Flood 1991, p. 44).

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becoming powerful cohesive organizations with global reach. The discourse of differences had to be reconstituted into a conversation of commonality' (Flood and Lederer 2012, p. 2537).

In my research, I observed how many influential figures in the British-Muslim legal field present themselves as holding qualifications in *both* areas of law, Islamic and English, to strengthen their authority. A number of solicitors I interviewed emphasised that they completed their post-graduate studies in Islamic law in addition to their law degree, or took on further study in a particular area of Islamic law. There appears to be a distinct advantage in being able to demonstrate expertise in both areas for gaining authority in the British-Muslim legal field. The dynamic of multi-positioning is not limited to Muslim and English law but also involves politics and private business for instance. Like in other specialisations such as immigration and nationality practice, key influential actors play a crucial role in the circulation of ideas and cross-fertilisation between fields, the boundaries of which remain by definition always permeable. For example, one of the most prominent and public figures in the area of British-Muslim family law is Aina Khan who launched and currently heads the Islamic & Asian division at Duncan Lewis Solicitors, which is a major firm in the UK offering a variety of legal services not limited to Islamic legal services.[49] Aina Khan advertises her expertise in that she 'has developed her niche specialism in Islamic Family law over 20 years, providing pioneering solutions which work under English as well as Sharia law' (Duncan Lewis Solicitors). Apart from her practice as a solicitor, she is also active in the political field where she is on the Ministry of Justice's Working Group on Unregistered Marriages. She launched the ROM 'Register Our Marriage' campaign, which advocates mandatory registration of Muslim marriages to ensure their validity under English law. Her involvement in the field of politics is not limited to recent activity only. In 1997, she was a Parliamentary candidate (Liberal Democrats) for Ilford South. Aina Khan's longstanding involvement in multiple positions across legal and non-legal fields is an example of the accumulated symbolic capital gained through these networks.

Actors maintaining multiple positions in different fields contribute to the British-Muslim legal field emerging as hybrid through their practices, discourses and

[49] According to Legal 500 the firm currently serves approximately 20,000 clients per year in 20 areas of law, with 36 offices throughout the UK and employs over 500 members of staff (Duncan Lewis Solicitors).

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backgrounds. What helps the British-Muslim legal field to retain *coherence* despite the lack of a defined path to access is that many of the individuals working in it professionally recognise each other on a personal basis and form a network that reinforces mutual trust and dependence – something referred to as 'local legal cultures' in other studies (see Mather, McEwen and Maiman 2001, pp. 10-11). This is not surprising given the field's (still) rather small size compared to other areas of law. While practice in British-Muslim family law cannot be considered as an elite segment of the legal market in the UK in terms of high profit margins or service to mainly elite clients, professionalisation and specialisation of 'experts' matter for practitioners as well as clients whose needs demand high quality services at affordable prices (Prabhat and Hambly 2017, p. 1513). Yet, as a smaller area of specialisation 'at the margins' the group of professionals associated with this specialisation remains easily identifiable. While the field is undoubtedly flourishing, with new practices opening between my first set of interviews in 2013 and the second set in 2015, legal professionals create plenty of opportunities to communicate with each other, meet at events and follow each other's professional development. This is not to say that it is a single personal-professional network that underlies the British-Muslim legal field. There are at the same time many firms or individuals that are not part of the circle of professionals who have a more public profile and seek to engage regularly with their peers. These areas of practice would then represent the outer margins of the field where professional, intellectual and procedural ties loosen and the influence and authority of the central figures weaken.

The structures enabling legal professionals to play an influential role in British-Muslim family law are related to existing pathways to power and their positions in multiple fields, which distinguishes professionals from lay people. Yet, the notion of 'professionals' must be approached critically not as a definite marker of un-contestable authority but rather as referring to a process of professionalisation and struggle for power in law. When our focus is turned to questions of power, solicitors' practices represent a particularly strong position inside the field that harvests different types of capital including symbolic and economic. A manifestation of different concentrations of capital and exchanges between them can be found in the market of Islamic legal services. This market is intrinsically linked to the field's other key building blocks.

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5.3. The market and legal professionals

As discussed above, legal fields function, change and sustain themselves internally through generating a logic of practice for those involved. The development of a legal field is inseparable from the constitution of a corresponding legal market. This is because professionals create the need for their own services by rendering problems expressed in 'ordinary' language into 'legal' issues. Formalisation or 'legalisation' of a dimension of social practice therefore creates new legal needs and new legal interests among those who, having technical-specialist expertise, find in these needs a new market. Bourdieu understands the market as socially produced relations of exchange where various forms of capital gain legitimacy. What is useful about Bourdieu's approach is his analysis of metaphors of capital that incorporate cultural, social, symbolic or physical capital into the approach so that economic capital is neither primary nor signular (Bourdieu 1986a). As Dezalay and Madsen explain further: 'a field constructs its own particular symbolic economy in terms of the valorization of specific combinations and forms of capital (social, economic, political, legal, etc.). The process of capitalization results from the struggle between the agents over gaining dominant positions in this social space, a process fueled by interest, dedication, belief, etc., in the issues at stake' (Dezalay and Madsen 2012, p. 441). Similarly, Dingwall argues that sociological investigations should abandon the quest to arrive at a 'correct use of the term "profession"' and instead treat it as a contingent notion that is 'invoked by members of particular collectives' in a particular time and place (Dingwall 1979, p. 331).

Legal professionals as understood in this thesis are not only solicitors and barristers on the private legal market. They also include Sharia councils for example, which may be registered charities and so do not make profit as such from their services. However, they still enter a 'market' of supply and demand for particular legal expertise emerging in the interaction between Muslim and English law. By engaging in the field and competing with other similar providers Sharia councils also enter into an exchange between professional and non-professional actors. Yet, the idea of a market is more complex than a simple supply and demand equation (see for instance Freidson 2001, pp. 61-62). Less so for Islamic wills, or for Islamic finance, but particularly when it comes to Muslim divorce services one has to consider that the reason these

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services (mainly provided by Sharia councils) exist is an unequal power distribution between women and men legal subjects, with the unilateral right to initiate divorce restricted to the husband. Where husbands refuse to grant a Muslim divorce or where the marriage was not registered civilly women do not receive matrimonial rights protection and ancillary relief through English courts. There is evidence to suggest that women are at times coerced or at least implicitly pushed into accepting a Muslim marriage only without going through an English legal registrar (Bano 2012).[50] From this perspective, the idea of a market is misleading as it implies a free-choice element on behalf of the receiving party of the legal services, and ignores gendered power imbalances. This uneven distribution of resources and the related gender dynamics are important for understanding inequalities in social power. Markers of hierarchy and gender stratification need to be included in the analysis and will be discussed in more detail in chapters six to eight. The notion of the legal market in this thesis is clearly located within a context of complex and gendered power differences, questions of agency, or predetermined social structures. It is not about uncritically adopting a neo-liberal idea of a market as an imaginary playing field for fair competition between equal actors. Rather, the concept of a socially-produced market is closely related to the idea of a logic of practice where it makes (practical) sense for the individuals involved in the legal field of British-Muslim family law to seek professionalised, legalised services – in exchange for a fee, but not necessarily for profit – to cater for their specific needs. These needs result from a time and place specific situation, embedded in wider social trends, in which Muslim citizens in the UK find themselves navigating their personal lives between Muslim law and English law when it comes to marriage, divorce or inheritance.

While I maintain that it is not a 'free' market in the neo-liberal sense, it is nonetheless important that the market of Islamic legal services, as provided by solicitors rather than Sharia councils, is one of private legal practice (see Scheingold 1974 and White 1990 on education and socialisation in law). In the private legal market,

[50] A number of solicitors I spoke to believe that the majority of women who do not register their marriage through the English legal registrars are either not aware of the fact that they do not have a valid marriage under English law, or are coerced by the husband or family into giving up the additional financial protection provided by civil registration. Others are of the opinion that most women are indeed aware of the fact that nikah 'contracts' are not binding under English law but, upon divorce they decide to make financial claims by referring back to the conditions of the contract and claiming they were not aware of its lack of validity under English law. Further empirical research will be needed to give a clearer picture of how women deal with nikah contracts and their decisions on whether to take them before English courts or attempt to enforce them through law firms or Sharia councils.

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professionalism and competitive advantage are key markers. Professionalism generally is available as 'symbolic capital' to those working in the field but its 'elasticity…means that it can be appropriated and deployed by lawyers representing a wide range of interests and approaches to practice' (Sarat and Scheingold 1998, p. 11). One marker of a discourse of professional service-orientation is that private legal practice offers a more diverse range of services than Sharia councils. Aina Khan at Duncan Lewis Solicitors, for instance, lists the following specific issues she deals with

> Couples who have had only an Islamic marriage, so are not legally married under English law and do not have matrimonial rights; Women seeking an Islamic divorce to which their husband does not consent; Women wishing to recover their 'Mehr' (Islamic marital finance settlement) under English law; Dowry & Wedding Jewellery disputes; Couples wishing to have tailor made Islamic marriage contracts and Prenups; Expert Opinions for court, other solicitors, Social Services etc. on complex issues such as validity of marriages and divorces; logistics of placing children abroad in Muslim countries (Duncan Lewis Solicitors).

Another aspect of professional positioning is that Islamic legal services offered by solicitors are advertised by highlighting their competitive advantage or by focusing on the potential benefits for clients if they were to choose a particular law firm (specialist knowledge becoming an asset). Advertising and positioning of private practices are very important in a context of technological development as well as increased competition in the legal services market (Sommerlad 2002, p. 215). The language reflects the private business context in which solicitors operate in firms with the need to generate business (Sommerlad 2011), and how they see themselves as different from other legal professionals in the field, as I shall argue in chapter seven. For example, Slater & Gordon Lawyers advertise on their website as follows: 'our Islamic legal services division can provide you with the best possible legal advice under English or Welsh Law…We can deal with all areas of Islamic legal advice and provide you with the right solution for your needs' (Slater & Gordon Lawyers). Another firm, Carter Law Solicitors offers a 'team of in-house Muslim Lawyers…on hand to offer sharia-compliant legal services to our clients who wish to conduct their legal matters in accordance with their faith…We can assist you with a range of legal services that are fully compliant with both sharia law and the British legal

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system…Many legal firms often advertise Islamic Solicitors and Legal Services, but very few can provide the same service that Carter Law offers' (Carter Law).

A specific aspect of the Islamic legal service market is of course the accommodation of clients' requirements relating to their faith and thus in their public profiles, firms and solicitors highlight an Islamic emphasis of their work discursively and visually. Yet, it is necessary to note that this positioning in the market is not only about doing well in business terms but also about 'doing the right thing' from a perspective of personal ethics and faith, as will be elaborated in more detail in chapter seven (see also Menkel-Meadow 1998, 2013). It could easily be assumed that socially committed lawyering did not take place in private practice. However, Trubek and Kransberger, focusing on the US market but making a more general point, argue for a reconsideration of this 'assumed separation between socially conscious lawyering and private practice' (Trubek and Kransberger 1998, p. 201). Certainly, in the field of British-Muslim family law this is also the case.

However, being located in private practice of law means that economic profit is a deciding factor for solicitors' work to continue and grow (Mather, McEwen and Maiman 2001, pp. 155-156). Without generating monetary income, solicitors offering Islamic legal services would not be able to continue their practice. Here I would like to link back to section 5.1. where we looked at different aspects of legal 'privatisation' in the current socio-political context. Apart from a clear policy to encourage family dispute resolution outside of English courts and the cut for legal aid for the majority of family law cases, another form of legal privatisation relevant to the emergence of British-Muslim family law is precisely the currently evolving market. I argue that the solicitors' service market flourishes within a context of multiple drives for privatisation. Related to this is a drive for entrepreneurship – fuelled in parts by a tougher economic environment post-2008 and cuts to legal aid practice more recently, and various other challenges to the monopoly of the legal profession and resulting loss of traditional profits since the second half of the twentieth century (Abel 2003, pp. 472-75). Menkel-Meadow observes that 'some of the younger generation of lawyers and recent graduates (those under or unemployed or unhappy with conventional legal practice) have begun some forms of new entrepreneurial activity to launch new sectors of legal or quasi-legal practice…hoping to combine profitable work with social good' (Menkel-Meadow 2013, p. 396). The development of the private Islamic legal service

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market is therefore possibly a sign of its embeddedness within current social trends rather than an expression of incompatibility with or an uncoupling of Muslim legal practices from the mainstream. The logic of the British-Muslim legal field is that its hybridity is sensible (though by no means without contestation or conflict) for its actors who are providing and buying services on its market. This is precisely what is missing in debates conducted at the abstract level of compatibility-incompatibility, East-West, law-religion, which produce hypothetical paradoxes that are paradoxical only because 'East', 'West', 'Islam' 'the secular' and other comparable terms are employed in their essentialist meanings.

5.4. Conclusion and outlook: The legal field and the role of the subject

To sum up, this chapter conceptualised British-Muslim family law as an incipient field on the borders of English law where it is emerging. Regardless of whether the field becomes formalised and recognised, this thesis makes the case that it is nonetheless an incipient *legal* field. To understand British-Muslim family law, its institutions, and its subjects, it is necessary to also explore the dynamics underlying the field, such as formalisation, materialisation, professionalisation and the formation of an interdependent market of legal services. Therefore this chapter detailed the field's background and structures, as well as the processes through which it is arguably emerging. By bringing broader societal dynamics into the analytical framework, this chapter demonstrated how a field is a site of struggle between differently positioned actors competing for social and political power and authority. Therefore, current practices in British-Muslim family law are of interest not only as emergent legal field in its own right but also as a challenge to common understandings of law and citizenship in multicultural Britain.

This thesis aims to give weight to both contextual and subjective factors in the construction of the field of British-Muslim family law. By combining both perspectives, it seeks to provide an account that addresses complex questions: What does it mean to be 'British-Muslim' in the legal field? What rights claims are being made in the British-Muslim legal field? To what extent do people have to claim rights under the umbrella of 'citizenship' in order for their actions to be conceptualised as citizenship struggles? The following chapter engages with these questions, taking as

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its focus the experiences of individuals who conduct themselves as legal subjects in the field, seeking to provide justice and redressing injustices. One of the major motivating factors for engagement in the field, especially for legal professionals, is the notion of gender justice. While not necessarily expressed in this way, these everyday engagements in the field contribute to the strengthening of rights claims to go through the legal process *as Muslim*. They intervene in questions of what it means to be a citizen today, what rules there are to follow, what are the rights and responsibilities in family law practices. The next chapter also explores how we can usefully conceptualise these everyday practices and claims as expressions of a right to differentiated citizenship.

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Chapter 6. Claiming rights and seeking justice: Citizenship, gender, and orientalism

> *On the one hand, the government is cutting legal aid because they want people to go to alternatives; but when they choose alternatives such as a Sharia council, they close down and say that's not an alternative you can go to (Rania).*

I chose the title of British-Muslim family law as a site of *citizenship* for this thesis because the findings of my research have clear implications for how we think about citizenship. This thesis is about citizenship because it is about justice and rights as will be discussed below. It argues that British Muslims renegotiate their citizenship through practices of British-Muslim family law in the everyday. Thus, the focus of this thesis is law but the argument it makes is also a political one. This is no contradiction, I argue, as both law and the political are part of the social field. While chapter five draws more on contextual information of the field and its market, in chapters six to eight, I mainly rely on the interview data that inspired and motivated me most during the past years of conducting research in this area.

If going through the legal process is significant for people's sense of themselves, what does it mean to be 'British-Muslim' in the legal field? What can the emerging practices and subjectivities tell us about the right to differentiated citizenship? What role does gender play in the constitution of everyday citizenship practices in the field? And to what extent can investigating British-Muslim family law contribute to bridging opposing conceptions of 'citizenship in law' versus 'citizenship in practice' (Werbner and Yuval-Davis 1999; Isin and Turner 2002)? This chapter explores different ways in which citizenship struggles shape the field of British-Muslim family law. Section 6.1. starts by looking at the rights claims that are being made in the British-Muslim legal field and at the different ways of understanding the notion of 'right'. It also discusses how conceptions of justice and injustice feature in the emerging field. Of central importance is gender justice, which is the focus of section 6.2. This chapter analyses how questions of gender play an important role for those engaged in the field as well as scholarly work. It investigates different notions of Muslim women's agency as these are central to the debates on gender equality and orientalism. Finally, section 6.3. explores how we can possibly explain the everyday practices in British-Muslim

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family law as expressions of a right to differentiated citizenship and what the challenges and limitations to such an approach would be (Young 1990, 1989; Rosaldo 1994; Modood 2005; Malik 2006; Lister 2007; Ghorashi 2010). This chapter argues that such an approach provides a useful angle from which to explore various tensions between inclusionary and exclusionary forces of citizenship. This is helpful in understanding why practices of British-Muslim family law are often not seen as expressions of citizenship especially when looked at through the frame of gender equality and the question of agency.

6.1. Citizens claiming rights and seeking justice

Before going into more detail on the implications of British-Muslim family law for citizenship, it is necessary to briefly note two different conceptions of, or approaches to citizenship, the difference between which lies at the heart of my argument: modern citizenship, as the dominant legal concept of British citizenship in politics and public discourse, and citizenship as political subjectivity. Both are essential to my argument that British-Muslim family law is a site of citizenship and yet not easily recognisable as such (for a more detailed discussion of the two contrasting conceptions of citizenship, see section 3.2.1). On the one hand, modern citizenship is based on the basic tenets of state, law and territory (Heater 1990; Behnke 1997; Pakulski; 1997; for the link to orientalism see Isin 2005, 2015). On the other hand, citizenship can be conceived as political subjectivity in the everyday not understood as 'a status given by the institutions of the modern constitutional state and international law, but negotiated practices in which one becomes a citizen through participation' (Tully 2009, p. 248; see also Werbner and Yuval-Davis 1999; Barnes, Auburn, and Lea 2004; Desforges, Jones, and Woods 2005; Staeheli 2011; Isin 2012; Clarke et al. 2014; Tully 2014; Kallio, Häkli, and Bäcklund 2015). Further, 'what makes subjectivity political is not only that it is creative, inventive and autonomous but that it also *articulates an injustice and demands or claims its redress*. It is this demand or claim that gives birth to political subjectivity and its expression to rights' (Isin 2012, p. 109, my emphasis).

The routinised practices of the everyday evolve around issues that matter to individuals engaged in British-Muslim family law. These issues are interrelated with wider public debates but through the prism of personal experience and perceptions.

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Young argues that 'people necessarily and properly consider public issues in terms influenced by their situated experience and perception of social relations' (Young 1989, p. 257). As the field of British-Muslim family law is constituted in a particular, gendered way rights claims are often brought forward by women. These are for example claims by women to regain unpaid dower or seek divorce, the unilateral right to which is reserved for the husband in Muslim law (see section 1.4.). The perspective of the everyday thus brings to light that citizenship is not a gender-neutral space. In British-Muslim family law and society as a whole, who inherits what proportion the relatives' estate, who has the freedom to divorce or marry and to what conditions, who is responsible for the upbringing of children are determined by gendered structures with those subjects gendered as women facing inequalities. Such inequalities, however, are erased in conceptions of the modern citizen subject that is based on the blueprint of the white male public figure (Cavarero 1992).

An investigation of British-Muslim family law as a site of citizenship constituted in the everyday highlights the operation of power relations within families and the role of the family in shaping social life, including citizenship. In drawing on feminist scholarship on citizenship, it also challenges the notion of a divide between the spheres of the public and the private (Pateman 1989; Young 1990; Lister 1997a). It is important to emphasise at this point that to take up a perspective of citizenship in the everyday is not an uncritical reproduction of the patriarchal divide between the public and the private, where the politics of subordinate groups such as women is thought of as belonging to the informal or domestic spheres. On the contrary – similar to legal pluralism scholarship's impetus to challenge legal positivist and centralist conceptions of law – a focus on citizenship in the everyday requests a redefinition of the 'political' more broadly 'so as to encompass the kind of informal politics in which women often take the lead and the struggles of oppressed groups generally' (Lister 1997b, p. 33).

Within this conceptual framework, this chapter argues that individuals in the field of British-Muslim family law constitute themselves as citizens by either claiming rights or addressing injustices that they experience or witness in their lives. In the following section, I will discuss in more detail the two different connotations of 'right' in British-Muslim family law as well as the struggle for providing justice in a plural legal setting.

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6.1.1. Legal, political and ethical right(s)

The language of 'right(s)' can be used in a variety of ways to engender political support to protect them (Banakar 2010; Brysk 2013). Research on the various influences of 'rights' on political but also cultural and social aspects of life has demonstrated that rights can be conceived of more broadly than 'quintessentially formal legal entitlements and as universal normative claims' (McCann and Scheingold 2012, p. 200; see also Scheingold 1974; McCann 2012). Thus, it clearly depends on the specific context how articulations and enactments of right(s) bring about particular political subjectivities. In the area of British-Muslim family law, the language of 'right' has two connotations. First, the language of 'right' is used by interview participants in the political-legal sense of citizens claiming the right to marry or divorce following Islamic norms or the right to a dower payment on separation. Second, the term 'right' is used to symbolise a value when people speak about what is right or wrong ethically or professionally in their day-to-day practice as solicitors, or what is considered right (or halal) from an Islamic point of view. De Jong discusses this relation between notions of 'right' and 'good' in the increasingly professionalised context of female NGO workers focusing on women's rights in the global South. She aptly sums up that 'the women not only want to "do good", they also want to "do it right"' (de Jong 2017, p. 195). In order to get an idea of the multiple articulations of citizenship, this chapter explores the different ways in which interview participants understand the term 'right' and express claims to justice or redress of injustice.

Mousa deals frequently with couples divorcing in English and Muslim law. He is able to advise on English law as well as Muslim law and liaises with a local Sharia council for Muslim divorces. In his experience it is at key moments in life when British-Muslim legal subjectivity is constituted through negotiation between questions of legal entitlements and ethical considerations both in Muslim and English law. This is not only the case for people who, according to Mousa, would consider themselves as giving great weight to Muslim ethical considerations in other areas of their lives. Things are different when it comes, for example, to making decisions regarding the upbringing of children.[51] Within one statement, Mousa uses the two conceptions of the term right described above:

[51] This was also the case for Jill and her husband, where the upbringing of children was central to making decisions about family arrangements. Jill got married to her husband over 30 years ago and only later converted to Islam. When they got married her husband insisted on making sure that the

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> I would also say that upon separation one of the key concerns of my clients is where should the children go? And they try to do that in line with Islamic principles as well. But this is also to do with haqq mahr and dower. A lot of clients say well *this is my right*, this is my dower, what can I do to get it back? …That's another facet of life when people turn to Islam and *ask themselves if this is correct Islamically* and probably these will be the same people who will not be practicing Islam in their lives (Mousa, my emphasis).

Two different notions of right emerge here. First, there is 'this is my [legal] right' to claim a contractually set amount of dower. Second, asking 'if this is correct Islamically' calls on a different register of ethical or religious correctness. Let's explore these two notions in more detail. The mahr (or 'haqq mahr', the Muslim dower) can be seen primarily as a Muslim legal entitlement as it emerges from the nikah contract. Because of the contractual characteristics of the nikah contract, people are not necessarily aware that this is not a marriage contract recognised under English law. Mousa does mention that there is the possibility of enforcing the mahr through English law with the help of specialist solicitors because 'when a husband doesn't pay the mahr he is potentially deemed to be in breach of contract' (Mousa).[52] However, in practice, this is potentially a complex process and only works for a minority of cases. The sense of entitlement created through the materiality of the practice of entering a contract of marriage and a prenuptial agreement as to what should happen in case of divorce, is not limited to the English legal framework but is negotiated across both Muslim and English law, ethics and custom. Not all women will their take claim to mahr to a solicitor or an English court. Some will not claim it at all. Some clients take their claims to mahr to Sharia councils that do manage to have mahr returned to women but again this is certainly not the case for everyone. A case from a Sharia council concerned a haqq mahr that was stipulated at £20,000 in the nikah contract. After many re-iterations, letters, phone calls and interventions by the council the

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'Islamic upbringing' of any future children was agreed should the marriage not be successful. On Jill's initiative, they sought out a solicitor who drew up a document confirming her commitment to raise any future children in conformity with the Muslim tradition of faith. They took this document along to the mosque in England where their Muslim marriage took place, which was subsequently registered under English law.

[52] One reported case where a £15,000 mahr payment of a Muslim marriage not registered under English law was enforced through an English court is Uddin v. Choudhury, [2009] EWCA (Civ) 1205, available at http://www.bailii.org/ew/cases/EWCA/Civ/2009/1205.html. In this case, 'the court case concerned obligations to pay, not the terms of a divorce settlement' (Bowen 2010, p. 423). The Court of Appeal thus 'recognized the Islamic law concept of the payment of a marriage dowry to a woman as part of an action for the enforcement of a valid contract' (Malik 2014, p. 94).

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husband agreed to return £10,000 and brought the sum of money to the council to hand over to his former wife in the presence of the Sharia council scholar and the administrator.

These examples show that power imbalances in gender relations result in complex positioning for women. On the one hand, experiences are productive of a subject that encounters injustice and seeks redress by establishing synthesised rights claims across English and Muslim law (English law of contract and Islamic legal provisions on responsibilities of the divorcing husband). On the other hand, the complexity and multiplicity of avenues available as well as the prospect of potentially unsuccessful attempts at realising justice, produce a particularly gendered subject that lacks the power of certainty of her rights and also remains dependent on a broker figure (often but not always a man in a position of authority) to support her claims to justice in the first place. This is important for conceptions of citizenship in contemporary Britain in the following way. The gendered subjectivities of Muslim women in British-Muslim family law call into question the possibility of a fully autonomous and equal, universalised citizen subject. They illustrate that the formulation of rights claims and the realisation of justice are always dependent on social-relational structures that are, in a Foucauldian sense, never free from power. Rights claims in British-Muslim family law stretch across English and Muslim law.

The claim to mahr is based on a certain understanding of law and the expectation of valid contract, but is also linked to a sense of what is ethically correct for Muslims. It creates and maintains an expectation of justice and rights in people that is articulated through the legal field when people seek solicitors' assistance or by taking the claim to one of the Sharia councils. Whether or not the claim is ultimately successful is important of course but it is not the sole factor in creating British-Muslim legal subjectivity. Samira's comment about her practice also refers to these two notions of rights when she says

> [In my work] Sharia law does play a huge part on two different scales. You've got perception of religion and culture that you have to break through especially when you are trying to empower women by convincing her that she's done the right thing by leaving the violent partner. And then you've got the barriers to a woman even asking for a divorce because a lot of women don't think that they are entitled to even ask [for a divorce]. So when you actually explain to them

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> that Islamically [legally] it is not incorrect, there is a provision there for you to issue those divorce proceedings if that's what you want, suddenly it's another step to empowerment (Samira).

In describing her work with Muslim women, Samira refers both to ethical and legal rights: It is ethically right to leave a violent partner and there is also a legal claim for a woman's right under Muslim law to initiate divorce (in a mediated way and not unilaterally as it is the case for the husband). The question of ethics, however, is not limited to the quest for doing the right thing for oneself personally. In an interesting variation of the idea of doing the right thing from a personal-ethical point of view, Rania asks herself if she can support practices that are not right according to her personally but which overall will allow herself to conduct her life the way she aspires to. In relation to a discussion on Muslim minority law, also known as fiqh al-aqalliyyat, Rania gave an insight into her thinking about rights of minorities:

> We are living in a country within a non-Muslim society, first of all we don't have a blueprint for it [Muslims permanently living as minority] because no Islamic history has had put in place laws in that way… So we have to put Islam in place as a minority along with other minorities. I think it's important for Muslims to fight for all minority rights in order strengthen our position (Rania).

She gave the example of recognising same-sex marriage and continued 'while I may not support same sex marriage, I support the government taking its definition of marriage away from Christianity because that's the only way that I can get my definition of marriage recognised as well'. Personally, she arrived at the following conclusion: 'I don't have to support other people's morality but if I want to live in society where my freedoms are protected I have to allow other people their freedoms as well'. Rania's concern was about a question to herself if she could 'politically' support something that she 'morally' did not support personally? There is thus a relationship between abstract political entitlement and personal claims to an ethical life. Questions of how to govern family in diverse societies are framed by Rania in a language of state law as well as Islamic law as the 'blueprint' for rules of negotiation of living together. Rania's reflections brought to light yet another facet of the different understandings of 'right': what is a political right and what is ethically right? There is a complex tension between personal ethics and political entitlements in the diverse

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citizenship of contemporary Britain. These tensions clearly exercise Rania, especially in the field of family law and how family relations should be governed by the state.

6.1.2. The claim to 'justice'

Isin broadly conceptualises the citizen as a subject who becomes political because they redress an existing injustice (Isin 2012, p. 109). In the field of British-Muslim family law, claims are framed less against the background of 'injustice' but rather in relation to providing 'justice', which links to the strong ethical and religious connotation of the conversations I experienced. Mohamed – who from his experience in community services recognises the need for something *different* than what is already available to guarantee justice for all citizens – sees the need for a special system that takes care of dispensing justice in a multicultural society. He argues that 'if you are going to have different people of different demographics, therefore you are having people with certain problems like divorce problems...Let's have a system [to dispense justice] that's…a proper, clean, transparent system' (Mohamed). A system that is properly done and capable of providing justice for all citizens from various demographics is something that is closely related to Mohamed's own plans for the community centre he works on. Kate, however, from her point of view as a practicing solicitor of many years is less optimistic about an easy solution to the challenges a diverse citizenry is posing to the English family law system. Kate herself is not Muslim but came to practice at the intersections of English and Muslim law. Her practice evolved over the years through clients and agencies recommending her services. Kate is aware of how complicated such a 'system' would be and highlights the difficulties of providing justice when Muslim law crosses the path of the existing English legal system and its professionals. She also highlights the potential for injustice at these legal intersections, or as she says the potential for 'harm' being done. She explains the challenges of implementing a justice system sensitive to diverse legal needs by using the example of a recent case:

> What I have really learned in my practice is the fact that there are complexities, that if you just treat somebody as a generic white British client and think that they are no different to a white British client who is Christian and then apply the law accordingly, then that client is going to have a very difficult experience, I think; not just with the relationship with the solicitor but also with the relationship with the whole Court experience if it goes to Court, because so much of their lives will be ignored, left out, abandoned. For

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> example part of my job is to explain to the judges, and often other solicitors what barriers there might be. For example, I was working with an Egyptian couple who had separated, they had divorced, and then they wanted to reconcile. And in order for them to do that they would have to marry someone else, have an official relationship with someone else, then divorce them and then get married again. And explaining that to a…judge was difficult. It was very, very important to them but the judge just didn't get it – it was all kind of stuff … – so I think that is a troubling aspect of the job…I think if people don't approach it in [a sensitive] way then there is the danger of doing more harm than good as a lawyer practicing in the UK – a white British lawyer practising in the UK (Kate).

This comment illustrates how Kate is motivated by a desire to minimise potential injustice, or in Kate's words 'doing more harm'. The 'white British lawyer practising in the UK' plays an important part in either doing harm or helping citizens find resolution and an equitable solution in between different normative structures. The two figures she invokes in her story are representative of two subject positions that lack the knowledge, or willingness to take into account the full range of influences that make up British-Muslim subjectivity as it is being represented (and constituted) in an English court. Kate is eager to explain the hybridity at play in what is important in her clients' lives. She therefore not only translates her clients' wishes into terms and ideas comprehensible to English law, she effectively contributes to constructing British-Muslim subjectivity through the legal process. She does this out of a motivation to enable an outcome for her clients that takes care of both their Muslim as well as English legal needs (which in the case of the Egyptian couple means to marry someone else 'officially' in order to marry the same person again under Muslim and English law). There is a sense that she fears without her intervention an English family law judge or solicitor would cause injustice and harm – a thought that 'troubles' her.

Although Kate is not Muslim herself, this is an injustice, or a grievance she closely feels affected by in her day-to-day work, even if a particular court decision would not affect her own family life. While she might not frame it as citizenship struggle but rather in terms of a legal issue, in her attempts to redress this legal injustice, I argue, she enters the realm of citizenship. In an understanding of citizenship as negotiated

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practices (in the everyday), citizens become such through participation (Tully 2014). Kate participates in the socio-legal fabric of society when she engages with her clients, attempting to achieve a just outcome for them. She acts as a citizen by realising and claiming her clients' rights to have Muslim legal aspects of their lives addressed in addition to English legal considerations. Importantly, the injustices she identifies in the system do not affect her personally but her fellow citizens. She conducts herself as a citizen as she engages in how family law is governed in British society no matter if she is seeking justice for herself or others. Thus, claiming rights and seeking justice as a citizen engaged in the British-Muslim legal field is not limited to personal-individual rights but extends to fellow citizens more broadly. The examples of Kate and Rania also illustrate how subjectivity constituted through engagement in the British-Muslim legal field is 'relational'. It is relational in the sense that one's own position is constructed and perceived in relation to other figures in the social realm, for example same-sex married couples, the white British solicitor or judge. Kate's account constructs the figure of the solicitor in British-Muslim family law as someone who is experienced in Muslim socio-legal norms. She uses a dynamic of differentiation when she juxtaposes herself against her 'white British' counterpart. Through her work and specialism she takes on the subject position of a British-Muslim solicitor without necessarily being Muslim herself.

Justice and injustice are experienced around concrete themes in British-Muslim family law, especially divorce problems and issues relating to marriage practices. Most noticeably, one of the dominant narratives of justice relates to gender justice or justice for women in the field of British-Muslim family law, which stretches across marriage, divorce, the upbringing of children and inheritance due to the gendered particularities of the constitution of the field.

6.2. Gender justice: Complex challenges and transformative potential

As interview excerpts will illustrate, it is often notions of gender justice that motivate interventions and engagement in British-Muslim family law. Gender justice is referred to broadly in two sets of interrelated concerns: first, with regards to the legal rules affecting the welfare of women and, second, regarding the representation of women in positions of authority within the legal field. The latter, I argue however, is not merely

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about ‘representation’ but also about who is making and interpreting the rules and negotiates participation of women in this process. This is why I refer to a transformative potential in section 6.2.2. The question of *who* interprets the conventions according to which we marry, divorce, bring up children and deal with inheritance is more than a simple matter of applying the correct rules. This is because there is *relationship* between ‘the private’ and ‘the public’ (Pateman 1989, p. 183). Feminist scholarship illustrates how public and private spheres can interrelate to produce exclusionary effects of modern citizenship, which is a gendered concept (Lister 1997b, pp. 38-42; Walby 1994). For example, the public is sustained and supported by the private arena and care responsibilities often restrict women in participating in decision making in the public (Walby 1994; Lister 1997a). Involving an increasing number of women solicitors in British-Muslim family law opens possibilities to break-up this divide, however, this must be approached with critical caution as will be outlined below. At this point, I would like to link to chapters three and five that explore in more detail how the legal profession remains dominated by patriarchal structures and social practices. The profession in itself is thus a gendered space intersecting also with other inequalities along lines of race and class, which are relevant for how the field of British-Muslim family law emerges. Before discussing notions of gender justice in legal practice in detail, I would like to mention a few considerations relating to this thesis’s approach to the question of gender in British-Muslim family law.

6.2.1. Approaching gender and agency in British-Muslim family law

This thesis takes a dual approach to investigating the gender dynamic in the field. On the one hand, the question of the experiences of women in British-Muslim family law must be tied to broader inequalities and injustices that disadvantage the women subject (Pateman 1989, p. 131). Certainly, front line practitioners may speak about vulnerability and empathy, which is understandable given that they are explaining their everyday experiences. Yet, this thesis understands the description of vulnerability as a prompt to analyse how this vulnerability is the result of structural disadvantages rooted in the gendered constitution of the legal field. Foregrounding individual vulnerability risks underplaying fundamental inequality, which is, it is important to mention, not limited to Muslim women’s experiences with the field but stretches across all social domains and groups. On the other hand, it is also important at the same time to pay attention to patriarchal and orientalist discourses that *render*

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the women who seek recourse to Islamic legal services 'vulnerable', and so contribute to maintaining an orientalist construction of the Muslim woman as victim (Yeğenoğlu 2008, Abu-Lughod 2013). Such discourses effect a denial of the woman subject's agency, even in its embedded conception (Mahmood 2001, 2005; Korteweg 2008), and posit the figure of the Muslim woman against its liberated, agentic Western counterpart. However, as Korteweg rightly observes there is 'no a priori liberated subject'; the task is to interrogate 'when engagement is productive of liberation versus when engagement moves us toward increasing inequality and exploitation' (Korteweg 2017, p. 218). Thus, this thesis adopts a dual approach in order to highlight that the inequalities of orientalism intersect with those of gender in how legal and political subjectivities are constituted through engagement in British-Muslim family law.

To illustrate it is useful to look at how notions of gender are framed in the Sharia debate and specific public initiatives. Launching the government's review into the application of Sharia law in England, then Home Secretary Theresa May justified the initiative in the following terms: 'a number of women have reportedly been victims of what appear to be discriminatory decisions taken by sharia councils, and that is a significant concern' (News stories - gov.uk 2016). Like in this case, the entry point is frequently the protection of vulnerable women, coerced into a discriminatory system that enshrines the woman's lesser legal capacity and their subordination. The problem with framing public initiatives or indeed research studies in this way is that this framing in some way paradoxically reproduces a stereotypical conceptualisation of Muslim women as subordinate and implicitly assumes a lack of agency. Any framework that approaches a topic asking about the presence or absence of Muslim (or other minority) women's agency posits against each other two conceptualisations of the subject as either capable or incapable of agency. This discourse of 'presences and absences' is one that characterises orientalist constructions of Western civilisation *in contrast* to its 'lacking' oriental counterparts (Abu-Lughod 2013, p. 111; see Isin 2015, p. 3 on the orientalist discourse of presences and absences). Madhok et al. put their finger on this. 'When, as it is often the case, the delighted gaze rests primarily on ethnic minority or non-Western women, this cannot but suggest the expectation that their agency might otherwise be missing. The identification of agency then seems to perform the very hierarchy and stereotype it claims to subvert' (Madhok et al. 2013, p. 3). Dannecker and Sieveking similarly remain critical of the 'discovery' narrative relating to female migrants as development agents (Dannecker and Sieveking 2009).

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Scholarship on citizenship as political subjectivity in the everyday and scholarship on gender and orientalism are therefore useful for this thesis to navigate the challenges explained above. Within this framework, a focus on experiences of users and providers of Islamic legal services needs to be embedded within its socio-political context. To this end, Madhok et al. advocate, 'tying analytical and empirical discussions of agency more firmly to the architecture of actually existing inequality' (Madhok et al. 2013, p. 4). A legal architecture of inequality includes, for instance, the inability of women to divorce their husbands unilaterally in Islamic law or the unequal distribution of inheritance between daughters and sons in Islamic wills. At the same time, it is interesting to observe that the majority of legal professionals I interviewed were women and that, according to evidence gathered during interviews and documentary research, women are better represented in Islamic legal services as solicitors than they are in professional capacities in Sharia councils or mosques. This finding opens up important points of interrogation of gender in the field of British-Muslim family law.[53] It raises the following questions. Is there an indication that involving women legal professionals in the process results in a more equitable outcome for female clients? To what extent can this finding challenge presumptions about the British-Muslim legal field as male-dominated? While further empirical research is required, insights gained from interviews I conducted can provide starting points for answering these questions as will be discussed in the next section.

6.2.2. Gender, legal representation, and transformative potential

The provision of gender justice in British-Muslim family law is clearly of great concern to those engaged in the field. However, there are differing opinions about how to best achieve this aim among legal professionals and clients I interviewed. Fareeda, who works as a family law solicitor, for example, strongly favours the recognition of Muslim marriages through English law as she sees much hardship caused to women in the UK through, what she calls 'a paternalistic', application of rules and social norms.

> In many cases, in their [Fareeda's clients] culture, the male partner takes the lead and property is held in just his name. The female partner, who may be

[53] Akhtar argues that 'a number of transformative processes need to be undertaken, [this includes] a substitution of the actors within the institutions to ensure fair representations from experts (both lawyers and therapists) and women. The MAT does provide for legal expertise and a proportion of female representation, however, it still remains male-dominated' (Akhtar 2013b, p. 392).

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> responsible for rearing the children, may be left without protection. So this is why it is important that each party understands what it involves to be in a relationship that is covered only by their religious rules but not under the law of the country they are living in. Because they can't then make an application to court and must rely on the religious tribunals, which are often paternalistic and don't give the vulnerable female, and it is usually the female partner that is vulnerable, they don't give them sufficient protection. Although they maintain to [give adequate protection]… but it is a paternalistic adoption of the rules, I would say, rather than what we would regard here as a fair division according to the law that I advise on, which is the law of England and Wales (Fareeda).

The actually existing inequalities Fareeda encounters in her practice, which leave Muslim women in disadvantaged positions, are the reasons for Fareeda's support for legal reform. She positions herself as occupying the subject position of a solicitor of English law, a system that provides for 'a fair division' between men and women (the presumed gender-neutrality of state law has been critiqued in scholarship, a discussion of which is provided in section 7.2.2.). This understanding of justice and her part in governing family justice as a family law solicitor are constructed in opposition to religious tribunals that do not give sufficient protection to women. She does not name Muslim law as such as the cause for injustice and the insufficient protection of women but rather blames a 'paternalistic adoption of the rules'. Fareeda points to the potential benefits of including women in the legal process as professionals but cautions against a quick-fix of formal inclusion in contrast to substantial change that can only be achieved if paternalistic interpretations of rights are challenged.

While achieving gender justice was often an important driver for professionals to get engaged in the legal field, interview participants were very much aware of the complexities of any potential intervention. Here, it is key that they did not necessarily perceive the idea of gender justice as synonymous with gender equality, something that I will come back to in more detail below (see section 6.3.2.). Kate framed one of the cases she told me about around 'getting the right result' for both sides in a family dispute, for the husband and the wife, and how she tried to achieve this drawing on her own capacities. She told me that

> at the moment I am working with a Nigerian woman and her kids and according to the Nigerian law the children belong absolutely to her husband

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> and his family. So her husband is acting on the basis that under Nigerian law they absolutely belong to him – so I have to really dig under the surface and really understand what is going on and what the implications are in order to blend in with the British system of legislation in order to get the right results for people; not just for my client but for the other side as well (Kate).

The ability to understand both sides, men and women, English and Muslim law, and the uneven power structures underlying negotiations is crucial for the actors in British-Muslim family law in creatively finding ways to negotiate a just and fair outcome. To achieve such an outcome, experiences of solicitors suggest that it may be necessary to give more consideration to women's faith or cultural background as factors that are of great personal importance to those involved. Indeed, Abu-Lughod's extensive work on the issue concludes that for so many women from various social backgrounds, whom she worked with, '[their] identity as a Muslim is deeply meaningful to [them], and [their] faith in God is integral to [their] sense of self and community' (Abu-Lughod 2013, p. 4). Women solicitors could play a transformative role here as Kate's account illustrates:

> The husband has an understanding of how women should behave according to his cultural upbringing, and that is not how his wife wishes to lead her life, so there is a lot of tension there between the two issues. I don't think it is necessarily something that can't be resolved, I just think it is something that needs sensitivity and it needs understanding to work with (Kate).

In Kate's words, without 'sensitivity' and 'understanding' the solicitor will not be able to navigate between English law, the husband's understanding of his subject position as holding the rights to govern his family, and the wife's subjectivity that conflicts with the expected subject position of giving up English legal rights to her child to her husband's authority. This case highlights the role of solicitors as mediators or brokers; their understanding of different positions including the woman's faith or culture can be important to the outcome of the case. Solicitors accommodate and respond to Muslim clients' needs, including cultural, ethical and religious needs. These needs are gendered in particular ways, some of which are in tension with gender roles established in English family law. The challenge in everyday practice is thus about how to fulfil these women's needs equitably and fairly.

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In what ways does it then matter whether more women become involved in the legal process of British-Muslim family law as professionals? This question was answered in different ways by the people I spoke to. Two different statements give an insight into the complexities of why including women may not be the easy answer to dispensing justice in the diverse British context and yet why having women represented as decision makers is a political issue, which attracts considerable public attention and which is relevant to how citizenship is constituted in contemporary Britain. I asked Fareeda if it made a difference, in her view, that she is a woman, and she replied

> No, I don't think in itself that matters because I see men as quivering wrecks as well. I see more women I suppose because the power imbalances are probably weighted against women; especially, if they are financially more vulnerable but I see men in that state as well. I don't think it matters whether the lawyer is male or female as long as that lawyer has empathy and is able to listen to their clients and act accordingly (Fareeda).

Fareeda's answer suggests that 'empathy' and the 'ability to listen' are crucial but that it makes no difference whether or not the solicitor is a man or a woman. However, it may be that asking this question directly is likely to produce precisely this answer in a professional context where gender-neutrality is expected (the figure of the solicitor and characteristics commonly associated with this profession are discussed below in chapter seven). When I asked Layla, who moved from the Middle East to Scotland about ten years ago and who used Islamic legal services to draw up her Islamic will, she responded positively to the idea of having more women working in the field and in particular on boards of Sharia councils.

> I didn't actually know that there are women involved. It's good to hear that there are also female judges in Sharia councils because this is to do something about their perception and to show that they do not all apply a patriarchal system...But then it's not fool-proof because it may be that the woman applies that same patriarchal system herself (Layla).

Layla remains cautious regarding the substantial effect of the inclusion of women as they may fail to challenge the existing patriarchal system. This concern is well-founded. Indeed, in legal practice, Sommerlad finds that rules of professional life are followed 'filtered through a perceptual apparatus which is founded on gendered

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thinking…In this way patriarchal professionalism is not threatened by letting some women into its top echelons…and yet may serve as symbols of a more egalitarian profession' (Sommerlad 2002, p. 225; see also Mossman 2006 on evidence of systemic gender barriers). This shows how patriarchy is a system and an institution women can invest in too. It is thus not only about symbolic inclusion but also about substantial change to the very structures of access to power, division of labour and application of laws (Mossman 2006, p. 5 argues that simply increasing the number of women in the profession is not a guarantee for change in its practice; see chapter five for more details on the question of professionalisation).

One such example of potential substantial change in legal practice through interventions aimed at ensuring gender justice comes from Alsana. One of her clients sought to get an Islamic certificate stating that he had divorced his wife by uttering talaq.[54] The husband requested the Islamic certificate to be posted to her family to clarify matters in quite a complex case, where the couple briefly resumed living together while in fact he had no intention of sharing a common life with his wife. Because of the complicated nature of this case, Alsana decided to include a clause that would give the wife the opportunity to dispute the talaq within 10 days of receipt of the letter – which she never did in the end. What is interesting in this case is that, on the one hand, Alsana chose a waiting period of 10 days for the other party to respond to the letter, which is not based on an Islamic legal provision but which is in fact a standard deadline of response in legal practice. On the other hand, Alsana was able to add an additional safeguard to the standard procedure of an Islamic divorce case by resorting to English legal practice; introducing a clause in the letter accompanying the divorce certificate would have allowed the wife the possibility of disputing the unilateral talaq.

Another example presents a more complicate situation. Similarly to Layla's hesitation mentioned above, Rania sees her experience with a Sharia council as 'very complicated' and she was eager to let me know that the board of the council were very concerned about the well-being of the women who came to see them and were conscientious in acknowledging and protecting their rights. Yet, in consideration of the overall experience of women in this male dominated environment, she wishes to

[54] In Islamic law, divorce can be initiated by the husband by pronouncing the phrase talaq, or a word of equal meaning (Nasir 1986).

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see more female personnel: ‘ten Board members, all men, all old men… they are really concerned about the women… but I really think they need some policies to consider the women’s experiences … and they need some female staff members’ (Rania). There is thus also a political representational aspect to consider. Regardless of the genuine concern of male board members for women’s welfare, it remains important for the women’s overall ‘experience’ (Rania) or public ‘perception’ (Layla) that women are represented in professional authoritative capacities in British-Muslim family law.

To sum up, inclusion of women in the legal process has the potential to contribute to the field of British-Muslim family law in different ways. First, on an individual case basis, arguably female clients would be more at ease speaking to another woman when it comes to the very personal and potentially emotionally difficult aspects of their lives: ‘I think a legal relationship has to be one of trust…it is really important that people can feel safe and can feel trust because they have to invest so much in what they tell me about themselves, their lives, their kids, their families’ (Kate). Second, as Rania emphasised for women using Sharia councils the presence of female members of staff is part of the overall experience and makes the services more inclusive and reassuring for the women using them. Arguably, in order to be sensitive towards particular struggles of Muslim women, an individual does not need to be a Muslim woman herself necessarily. However, some scholars argue that a certain (embodied) knowledge, awareness and sensitivity that grows out of a shared experience of being in the same (subordinated) subject position, arguably enables individuals to more effectively understand and assist in alleviating challenges posed to particular groups of people (for a summary of the discussion see Mather 2003, p. 34). Third, as mentioned above, regarding the political debate on Muslim law in Britain, the increasing involvement of women solicitors in British-Muslim family law (including in Sharia councils) may be a way forward in terms of bringing Muslim legal practice more in line with public policy on gender equality. This would alleviate some of the concerns voiced by the then Home Secretary Theresa May when launching the independent review into the application of Sharia law, and would address calls made by a number of researcher (Akhtar 2013a, b; Manea 2016). Finally yet importantly, there is arguably the potential for women to contribute substantially to dispensing (gender) justice in the field and to get involved in the interpretation and application of Muslim and English legal rules.

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Examples discussed above show, while there is no definitive answer as to whether effective change has been achieved, diversification and feminisation of the legal profession has the 'potential for subversion and contestation of normative professionalism' that historically tended to exclude women from their ranks (Sommerlad 2007, p. 195).[55] People engaged in the field, driven by the aim to achieve gender justice, thus challenge how and by whom the rules are being made – and so re-draw existing subject positions. They conduct themselves as citizens claiming justice, for themselves or other women.[56] Lister argues that, for all of citizenship's exclusionary tendencies, there can be a 'woman-friendly citizenship' (Lister 1997a, p. 195) and highlights the extension of cultural and especially reproductive rights as key to effective participation of women (Lister 1997a, p. 18). The negotiation of rights for women and the interpretation of their application in a non-patriarchal manner make the practice of British-Muslim family law a site of contemporary citizenship. This is because in a highly politicised context, individual interventions engage in bigger questions about power and about who is authorised to determine what 'justice' means in a diverse society. British-Muslim legal professionals (and their clients) conduct themselves as citizens in the everyday practice of their work, one case at a time, claiming and enshrining, I argue, *a right to differentiated citizenship.* Conceptions of differentiated citizenship accommodate for the complexities and contradictions of everyday lives and challenge the myth of an impartial general perspective in the pursuit of justice (Young 1989, 1990), as will be discussed below.

6.3. Being British-Muslim in the everyday – a right to differentiated citizenship?

As discussed in section 6.1., the struggle for citizenship articulated through practices in British-Muslim family law is as much about actively seeking justice and claiming rights as it is about *everyday* political struggles that are not necessarily named as such by their subjects. Section 6.2. focused on how everyday struggles for justice in the field often concern justice for women disadvantaged in the gendered constitution of

[55] A similar point about transformation is made in relation to the first women lawyers in modern America. Drachman rightly observes that 'women lawyers faced an obstacle unique to women professionals: their profession made and interpreted the laws that denied women access to the rights of citizenship, including the practice of law' (Drachman 2001, p. 2). For this reason, 'women who tried to gain admission to the practice of law were required to change the law itself' (Mossman 2006, p. 12).
[56] This is not to say that men who are engaged in the field, for example as solicitors, ignore concerns of gender justice, which is something that became clear in the interviews.

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the field. Generally speaking, people engaged in British-Muslim family law do not necessarily conceive their role as activist, claiming the recognition of Muslim law in the English legal system. In fact, as we will see in chapter eight, there is a sense of strategic de-politicisation in the field whereby people emphasise the ordinary character of their practices as divorced from bigger questions of the politics around the place of Islam in Britain. This is important as it allows people to continue with their lives and seek practicable solutions to the particular issues that may arise when Muslim and English law interact. People may not intend to perform citizenship but they are, I argue, when engaging in the political fabric of society by making rights claims or by addressing injustices. Here lies the responsibility of researchers to interpret fragmented and varied practices (Hammersley and Atkinson 2007, p. 231).

Within the broader socio-political context, practices taking place in the British-Muslim legal field have become considered political even if they do not conform to longer established repertoires of political activity (Tilly 2008). This thesis argues that citizens 'marry, divorce, bring up children and arrange for inheritance' in British-Muslim family law and thereby re-negotiate their belonging in the political-legal landscape of what it means to be a British-Muslim citizen and subject of law. In this context, could we usefully describe citizenship as enacted or realised through asserting a right to differentiated citizenship in a given space?

6.3.1. A right to differentiated citizenship

I would like to propose conceptualising the expectations that Muslim marriages and divorces are available to citizens as expressions of a right to differentiated citizenship (Young 1990; Pateman 1992; Walby 1994; Lister 1997a, 2001; Yuval-Davis 1999). While this thesis interprets and modifies the concept in particular ways, it is important to state that it was developed in relation specifically to the inclusion of women in notions and processes of citizenship. It is well suited, I argue, for highlighting the fact that neither modern institutions of citizenship or law can be thought of as interest-free, neutral spaces. As they are conceptualised based on secular, white, male models of being they effect an exclusion of subjects and subjectivities that do not correspond to this blueprint (Cavarero 1992; Walby 1994; Volpp 2017). This exclusionary character has been highlighted and criticised by feminist scholars who argued for various forms of differentiated citizenship, extending beyond the strict analytical framework of gender inequality. Importantly for this study, such approaches also provided a framework for 'exploring the issue of diversities among women and how it would be

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possible to accommodate the complex inequalities of race, ethnicity, age, sexuality, or class that intersect with gender and structure citizenship for women and men' (Meier and Lombardo 2008, p. 483; see for example Lister 2001 on the gender-pluralist citizen). Ideas such as the 'heterogenous public' (Young 1989) or a 'differentiated universalism' (Lister 1997a) developed in these debates are key notions in relation to British-Muslim family law as they resonate with the experience of interview participants who stake claims to maintain difference while being fully part of the contemporary British citizenry (as will be discussed below). Such ideas successfully move beyond the dichotomy of equality versus difference (Bock and James 1992; Mookherjee 2009), have the capacity to highlight structural inequalities hidden in universalist formulations of citizenship and law, yet at the same time do not abandon citizenship as a universal aim worth aspiring to (Lister 1997b, p. 39). In fact, in order to achieve the universal, attention must be paid to difference (Lister 1997a, p. 91). It must be emphasised that the claim for citizenship to be differentiated relates not only to marginal groups in society; far from it, as Phillips succinctly puts it 'all of us are different in many different ways, and that being "different" is the norm' (Phillips 2000, p. 41). In the particular site of British-Muslim family law, at the 'margins' of English law, the formulation of claims to doing things differently, to conducting family affairs a little differently while retaining access to full justice and citizenship, thus arguably assert a space for Muslim law in contemporary Britain and destabilise modern ideas of citizenship and law.

In existing literature, the right to differentiated citizenship more broadly often relates to questions around 'the right to cultural difference' (Ghorashi 2010, p. 176). It forms part of the conception of cultural citizenship, which refers to the right to be different and to participate democratically in society (Rosaldo 1994). Stevenson defines cultural citizenship as including 'rights and obligations, civic spaces of participation, respect, identity and difference and individualization' and explores the possibility of maintaining solidarity whilst at the same time promoting the creativity of the self (Stevenson 2003, p. 33). This creativity of the self is related to what Gray calls for as an ideal 'based not on a rational consensus of the best way of life [but] on the truth that humans will always have reason to live differently. *Modus vivendi* is such an ideal… people who belong to different ways of life need have no disagreement. They may simply be different' (Gray 2000, p. 5). However, it is important to stress that in the conception of cultural citizenship this right is limited to being different *culturally,*

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or in Modood's terminology to exhibit 'public ethnicity' (Modood 2005, p. 134). But can we also conceptualise a right to go through the legal process as Muslim? Is there a right to differentiated citizenship *in legal practice*? This is where legal pluralism can provide crucial insights into how different legal (or normative) systems impact on the individual's subjectivity beyond what is considered state law (Griffiths 1986; Chiba 1989; Shah 2005; Grillo et al. 2009). Malik notes that 'many now no longer ask for the "same" rights as the majority. Some of the most compelling demands of minorities now take the form of calls for the accommodation of "difference" in the public sphere' and that 'public accommodation of traditional groups raises a distinct set of problems for feminists and family law' (Malik 2006, p. 212). Related to, although not identical with the notion of cultural citizenship, is the idea to conceptualise a right to go through the legal process *as British-Muslim* – be it state governed or other. This is because British Muslims' specific legal requirements clearly do matter in the overall experience with the legal process and in the outcome for the individuals involved in a marriage, divorce or production of a will. As Kate's quote above illustrates: 'if you just treat somebody as a generic white British client and think that they are no different to a white British client who is Christian and then apply the law accordingly, then that client is going to have a very difficult experience' (Kate).

There are strong indications that people on the ground are claiming and exercising their right to differentiated citizenship, while not necessarily framing it in that way. Kate refers to a need to find legal solutions that work in practice and Fareeda and Asima both, in their interviews, confirmed there are new hybrid practices of law emerging that people now rely on and assume to be available. Fareeda sees in her work a trend in people not civilly registering their Muslim marriages. She says that young couples especially appear to choose a path whereby a Muslim marriage contract functions as a form of testing period:

> There is a trend for younger couples for entering just Sharia law marriages because it's a form of stamp of approval for their relationship, which they need to be able to satisfy their parents … They know this is not a valid marriage but they have chosen to go along with that because it is a way of presenting their relationship as formal looking within their community... A lot of the younger couples are affluent, they are professionals, they have their own properties, and they don't want to share this in marriage. So there is an argument to be said

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> that people should have that freedom of choice to enter into legal marriage or not (Fareeda).[57]

Asima, in turn, reflected on how sometimes people do not think about how important a Muslim marriage or divorce is to them. It has instead become a common expectation that these services are available as an option to British Muslims when conducting their family affairs.

> For me, a Muslim marriage and divorce is important and this is not just me. If you tell somebody they cannot have an Islamic marriage, you just have to get married under English law, then lots of people would complain about it…But people sometimes don't think about [Muslim marriage] not being available as an option to them… Also for divorce as well, even if people aren't very religious or aren't very practicing they still, if they want to divorce someone, they would divorce them under Islamic law (Asima).

While not necessarily expressed in this way, what Fareeda and Asima describe above is people claiming and maintaining an entitlement or a right to marry and divorce Islamically in Britain. In interviews, I did not come across many instances where people explicitly called it a 'right' to marry, divorce or arrange inheritance according to Muslim law, there is an expectation that these options are available in Britain. Individuals practice and therefore claim these rights. In interviews with people using and providing Islamic legal services, nikah ceremonies, Islamic wills, and to some extent Muslim divorces, were described to me as a very commonplace practice; Sophia and Farhat called their planned nikahs 'just the thing you do'. What is crucial here is that people think of themselves as being entitled to make different choices even if these practices are commonly not referred to as a way of (intentionally) claiming one's rights as a British citizen.

Thinking through citizenship in British-Muslim family law as a right to differentiated citizenship makes visible how British Muslims expect rights to marry or divorce according to Muslim law, how they are being responsibilised (Burchell 1996), and how (routinised) exercise of these rights is essential for bringing into existence and for

[57] In the interview Fareeda raised but did not answer the question of how the decision not to register a nikah marriage civilly is gendered. The reasons are certainly complex and further research will be necessary to assess to what extent this trend is one that is protecting the interests of both men and women.

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maintaining these entitlements (see Isin 2012, p. 109 on the right to claim rights). By making claims to rights through a particular system of justice, be that English law, Muslim law or else, the citizen also recognises this very justice system. They become a subject of and to the law. Recognition here, however, is not to be understood as formal accommodation within the English legal system *as is*; rather these claims necessitate change in the very system of recognition and bring about new (differentiated) ideas of governance of family law and gender relations. Put differently, these claims are not simply for a subject to be recognised but are also claims to change what the subject is seeking rights from. As Young argues 'the goal is not to give special compensation to the deviant until they achieve normality, but rather to denormalize the way institutions formulate their rules by revealing the plural circumstances and needs that exist, or ought to exist, within them' (Young 1989, p. 273). Tully presents a similar argument when he advances a notion of recognition of differences that includes, but also goes beyond the recognition of minorities within a static constitutional framework: 'the mutual recognition of the cultures of citizens engenders allegiance and unity for two reasons. Citizens have a sense of belonging to, and identification with, a constitutional association in so far as, first, they have a say in the formation and governing of the association and, second, they see their own cultural ways publicly acknowledged and affirmed in the basic institutions of their society' (Tully 1995, pp. 197-98). In this conception, differentiated citizenship is understood as being implicated in power relations in the sense that Foucault has argued. Once two parties engage in a struggle over each other, each party enters into this field of power relations with simultaneously the powers to change and the powers to be changed by it (Foucault 1982).

Thus, it is not only about seeking recognition but about changing the framework within which recognition can take place. This insight makes a conceptual contribution to citizenship studies in the sense that it highlights the importance of citizenship practices in law. By doing so, it bridges a distinction that is often drawn between citizenship in law (understood as status within established legal frameworks) and citizenship in practice. It counterbalances a conception of citizenship that emphasises the contrast between law and social practice and is presented as 'a sociologically informed definition of citizenship in which the emphasis is less on legal rules and more on norms, practices, meanings, and identities' (Isin and Turner 2002, p. 4). Citizenship is often defined in a contrast between citizenship as 'the relationship

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between an individual and the state' and 'as a more total relationship, inflected by identity, social positioning, cultural assumptions, institutional practices and a sense of belonging' (Werbner and Yuval-Davis 1999, p. 4). By focusing on the social practices and subjectivities sustaining the legal field and their importance for the constitution of a site of citizenship, this thesis critically interrogates definitions of citizenship that tend to separate the legal sphere from social practices.

Looked at through the lens of a right to differentiated citizenship, British-Muslim legal practices also present themselves as contradictory. When read through this lens, the contradictions that presented themselves in the practices and subjectivities of the people I spoke to are as follows: There is a need to do things differently and yet a desire to be part of the whole (see Young 1990). Samira and Rania both express these different directions.

> Being a British Muslim you have so many questions... It's very relevant to my identity and that is part of the reasons why I started to look into Islamic finance [offered in the UK]. I wanted to know whether mortgages were halal [allowed under Islamic law]. I realised I was going to graduate, I wanted a house eventually and I *wanted to do things differently*, and I needed to know what are the practicalities (Samira, my emphasis).

> [As I grew older and after trips back to my parents' country of birth], now I feel more British, I want to be contributing. I want to be seen *to be part of this society in the way I am* dressed, praying, and fasting and all of that and still be seen to be part of the society I live in (Rania, my emphasis).

Thinking of differentiated citizenship as a right has the potential to render visible the struggle for forging and shaping the space for Islam in the UK in an affirmative rather than a defensive framework. Yet, does framing it as differentiated citizenship risk re-constructing a binary between 'British' and 'Muslim'? This binary is expressed by Rania who explains that she felt pressured into making a definite choice between either British *or* Muslim that leaves no space for the creative and hybrid negotiations of British-Muslim subjectivity.

> I think Muslims are often asked whether they consider themselves British first or Muslim first. And I think they are two different questions. It's like apples and oranges… because one is asking you your citizenship and the other one is

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> asking you your religious identity. No Christian is ever asked are you British first or Christian first because it is understood that they are two different aspects of your human being. My answer to that question is I'm British first and I'm Muslim first because they are two different 'firsts' you are asking me about. I don't see the clash in it…. For a number of years I would have said there is a clash for me in being British and being Muslim. As the years have gone by… I started asking why am I put in this position of having to choose? Because it's not [about that choice]. They are two different positions (Rania).

Thus, the entitlement to go through the legal process as a British-Muslim should not be thought of as a point of no return where a subject needs to choose one or the other path at the start of her legal journey (for a similar point see Schachar's model of 'transformative accommodation', Schachar 2001). The enactment of such entitlement remains flexible in the everyday by definition because citizenship (as political subjectivity) is constituted in a relational process through constant contest of what it means to be a political and legal subject. The dynamic right to differentiated citizenship is claimed through strategic performances of crossing the boundaries of established legal subject positions as either British or Muslim legal subjects, which ultimately unravels their orientalist construction as ontologically different and incompatible (Said 1978; Ruskola 2002; Isin 2015).

This constant negotiation between 'to do things differently' while being 'part of this society in the way I am' is indeed a difficult balance to strike in the legal process, especially in relation to gendered legal subject positions in Muslim law that may be in tension with English law. Rania sums up complex tensions in her legal subjectivity succinctly when she says:

> Ultimately, if I truly believe that God has said men you get divorced like this and women you get divorced like this; men you dress like this, women you dress like this…. If I truly believe that, I don't care if some liberal society believes that's not equal. I don't care that English non-Muslims think that's not just, because God is just. And that's right for me (Rania).

Muslim women in the field may not only conduct themselves differently from majority society but also as different from men. Is this choice to do things differently considered an expression of a claim to differentiated citizenship? If not, why? Does

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the enactment of the right to differentiated citizenship include agency within piety? Does it include a right to choose submission? As Nyhagen and Halsaa rightly point out 'the notion that agency can be located in piety, and in the right to choose submission, challenges feminist liberal conceptions of what agency is and how it relates to structural factors' (Nyhagen and Halsaa 2016, p. 6; see also Mahmood 2001, 2005). Here, a postcolonial feminist perspective cautions against 'oversimplifying women's interests or simply equating them with Western liberal priorities' (Mookherjee 2009, p. ix). However, because elements of British-Muslim family law are enacted in gendered ways that are in tension with the principle of equal rights for men and women, it can become constructed as non-citizenship or even 'anti-citizenship' practices (Matless 1996). The following section will explore in depth the question of what constitutes political-legal agency and how its construction relates to exclusionary dynamics of orientalism.

6.3.2. The question of agency, gender and orientalism

The earlier discussion on ideas of gender justice brings into the frame questions of agency, gender and orientalism. As mentioned above, how people think of gender justice in the British-Muslim legal field is that it is not *necessarily* dependent on full equality of rights between men and women (see section 6.2.). This is important for understanding British-Muslim family law as a site of citizenship because it means that this hybrid legal field also configures the formulation of differentiated rights and claims to justice based on gender. However, the dominant conception of a modern form of occidental citizenship excludes rights claims that are not framed in terms of individual secular autonomy and equality. This exclusionary dynamic affects Muslim citizens in Britain who conduct their family affairs within British-Muslim family law. For example, in an interview with the BBC, Shaista Gohir, who is the chair of Muslim Women's Network UK, criticised the government-led review of Sharia law and the Home Affairs Select Committee inquiry into Sharia councils in Britain as patronising women. She forcefully argued that 'everyone wants to listen to Muslim women when highlighting their terrible experiences. However when it comes to the solutions, everyone thinks they know what is best for them…I do feel that there are people who are anti-faith, particularly anti-Islam, who are using women's rights as a guise, wanting to abolish Sharia councils' (Bashir 2016).[58] Yet, the 'One Law for All'

[58] Gohir continues to describe possible consequences of a ban of Sharia councils: 'if tomorrow or next year you shut down Sharia councils, what would result is Muslim women stuck in marriages, abusive

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campaign in Britain proclaims that 'Sharia councils and Muslim Arbitration Tribunals are discriminatory, particularly against women and children, and in violation of universal human rights' (Namazie 2016). However, the constantly changing realities of social phenomena such as culture and religion pose complex challenges. To designate culture and religion as either supporting or hindering women's agency is simplifying the very complexity at work. 'Cultural and religious beliefs are often edifying *and* potentially oppressive at the same time…[they can be] simultaneously the source of vulnerability, prejudice *and* meaningful existence' (Mookherjee 2009, p. 103).

As Gohir's and Namazie's arguments exemplify, women's rights and women's agency are a crucial elements in discussions taking place as part of the Sharia debate. At this point, I would like to emphasise that agency is never free from power and instead needs to be situated in, and is thus dependent on, a complex web of opportunities, relations, and contexts of the individual. A Foucauldian understanding of power relations is useful here as it reminds us that any social interaction is imbued with power relations always involving a negotiation of degrees of freedom and submission rather than a separation of the two. Madhok et al. argue for shifting 'the focus away from simpler oppositions of agent or victim, and towards the complex ways in which agency and coercion are entwined, often in a non-antithetical relationship. We want to think of these, not as separately constituted, or existing only in a relationship of achieving/overcoming, but as connected in a dynamic continuum of simultaneity' (Madhok et al. 2013, p. 3). Agency is therefore not something that exists in opposition to power but rather as embedded in it. As Butler emphasises, 'subjection consists precisely in this fundamental dependency on a discourse we never chose but that, paradoxically, initiates and sustains our agency' (Butler 1997, p. 2). Brady and Schirato explain how the formation of the subject – even in its more agentic conception following Dezalay and Madsen – is dependent on remaining to some degree within existing power relations and social contexts. They maintain that 'in order to have, gain, claim or be assigned an identity, one must be recognisable and explicable within a particular grid of intelligibility that makes subjects appear (Brady and Schirato 2011, p. 6). Specifically in relation to postcolonial feminist scholarship, Mahmood argues for a conceptualisation of agency not as simply equating to

marriages sometimes, and the Sharia divorce service would actually go underground. That would result in less transparency, higher prices and more discrimination' (Bashir 2016).

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resistance against existing social norms but as a 'modality of action' (Mahmood 2005, p. 157). Korteweg supports an understanding of agency as 'embedded agency' which allows to see Muslim women's agency as possibly embedded in 'social forces like religion, which are typically construed as limiting agentic behaviour. The capacity to act is not contingent upon adopting liberal "free will" and "free choice" approaches to subjectivity' (Korteweg 2008, p. 437). This thesis thus builds on an understanding of an embedded agency of Muslim women in the development of hybrid subjectivity constituted in the practices of British-Muslim family law.

A discussion of gender and agency in the field of British-Muslim family law also touches upon the question of orientalism and how the conceptualisation of the legal subject as male and occidental in contrast to its oriental counterpart, results in the Muslim legal subject being seen as less able of agency (Haldar 2007; Ruskola 2013). Indeed, in current debates on women in Muslim law, Muslim women are often orientalised in the sense that they are portrayed as the opposite to Western women and in need of rescuing from their own laws and cultures (Abu-Lughod 2013, pp. 6-7; Razack 2008). Here, the inequalities of orientalism intersect with those of gender in the production of the subjectivities of citizenship. Muslim women are portrayed as not able to choose freely, being either openly oppressed by men or implicitly understood as more 'religious', with the effect of being more susceptible to making irrational judgments. Ghobadzadeh calls this the 'portrayal of ethnic minority women as perpetual victims of patriarchy' (Ghobadzadeh 2010, p. 302). Abu-Lughod calls this representation of Muslim women 'gendered Orientalism', whereby 'Muslim women are portrayed as culturally distinct, the mirror opposites of Western women' (Abu-Lughod 2013, p. 88; see also Yeğenoğlu 2008). In their juxtaposition against Western women, images of the latter are sustained as complete and genuine agents, conscious of their situation and able to make rational decisions. Thus, rather than engaging with Muslim women's agency such orientalising 'rescue narratives' impose a homogenised, static gender role of the woman legal subject in Muslim law, which effects a disavowal of their agency (Bracke 2012, p. 241).

When we put together orientalised conceptions of Muslim law and modern conceptions of citizenship, we observe the exclusionary dynamics of citizenship in 'neoliberal' narratives of autonomy as 'free and unconditioned choice' (Sabsay 2015, p. 18) – a dynamic at work also in the Sharia debate. Indeed, 'the fact of belonging to

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citizenship's inside is made intelligible, through citizenship's outside' (Volpp 2017, p. 173). Sabsay argues that 'at the intersection of certain interpretations of gender and cultural background, the neoliberal idea of autonomy as free and unconditioned choice serves the purpose of disavowing these enactments of citizenship' (Sabsay 2015, p. 18). Put in a different way, Motha aptly argues that attempts 'to universalise the emancipated feminine subject…[undo] the very important negation of the abstract, autonomous liberal subject exposed by an earlier feminist critique' (Motha 2007, p. 146; see also Young 1990, pp. 124-130 on a critique of the claim of modern reason to universality and neutrality). The neoliberal idea of choice is contested through those practices and subjectivities evolving in the field of British-Muslim family law that do not exercise gender equality. This creates a dilemma for public policy and emancipatory politics as well as professionals and clients engaged in the field, which is very well expressed by Rania when she says that 'on the one hand, the government is cutting legal aid because they want people to go to alternatives; but when they choose alternatives such a Sharia council, they close down and say that's not an alternative you can go to' (Rania). These 'choices' for Sharia councils or Islamic legal services are excluded from the political realm because they do not conform to an occidental modern understanding of citizenship which pre-supposes the autonomous, secular (legal and) political subject.

Dominant conceptions of citizens as 'unencumbered' subjects also rely on the assumption of their secularity in political life (Isin 2005, p. 34). Thus, the idea of the free subject tends to exclude notions of faith or religion. Indeed 'the role of faith in women's everyday life [is] often ignored, even more often seen as symbol of traditionalism and backwardness, an obstacle to emancipation, and seldom recognized as an inspiration in women's struggles for social justice and women's rights' (Žarkov 2015, pp. 5-6). It must be noted here that the conceptualisation of modern citizens as purely secular subjects is paradoxical as secularism as an idea itself emerged out of a particular religious context (W. Brown 2012). As Brown argues 'secularism cannot govern religions and subjects without stipulating their form and content, and this stipulation necessarily emerges from within particular religious histories and predicaments—there is no religiously neutral outside' (W. Brown 2012, no page number). Faith and religious practice are of great personal importance to many people engaging in the field of British-Muslim family law and lie at the very heart of why this hybrid field is developing in the first place. The significance of Muslim law – or what

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is considered ‘religion’ in the view of English law – is related to the observation that a considerable number of Muslims in the UK do not register their Muslim marriage. While the reasons for couples not registering their Muslim marriages are of course very complex (as well as under-researched), the idea of a right to differentiated citizenship in the legal field, at its intersections with gender justice, brings to light important political contestations and how they impact on Muslim women’s citizenship in the everyday. A statement by Rania exemplifies well how the politicisation of Muslim legal practices and gender relations implicated therein frames her political-legal subjectivity. Rania ‘chose’ (in her own words) not to register her Muslim marriage and to have a nikah ceremony only. She wondered ‘why are they picking on Muslims? Why is it a problem when we don’t register our marriage while everyone else is just cohabiting and no one is bothered about it?’ (Rania). As mentioned above, modern citizenship does not recognise as political any claim that is not formulated in terms of individual secular autonomy. ‘One particular mechanism of the orientalist logic of citizenship is to deny political agency to those who make wrong choices…. One particular way in which this occurs is by defining wrong choices as those that do not express the autonomy of the person who chooses, and therefore as non-choices’ (Sabsay 2015, p. 19). This logic is also based on what Mahmood terms ‘normative liberal assumptions about human nature’ that ‘all human beings have an innate desire for freedom’, that ‘we all somehow seek to assert our autonomy when allowed to do so’ (Mahmood 2005, p. 5). Thus, it is not considered the wrong choice only, it is questioned as being a free choice, i.e. choice at all. The discussion in this section attempted to demonstrate how, from certain perspectives, women’s agency in practicing Muslim law as a right to differentiated citizenship is not considered genuine agency and hence not citizenship.

To sum up, the purpose of this section is to highlight and analyse different discursive and political forces (of orientalism) at play, which determine what practices come to be perceived as citizenship practices and what practices remain excluded. The lens of the ‘right to differentiated citizenship’ serves here both as a research finding and a mode of inquiry that I will come back to again in discussions of citizenship practices and subjectivities in the subsequent chapters. This viewpoint helps us understand a number of intense tensions in British-Muslim family law as a site of everyday citizenship: the creative tension between the claim to do things differently and the desire to be part of the same; the difference between conceptions of gender equality

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and how gender justice is enacted in the field; and how a neoliberal idea of choice is contested by Muslim practices of women. Looking at British-Muslim family law from the angle of a right to differentiated citizenship also raises important questions regarding the limits of citizenship; it illustrates not only the inclusionary struggles of everyday practices but also the exclusionary dynamics of a modern conception of citizenship, which relies on the idea of an unencumbered, equal and secular political subject.

6.4. Conclusion and outlook: The constitution of the professional subject in law

To conclude, this chapter argues that British-Muslim family law is a site of citizenship because citizenship as political subjectivity is enacted in everyday articulations of rights claims and redress of injustices. In the field we see the emergence of a dual meaning of 'right(s)' – in the political sense of a legal entitlement and what is the right thing to do – in the negotiations of the meaning of justice (in family law). Gender justice emerged as a key driver for many professionals and clients to get involved. However, the notion of gender justice as I encountered it in interviews is complex. It represents different approaches from personal, over representational to substantial justice for women. However, gender justice is not necessarily equated with gender equality, which is not automatically a contradiction in the field. As Mookherjee observes 'positive conceptions of gender identity can be non-liberal without being unreasonable, irrational or unjust' (Mookherjee 2009, p. xii).

This chapter also attempted to develop a notion of citizenship that is capable of accommodating practices and subjectivities that would otherwise be disavowed their citizenship. For example, the practices of women going through Islamic legal services are not considered autonomous and thus not expressions of genuine agency in a neoliberal understanding of free choice. Here, adopting a lens of differentiated citizenship renders visible how British-Muslim subjectivities emerging from the legal field challenge dominant conceptions of citizenship as inherently orientalist. They contest the imaginary of the unencumbered, secular citizen as excluding other forms of citizenship not expressed in terms of individual secular autonomy. While there are expressions of individuals involved in the field of doing things differently, there is simultaneously a desire to be part of the whole. This tension results in challenges to the very framework of what citizenship means in contemporary Britain. Looked at

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from an angle of citizenship rights, practicing British-Muslim family law is not (simply) about accommodation within the English legal system *as is*; rather it makes creative interventions into the very system and brings about new ideas of governance in family law matters and gender relations. It is not merely about being recognised but about changing the very framework within which recognition can take place.

As we have seen in this chapter, the struggle for including women in the legal process takes on the question of who is making and interpreting the rules when it comes to conducting family affairs and gender relations. Here, legal professionals can play a crucial role in creating the scope and content of rights claims and citizenship practices in law in their everyday work. Similarly, Scheingold observed in relation to the civil rights movement in the United States that the constitutional litigation by lawyers did not bring about monumental change and desegregation single-handedly. Rather, as Scheingold argues in the second edition of his influential work *The Politics of Rights*, 'constitutional litigation did, by way of a politics of rights, contribute indirectly to the emergence and success of the civil rights movement' (Scheingold 2004, p. xx). The legal imaginary produced in professional practice is important for the politics of rights. Legal ideas and strategies are formed to a considerable extent 'at the level of agency' (Madsen 2017, p. 116). For this reason, the following chapter takes a closer look particularly at the subjectivities of solicitors as legal professionals in the field, their motivations for engagement and how they perceive their role in British-Muslim family law.

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Chapter 7. Solicitors in the field: Professional practice, legal subjectivities and everyday citizenship

It's practice that makes a good solicitor (Mousa)

By adopting a dynamic notion of citizenship as political subjectivity in the everyday, this thesis looks at the process of emergence of legal rights and legality more broadly. This involves drawing on sociological, political as well as legal aspects that are inseparable from each other. I attempt to shed light on the practices and subjectivities driving these processes rather than to investigate rights already established within a legal system. More specifically, this thesis is concerned with how the British-Muslim legal field comes to facilitate for subjects to claim rights, and explores the nature of such rights claims as synthesised understandings of gender justice, ethics, professional duty, religion and culture that transcend the fuzzy boundaries of English and Muslim law. By taking recourse to the (porous) framework of British-Muslim family law, by making claims, redressing injustices and so on, two interconnected processes are set in motion. On the one hand, the figure of the citizen is claiming justice and rights within a particular hybrid system that emerges out of interaction between Muslim and English law. By subjecting themselves to this legal framework, citizens also recognise its justice system and become responsible agents, albeit not necessarily in a subservient manner. On the other hand, new actors are evolving within this field who can act as brokers between different normative spheres and different subject positions – a particular group of these actors are solicitors.

These legal professionals within the field play a crucial role in articulating the emergent logic of rights and claims in British Muslim family law. While non-professionals also play a very important role, following insights from Bourdieu's theory of the legal field (Bourdieu 1987) and literature on cause lawyering (for example Scheingold 1974, 2001; Sarat and Scheingold 1998; Boon 2001), solicitors' contribution to law's symbolic powers and its enduring authority in governing ourselves requires specific attention. Conceptually speaking, this chapter's analysis of solicitors' practice from an angle of citizenship also aims to contribute to ongoing scholarly debates by bridging contrasting notions of 'citizenship in law (status)' versus 'citizenship in practice' (Werbner and Yuval-Davis 1999; Isin and Turner 2002; Bloemraad 2018). This is related to what Keating describes as the creation of

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‘new forms of citizenship de facto if not de jure’ (Keating 2009, pp. 510-11). In the case of British-Muslim family law, I argue that an understanding of citizenship as more nuanced is necessary to take account of societal change and shifts in gender and generational relations through the practice of law. Taking as a focus the subject of the solicitor rather than external frameworks of reference helps bridging this gap. Examples discussed in this chapter show how the practice of solicitors at the same time draws on existing legal rights *and* facilitates the formulation of new claims to justice (and differentiated citizenship) located outside the realm of state law or national boundaries. The chapter looks at the dynamic subject positions emerging among solicitors in British-Muslim family law as part of processes of professionalisation that affect their positioning, perspectives, and understanding of the field and their role within it.

Gender plays an important part in how processes of professionalisation play out in the British-Muslim legal field and for the transformative potential of professional subjects (discussed in chapter six). On the one hand, feminisation of the English legal profession clearly continues into the field of British-Muslim family law. The comparative lack of such has been criticised in other professional groups such as Sharia council boards (Moore 2010; Manea 2016).[59] On the other hand, the engagement of women professionals in the field must be analysed in the broader context of gendered stratification of the legal profession in which women (as well as other disadvantaged groups such as ethnic minorities) tend to remain confined to more marginal areas of legal specialisation or ‘women-friendly’ areas such as family law (McGlynn 2003, p. 152; see Witz 1992). The tension between these two perspectives raises the question to what extent can solicitors practicing in Islamic legal services and offering advice challenge subject positions in British-Muslim family law, and to what extent are they reproducing established (professional) gender roles and inequality. It also shows how subjects are made through a gendered discursive regime of professionalisation, which produces and reproduces the figure of the British-Muslim solicitor.

In providing Islamic legal services, questions of professionalism, ethics and religion and their interaction with or distinction from ‘the law’ tend to come to the foreground.

[59] Moore argues that ‘while a diasporic jurisprudence may create an opening for a feminist reuse of legal concepts, to date the absence of women’s input is conspicuous’ (Moore 2010, p. 79).

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Solicitors are faced with the challenge of doing the right thing (section 7.1.), including not only professional standards (section 7.1.1.) but also ethics and Muslim faith (section 7.1.2.). Without necessarily intending to do so, this interrogation by solicitors of ethics and religion through the lens of legal practice also sets in motion the boundaries of law itself (section 7.2.). The emerging figure of the solicitor is one that challenges boundaries of what is right (as in the right thing to do, including interrogations of gender justice) and what is law (section 7.2.1.), at law's intersections with other fields such as culture and religion (section 7.2.2.). Drawing on individual experiences that stretch across English law, Muslim law, religion, culture and ethics, solicitors help formulate in particular legal language rights to differentiated citizenship that extend beyond the cultural or religious domain. Without necessarily expressing it this way, they are thereby expanding imaginations of possibilities for citizens to conduct themselves as British-Muslim legal subjects in the field (see Moore 2010, p. 78). By focusing on the figure of the solicitor this chapter thus seeks to provide 'an embodied, rather than an abstract, view of citizenship' (Kabeer 2005, p. 11).

7.1. Doing the right thing? Questions of ethics, faith and professional conduct

While the 'group' of solicitors is not a homogenous group, there are a number of cross-cutting themes or tensions that crystallised through my conversations with solicitors in the field. On the one hand, their particular formal-legal education and training (Scheingold 1974) provides legal professionals with a particular *legalised* way of looking at everyday issues. The first principle in the Solicitors Regulation Authority's (SRA) Code of Conduct asks of legal professionals to 'uphold the rule of law and the proper administration of justice' (Solicitors Regulation Authority 2011). On the other hand, they also have subversive capacities (see the example of cause lawyers discussed in section 2.3.2.) to challenge the boundaries of law and professional 'norms' of conduct in their quest to do *good* and do *well* (Scheingold and Sarat 2004, p. 96; Scheingold 2001; Menkel-Meadow 2013). The strong connotations of faith and/or ethics present in solicitors' practice in British-Muslim family law indicate a particular sense of *doing the right thing*, one that draws not exclusively on English law and professional conduct. By performing within a discourse that combines notions of professionalism with ethics and faith, I argue, their emerging

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practices and subjectivities bring about new imaginations of citizenship and differentiated rights.

7.1.1. Professional duty

One solicitor, Mousa, who specialises in Islamic legal services at an inner city law firm in England, used to work in his spare time with the local Sharia council while he was training to become a solicitor. Before working with the council, he was somehow sceptical about any business in the 'shadow of the law'. His main concern was to make sure that the council introduced a strict and transparent code of conduct and that proper processes and procedures would underpin any decision made by the scholars. Mousa formulated this commitment to due process as a professional 'duty' that comes with being a lawyer, which is bestowed on him through the trust his clients put in his service.

> As lawyers we are instrumental in people's lives. If you are placed in a position of trust it is your duty to do things to the best degree possible, because at the end of the day your client is more important. We as lawyers have to keep assessing ourselves as well. I'm not saying we are perfect, [but] we go on professional development courses, we have ethics rules… we have a duty to our clients, and as we are officers of the court, we have a duty to court as well and not to our pockets (Mousa).

A high standard of professional conduct is also something Fareeda emphasised as very important when she spoke to me about how she saw her role as a solicitor. Fareeda is a qualified solicitor under the law of England and Wales. She is generally interested in the issues of Muslim law in the UK especially in relation to women. We initially met at a conference discussing potential issues around unregistered Muslim marriages and she was a supporter of the call to register Muslim marriages because in her daily practice she sees so much hardship for women whose nikah marriage certificates do not provide them with adequate protection in case of relationship breakdown. While she is very passionate about this topic, she maintains that professional conduct requires her to keep apart personal viewpoints and legal practice. She said

> I am trying to distance personal faith. I try to not bring that into my work because at the end of the day this is not what I have been taught at university. I've been taught to apply the law. The application of that law should not take into account your own personal view, religion or morality. I can't pass

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> judgement on somebody just because I have my own view on morality. I have to accept people as they come and guide them through the law, otherwise I wouldn't be doing my job properly (Fareeda).

Commitment to gender justice and equal treatment in law are ideals Fareeda aspires to. The gendered constitution of British-Muslim family law may put women subjects in a disadvantaged position. Fareeda sees the solution to this in ensuring protection of women's rights in case of marriage breakdown through the registration of nikah marriages under English law. She is able to formulate her critique of the inequality she observes in her work by drawing on the notion of her *professional duty*. Her statement above is also interesting in relation to the question of the scope of transformation that can be brought about by women solicitors engaging in the field, both by bettering the position of individual women as their clients and more structurally by contesting gendered inequalities in the legal process. Conversations with solicitors raised the following questions. What is the possibility of solidarity between women as professionals and as clients? Is there a danger of patronising female clients where there is a power imbalance between professional and lay subjects and where the assumption of shared experience on the basis of gender is misleading rather than helpful?[60]

Feminist scholars such as Lauretis criticise an essentialising view of the subject through the lens of the male-female polar opposite which comes to disregard the importance of other experiences such as race and class, *in addition to* sexual relations. She argues for a conceptualisation of the (legal) subject that is 'a subject, therefore, not unified but rather multiple, and not so much divided as contradicted' (Lauretis 1987, p. 2; see also Mookherjee 2009, p. 156). The complexity and diversity of women's experiences with the law must be acknowledged and also that the status of the woman as subordinate to men does not exclude the possibility of women's agency as oppressors, even if unwittingly (Lister 1997a, p. 75). Are solicitors in their 'privileged' professional position creating and perpetuating the woman citizen who is in need of help due to her individual circumstances, rather than challenging this

[60] Walby notes that changes in societal context affect women differently according to their position, 'not only in class and ethnic relations, but also within different household forms' (Walby 1997, p. 1). Indeed, Mahmood notes that one of the central questions that many feminist theorists have grappled with is 'how should issues of historical and cultural specificity inform both the analytics and politics of any feminist project' (Mahmood 2001, p. 202). Lister refers to this challenge as 'the false universalism of the category "woman"' (Lister 1997b, p. 38).

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subordinated subject position by contesting structural inequality in a patriarchal legal system? (see Sommerlad and Sanderson 1998, p. 256 on solicitors as a privileged group). In comparison, when we look at the history of the concept of citizenship, we see how modern citizenship discourses constructed the woman's participation as confined to the domestic sphere where the husband, or failing this the welfare state, provided for the woman (Volpp pp. 154-157). In this context, a Foucauldian understanding of power beyond coercion highlights here the possible perpetuation of power imbalance specifically between professional and lay subjects that functions also in cases when professional engagement is motivated by solidarity, empathy and the wish to provide justice (section 2.3.2. discusses the profession as not interest-free).

Gender relations also affect the professionalisation of the field in another aspect. Positioning of women in the labour market in general is reflected in the legal field. While the legal profession now includes a large number of women,[61] the figure of the woman solicitor is still inhabiting more marginal, less powerful spaces, many of them having 'as good or better credentials than their male counterparts' (Sommerlad 2002, p. 215; see also Schultz 2003a; Sommerlad 2016). As explanatory factors, Sommerlad mentions the symbolic *and* practical gatekeeping function of the long hours typically worked, or professed to be worked, in solicitors' firms and how this negatively affects women's career opportunities when they had caring responsibilities.[62] An interesting finding of Sommerlad's study is that even when firms offer flexible working that could be taken up by individuals, the effects of such were 'feelings of guilt and gratitude…resulting in the internalisation and consequent further embedding of professional values' (Sommerlad 2002, p. 220). This observation illustrates the point I made earlier on how power – drawing on Foucault's work – is exercised in more subtle ways than explicit coercion, and how subjectivities emerge not simply in opposition to power but are dependent on it. It also illustrates how a gendered discourse of professionalisation affects the construction of the figure of the solicitor in British-Muslim family law. This is how the process of professionalisation (even where

[61] Admission to the roll of solicitors of England and Wales entitles the applicant to practise as a solicitor. 60% of individuals admitted to the roll in 2014 were women. 59% of those admitted from minority ethnic groups were female. Qualified solicitors on the roll in 2014 were made up of 51% men and 49% women (The Law Society 2016). Sommerlad and Sanderson note that the trend of feminisation of the legal profession in England and Wales is apparent since the 1980s (Sommerlad and Sanderson 1998, p. 256).

[62] Sommerlad points out that 'it may be argued that the importance of an unbroken career pattern lies rather in its symbolism, and function as an excluding mechanism, than in any resulting dysfunction in the real world of staffing firms and servicing clients' (Sommerlad 1994, p. 44).

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formal flexible working policies exist) can contribute to solidifying stratified social structures along gender lines.[63] At the same time, it is important to mention, repeated performance of gendered subject positions opens up opportunities to challenges these.

The question of professional conduct and the notion of solicitors as key to helping women who are (discursively constructed as) vulnerable are clearly entangled with gendered assumptions but also gendering effects of the process of citizenship construction in the encounter with the legal process. Such question of professional conduct of solicitors and its interrelation with social structures of inequality was also discussed intensely in the debate on the Law Society's practice note on Sharia compliant wills, which ended up being withdrawn a few months later, due to pressure from solicitors, the government and the public (see chapter eight for more details). The amount and range of comments that were triggered by the articles in the *Law Gazette* indicate that not only personal ethics but also professional and public policy have implications for the positions solicitors take in their daily practice. It is the solicitor's perception of their subject position in the field that determines their approach to practice. To what extent do solicitors see their own ethical, religious or political views as important in regards to whom they take on as clients? For some, their personal opinion about a testator's will (Sharia compliant or not) is irrelevant either because this is what they understand their professional duty to be or because they simply see practice as a business.

> I once prepared a will for a lady of advanced years…She gave me the names of the children of her first son and her daughter. And when I asked 'And [your second son], has he any children?' she pursed her lips and answered 'I think like should go with like, my dear, and I don't approve of racial mixing, and that's all there is to say on the subject'. Now, does anybody on this site think I should have shown her the door and declined to draft her will for her? If you do I can only disagree; she was exercising her freedom of testation…It wasn't my will I was drafting, it was the client's! (Anonymous 8 April 2014).

[63] This corresponds with findings where the image of a successful legal professional was discursively linked to naturalised ideas of 'male' characteristics like objectivity and the ability to apply dispassionate reason (Felstiner, Pettit, and Olsen 2003; Schultz 2003b; see also Lister 1997a, p. 71; Young 1989, p. 253).

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> I have drawn up wills giving ridiculous amounts to animal charities... I thought my clients were two sentimental fools but I drew up the wills and kept my opinions to myself (Anonymous 24 March 2014).

> We cannot necessarily have all liberally minded clients and we need to serve them all. Practice is a business (Anonymous 8 April 2014).

Questions of whether solicitors' practice is simply neutral business or whether their practices and position-taking should be seen as informed by changes in socio-political context are clearly a defining element of solicitors' subjectivities in the field. However, in the field of hybrid British-Muslim family law professional duty cannot be conceptualised in isolation from Muslim legal considerations. A conversation with Asima is telling about how the Muslim and English legal registers – what she called the 'Islamic' and the 'legal' viewpoints – are in fact interlinked in the practice of British-Muslim solicitors. Asima is a solicitor based in England who started up her own independent business offering Islamic legal services in addition to other family law services. She trained in Islamic law at Masters level at a British university in addition to her first qualification. Speaking about prenuptial agreements, I asked her whether she would produce more than one agreement for a polygamous marriage. This triggered an interesting thread of thoughts. It had never occurred to her to do a prenuptial agreement for a second wife as no client has ever asked for this service. She started her reflections based on her professional experience where she drafts such agreements for non-Muslim clients, and concludes that she would not do it for a polygamous marriage because the second prenuptial agreement is 'not valid'. I prompted her again querying that she would not be breaking English law since prenuptial agreements are not a legally binding document under English law in any case. Against this, she brought up another argument that drafting a prenuptial agreement for a second wife might be seen as giving wrong advice and this is breaching the basics of her professional duty. Then there seemed to be a moment of reflection, and she continued 'it's not legally binding at the moment... but it's not the right thing to do as a solicitor' (Asima). Expanding further on why it is not right to do prenuptial agreements for multiple wives, she responded

> because we live in England and you are not allowed to have more than one legal wife. Whereas if we were in a Muslim country and up to four wives were

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> allowed, I'd do more than one prenup. But not here because there is no point to it. The second wife is not a wife and prenups are for married couples (Asima).

It is not 'right' in a framework of thought that recognises marriage as monogamous and prenuptial agreements as restricted to wedded couples. It is not right if she takes up the subject position of a solicitor under English law. Legal subject positions are gendered differently in English and Muslim legal traditions. In making sense of the two through each other, Asima draws on a sense of professional duty that is influenced by principles of English law and concepts, such as the institution of marriage being monogamous. In her reflections, however, she also interrelates this with her subjectivity that is shaped by Muslim legal considerations of what is considered common family practices.

7.1.2. Ethics, religion and faith

Acting according to professional conduct is thus only one aspect of 'doing the right thing' in legal practice in British-Muslim family law. For practicing Muslims, this is also linked to questions of religion or personal faith. Before discussing this further, it is necessary to clarify that I use the notions of faith and religion when solicitors explicitly referred to being Muslim and how that mattered in their practice. In contrast, I refer to an idea of ethics when solicitors talked about doing the right thing, without linking this specifically to religious considerations. While this distinction is not perfect, it helps illustrate how a concern with doing good is not necessarily limited to questions of Islam in the Islamic legal services market. This keeps the framework open for including subjectivities of those solicitors who work in the field but do not consider themselves Muslim.

While there appears to be a certain degree of flexibility when it comes to specific religious aspects of Islamic legal services on offer, some areas of practice are perceived as more sensitive in the examples I gathered in interviews. With regard to Islamic wills, an interesting case was that of Alsana, a solicitor offering Islamic legal services in England, and one of her clients who had converted to Islam but whose family had not and were therefore non-Muslim. To the client, drafting an Islamic will was of personal importance. However, Alsana informed him that in Islamic law as a Muslim he could not make bequests to non-Muslims that exceed one third of his estate. Undeterred, the client asked for the flat he was sharing with his mother to be declared as a gift to her and also left a gift of £50,000 to his cat. Alsana told him that

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this was ‘not Islamic’ but he requested this clause to be included regardless. So she followed his request and explained,

> As some people are very strict, they’d only do fully Islamic wills.... As for me, I feel I advised them that this is the Islamic issue and then, even though they know it’s wrong, they still want to go ahead with it, then that’s their responsibility. It’s not for me to judge if really what you’re doing is Islamic or not. Because I think they are old enough to make their own decisions (Alsana).

While there appears to be some flexibility, Alsana was still concerned about the religious implications of her professional actions in addition to questions about correct professional conduct. This became evident when we discussed Muslim divorces. Regarding the potential challenges for solicitors getting involved in Muslim divorces, Alsana emphasised that she always looks for solutions that allow her clients to find ‘peace of mind’ without conflicting with her own religious obligations. She explained to me that ‘because I am Muslim myself, we believe that we have to answer for everything, your actions, etc. So I don’t want to go around pronouncing somebody’s divorce when technically they are not divorced’ (Alsana). This sentiment is echoed by Samira who is a solicitor based in a larger inner city firm in England. She was keen for me to know that generally her firm’s policy regarding Muslim divorce requests is to

> refer them on to a service that is for Muslims to assess their situation. We refer them on to Sharia councils or their local mosques. I think we’d be doing them a disservice if we kept them on as clients because we couldn’t do this [issuing Muslim divorces] as English lawyers. This is completely outside my remit, this is a religious decision (Samira).

Solicitors I interviewed, however, not only referred to their Muslim faith as important determining factor. They also engaged with ideas of justice not necessarily based on Muslim principles. For example, one of the main points of contention around the Law Society’s practice note was that Islamic wills foresee unequal shares for daughters and sons. In the UK, while dependants or relatives are able to dispute provisions of a will before English courts, so far, no Islamic will has been challenged according to my interview participants. However, some of the solicitors I interviewed concede that

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there is a possibility of a successful challenge because a daughter's share is half that of a son's according to Islamic legal rules. Alsana concluded that

> if challenged it would be interesting because this is unequal isn't it? The court would look at it as an individual will, not as an Islamic will [the fact that the document was drafted under the heading of Islamic will is irrelevant under English law] but the daughter could argue it's not justified for her to get less (Alsana).

The example of the Law Society's practice note shows how the enactment of British-Muslim family law through legal professionals has got far reaching ramifications beyond questions of business or professionalism as wider political questions around the conceptualisation of citizenship and justice, including especially gender justice, are at stake. Some solicitors clearly struggle when it comes to positioning their professional role when dealing with Sharia compliant wills.

> Clients are free to leave their property as they see fit, subject to the law, but do we have to help them to discriminate? (Anonymous 9 April 2014)

> We have to be very careful not to be asleep when someone tries to overrule our laws with their own, whether it be legitimising FGM [female genital mutilation], giving less money to women who earn less because of their childrearing responsibilities or anything else. What happened to our sense of justice? Has it been obliterated by political correctness? Is this really what we believe or can we challenge it? (Anonymous 16 April 2014).

> What I have always understood one's professional duty to be…is to carry out one's client's wishes as far as is practicable and to the best of one's abilities, not what one thinks his or her wishes ought to be …If you don't want Moslem, gay or homophobic clients, that is your decision, provided that you make that clear, don't mislead people whom you are unwilling to advise into instructing you and are prepared to try to defend yourself against any action the EHRC [Equality and Human Rights Commission], the Law Society or anyone else may choose to take against you. … telling, say, a Moslem from the Indian subcontinent that you'll only take instructions to do what fits your ideas as a well meaning middle class English man or woman of a vaguely liberal

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> disposition strikes me as potentially religious or racial discrimination or both (Anonymous 7 April 2014).

When navigating the hybrid field of British-Muslim family law legal professionals cannot help but touch on public policy issues, gender justice and governance of family models in society. As summarised aptly by Grillo 'Islam generally and the Muslim family in particular have become highly politicised sites of contestation' (Grillo 2015, p. ix). The last statement sums up a triangle of normativity within which solicitors feel compelled to position themselves: personal ethics, professional duties, and public policy or broader societal ethics. The comment mentions the solicitor's personal opinion at play about 'what one thinks [the client's] wishes ought to be'. Second, colleagues are reminded that it is the solicitor's professional duty to simply 'carry out one's client's wishes as far as is practicable' and not to 'mislead people'. Third, there is the dimension that failing this professional duty is violating broader public policy regarding 'religious or racial discrimination' that fall within the scope of bodies such as the EHRC or the Law Society. One should add 'discrimination of women' to this example as concern of negative effects on the principle of gender equality was a central feature in the public debate regarding the Law Society's practice note. One of the biggest points of contention regarding Islamic wills was the Islamic structure of assigning the daughter half the share of the son's. The above quotes serve to illustrate how solicitors in the field position themselves in relation to ongoing discourses on broader societal issues such as debates on gender, racial or religious discrimination. This process of position taking within a web of (discursive) relations is constitutive of their subjectivities. Professional subjects are thus constructed within and by social and cultural systems including patriarchy. This is how I see solicitors' agency to be constrained, or better embedded, within a particular context which means they are not able to completely freely 'take up' the role. The examples of the Law Society debate also show how the public arena and solicitors practice interrelate. It becomes apparent how solicitors do not operate in a vacuum as their practice is situated in social debates and contexts. These are clearly subjects constructed within contemporary culture, law, social context.

To summarise, although some solicitors prefer to see themselves as merely executing the wishes of their clients, my research shows that they exercise considerable activism, authority, and judgment in the scope of their practice, and the decisions they

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take or advice they give. This is because there is no standardised guide for practitioners in the field onto which solicitors can fully rely. Solicitors not only turn to legal, ethical and religious considerations in their work but also engage in and therefore shape the practices and discourses of law in the present. They engage in how family and gender relations are governed in the UK. At the same time, their practice is structured by existing power relations emanating from gendered projects of professionalisation and citizenship. For instance, the fact that more women participate as professionals in a marginal specialisation of British-Muslim family law as solicitors must also be linked to the gendered nature of the legal profession that marginalises women solicitors more widely. Yet, these structures should not be conceptualised as overly deterministic, I argue. Here, the concept of 'embedded agency' is also one that can usefully be applied in the area of solicitors' practice in the UK. While research has shown that clearly gendered distribution of power works to the disadvantage of women in terms of career progression and their ability to bring about subversive change within the profession, women are not to be thought of as passive in the field. There is at the same time evidence that women 'are playing a significant part in contesting traditional professional structures and cultures, both through deliberate challenges and also by the mere fact of their presence. However the picture is complicated' (Sommerlad 2002, p. 229).

Thus what is law, and what is right? remain questions open to interpretation to some extent. The responses have been different from solicitor to solicitor I interviewed. The fact that there is no singular answer, however, not only reflects simple variety of opinion or the lack of standardised professional guidelines. More than that, I argue the differing responses by solicitors can more usefully be understood as negotiations of boundaries between law, religion and culture through legal professional practice.

7.2. What does law do? Questioning the boundaries of law, religion and culture

Professionals in their practice – while not describing it that way in their own words – thus question 'what law is' through their day-to-day business in the British-Muslim legal field. As legal subjects whose creative agency is embedded in their particular hybrid context, they perform social meaning-making beyond the strict boundaries of English law. This is also why the practice of solicitors in Islamic legal services – a

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specialisation arguably at the margins of English law – is important to questions of citizenship. It is because they play an important part in changing the imaginations of the political community and its social conventions. As Moore poignantly summarises, 'legal conventions, including topics such as family law… engender critical discussions of conceptual inheritances and legacies', and these discussions 'matter because they set limits on conceptions of what is possible (and impossible)', and 'for many, these practices provide the resources to help normalise Muslim living in Britain not in relation to the dominant institutions of law and society but in an internally differentiated Islamic idiom' (Moore 2010, p. 78). Such imaginations of the political community includes imaginations of synthesised notions of justice grounded in a field that, while structured by conservative gender relations, nevertheless remains fluid enough for women – both professional and lay – to critically challenge the dominant position assumed by authorities often occupied by men. As Bano observed, women users of Sharia councils may use their services to obtain a Muslim divorce but they nonetheless contest the very norms and expectations of women legal subjects that underlie these resolution bodies (Bano 2007). Similarly, one of the solicitors I spoke to told me how a client once queried whether as a woman she had the capacity and authority to deal with Muslim divorce certification. This prompted her to conduct further research and she concluded that the Islamic requirement to be considered in a learned position is not limited to men.

Asking 'what law is' invites a number of related questions that need to be addressed in order to better understand the figure of the British-Muslim solicitor as well as their potentially creative role in the field of Muslim family law in Britain today. Do solicitors think of 'Islamic law' as law or as religion, culture or else? How do their clients' perceive these different authoritative registers when they seek Islamic legal services? Does it make a difference if these services are offered by a professional trained in English law rather than a panel on a Sharia council, or a religious figure such as an imam? In the examples discussed in this section, it is possible to observe how concepts of law, culture and religion are unsettled and reassembled drawing on actors' understanding of them based on their personal faith, legal training and experiences of the political, social and professional context they operate in. This complex web of internal (subjective) and external (structural) connections makes up what can be called a person's subjectivity. The practices and subjectivities of actors in

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turn shape and fortify the edges of this particular field of British-Muslim family law and help their clients formulate claims to differentiated citizenship.

7.2.1. Contesting and broadening the concept of law

This thesis argues that the emergence of British-Muslim family law effects political contestations delineating the boundaries of law in contrast to other realms in an ongoing struggle for authority. In this context, a variety of actors employ law, or the claim to act according to the law, for different discursive strategies. The political urgency of this issue is illustrated by a discourse that uses the terms 'council' and 'court' interchangeably and therefore suggests a threat to the authority of English courts. Grillo recounts how different actors in the field refer to Sharia councils as either courts or councils but clearly notes that often those individuals hostile to the idea of their existence call them courts, while Sharia councils themselves use the term council (Grillo 2015, pp. 21-22). For example, in the Mail Online, Corner uses the term 'court' throughout a newspaper article arguing that 'the number of Sharia courts operating behind closed doors - and beyond the reach of British law - continues to grow apace'; Corner is clearly critical of the existence of Sharia councils (Corner 2017). Another example, is a 2014 petition to Parliament that attracted 21,452 signatures with the aim to 'stop all 85 sharia courts… [and] to see all sharia law banned'. The government, however, responded to the petition stating that 'there are a number of Sharia councils in England and Wales which help Muslim communities resolve civil and family disputes,…they are not part of the court system in this country and have no means of enforcing their decisions' (Petitions UK Government and Parliament). The discursive distinction between what is considered a court or a council – law, religion or culture is crucial here. This negotiation is not limited to Sharia councils but is also one of the central themes that emerged during the interviews I conducted and in the debates surrounding the practice of British-Muslim family law. When it comes to discursively articulating the boundaries of the British-Muslim legal field in practice, it is necessary to highlight the unequally distributed power to speak. As Grillo observes, 'actors articulating different social and cultural interests engage in a struggle over meaning, and crucially also about practice, and rights and duties' (Grillo 2015, p. 7). He rightly points out, however, that these power struggles are far from equal with some voices carrying more authority than others (see also Young 1990, p. 185 on privilege and the right to speak). Specifically, in a field of law, voices that have an institutionalised legitimacy carry significantly more authority,

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or influence, than those that can be considered as 'lay' opinions, or opinions of the religious or cultural sphere.

It is for this reason, I argue, that the figure of the solicitor experienced in both English and Muslim law plays a key role in the creation of the field of British-Muslim family law. Legal professionals trained and qualified to practice English law, often operating at law firms, carry a strong association with the law in the sense of a formalised, state-centred, professionally guarded idea of legality. This particular image of the solicitor as rooted in the sphere of law distinguishes them clearly from other actors in the field such as Sharia council board members, or imams. Their training in processes of English law means that their day-to-day practice also differs to some extent from how these other actors operate. For example, they tend to be office based, keep comprehensive file records, produce documentation and have a detailed fee plan, which all form part of the distinct materiality and legal process that is understood as belonging to the realm of law (as discussed in chapter five). From the perspective of the English legal system, the fact that they are qualified solicitors under English law is of relevance in some areas such as will writing, as, for example, only solicitors are allowed to give tax advice. Other services such as certificates of Muslim divorce are documents not recognised under English law. However, from the perspective of many clients the figure of the solicitor belongs to the semantic field of law; therefore also their services that may lie outside the remit of English law become part of a wider concept of legality. Alsana's experience of her practice offering Islamic legal services illustrates the solicitors' association with a broader conception of law, or legality. She was talking to me about her experiences of different peoples' motivations for seeking Islamic legal services. Her stories of clients who come and see her in her office indicate that in practice it is as much about the state's definition of law as codified in the statute book as it is about a subjective understanding of what law is, what law does. Alsana provides certificates of Muslim divorce to her clients who want to document their Muslim divorce either in addition to a civil divorce or in cases for marriages where the spouse resided abroad. She explained to me that

> the reason they come to us is that we are Muslim and also that we are solicitors. It's almost as if, if we do it, it makes it legal, not technically legal because it's not binding in law. We say to our clients that these things don't mean anything under English law. But the people who come for Islamic

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> divorces come for their own peace of mind and satisfaction, knowing they have something in hand and have given it to the other person…
>
> What distinguishes solicitors' legal services from other providers is I think that it gives peace of mind. They feel that going to a solicitor is binding even if we say it is not. But they get that peace of mind (Alsana).

I argue that the understanding of legality in the British-Muslim legal field spans across different areas of law and normativity and includes elements of Muslim law as well as English law. For Alsana and her clients alike, then, the concept of what constitutes law goes beyond the limits of state law. This is an important finding because this is one of the central reasons why Islamic legal services provided by solicitors emerge. The solicitors I interviewed all stated that the demand on their Islamic legal services was on the increase or that the knowledge of Muslim law was of increasing importance. Kate, whose work regularly involves aspects of Muslim law, mentioned that 'it has become critical for me to understand Sharia law and to understand how it impacts on the lives of my clients and I would say that is an absolute definite'. Also, the scholar of a Sharia council that I spoke to confirmed that they see cases increasingly go through solicitors. I would like to mention at this point, however, that there are significant difficulties in investigating what practices and norms can be considered part of the legal sphere outside the state realm – especially when interviewing legal professionals trained as solicitors in English law. If asked to define the law they work with, solicitors refer to the law of England and Wales. For instance, when I directly asked Fareeda if her services include 'Islamic law' as well, her response was emphatic: 'no, no we are solicitors we are not qualified… we can only advise on the law of England and Wales and cannot advise on the Sharia law' (Fareeda). At the same time she referred to Sharia as 'law' and not as a purely religious realm as others see it. This exchange with Fareeda is important as it highlights the challenges of defining the scope of this broader realm of legality in British-Muslim family law and the positioning of solicitors within it.

Thus, both methodologically and analytically it proved unfruitful to go looking for the precise definition of British-Muslim family law and thus a baseline for solicitors' practice. Rather, in conversations with solicitors and in online discussions, it is possible to observe how the construction of legality takes place through a juxtaposition of law with other social concepts. I therefore propose to look at the

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boundaries of the realm of British-Muslim family law through its interrelations with normative forces such as English law, Islamic law, religion, or culture. My research findings suggest that it is along these borderlines that solicitors make sense of what constitutes the British-Muslim legal field and what subject positions are available to them. Moving along the fuzzy boundaries with these related normative concepts, it is possible to draw a picture of the current practices and subjectivities of legal professionals in this area of family law.

7.2.2. Productive tensions between law, culture and religion

The most productive tensions in my empirical research include those between law versus culture, and law versus religion. It is necessary to mention at this point that I do not interpret the notions of religion and culture as clearly distinct from each other. The aim of the analysis below is not to erase the evident complexities of distinguishing (or failing to distinguish) between religion and culture in practice. Rather, it illustrates how professional subjectivities are constituted within the tensions of such discourses and how solicitors position themselves, their work and thus their idea of 'law' along these conceptual binaries in a process of discursive sense-making.

Let's first turn to the discursive distinction between law and culture. The different ways in which law and culture interact with each other conceptually are manifold in existing socio-legal literature. 'Links between law and culture are portrayed in many seemingly incompatible ways—law sometimes appearing to be dependent on culture, sometimes dominating and controlling it; sometimes ignoring it, sometimes promoting or protecting it; sometimes expressing it, sometimes being expressed by it' (Cotterrell 2004, p. 6). Mezey points out that 'law…appears easier to grasp if considered in opposition to culture as the articulated rules and rights set forth in constitutions, statutes, judicial opinions, the formality of dispute resolution, and the foundation of social order' (Mezey 2001, p. 35). The close relationship between law and culture is also a familiar trope specifically in the area of Muslim law and gender relations (see for example Mayer 2012). Anwar argues that 'it is not Islam that is oppressing women, but interpretations of the Qur'an influenced by cultural practices and values of a patriarchal society, which regard women as inferior and subordinate to men' (Anwar 2013, p. 108). Relatedly, Macey argues that culture and religion 'are not easily separable, and much of what is transmitted as religious code is actually cultural tradition' (Macey 1999, p. 54, note 1).

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Mousa sees the explanation for some of the issues in Muslim legal practice in the fact that 'Asian culture' gets confused with 'Islamic law'. In line with Mezey's argument, law in Mousa's view comes to represent a clear and precise system different from potentially problematic culture:

> Because remember we've got Islamic law. Law in general is clear and precise isn't it? Any law in any country is laid out, subject to change, but the law is there. That's why we can study it, we get up-dates every year. When it comes to this sort of area when it comes to deaths, birth and marriages it's that Islamic law gets mixed up with Asian culture. This is where the problems occur. Islam gets mistaken for culture and culture gets mistaken for Islam… a lot of the practices of people from Pakistan, India, Bangladesh, for example in divorce, are actually malpractices (Mousa).

The juxtaposition of law with culture comes to the fore also in relation to marriage practices. Alsana talked about a particular case of a client breaking with established culture or tradition by asking for a higher mahr than her siblings as well as by stipulating her right to work in the marriage contract.

> In the nikah you can write down conditions, I know you can write down all sorts of conditions but in the Pakistani culture you don't write down conditions… and also prenups in English culture aren't really the norm … however one client did hers with certain conditions. She has got two sisters who are married to their cousins, they didn't have that high a mahr. She herself did have a higher mahr because she married somebody else [outside her extended family]… She had a higher mahr to protect her, she had something like £15,000. In Pakistan it was tradition to give 32 rupees… She also had another condition, that he won't stop her from working. So she came to me to prepare a document for her outlining these conditions and have it all on paper (Alsana).

By instructing a solicitor and by formally incorporating these conditions into her Muslim nikah contract, which acts in a similar way to a prenuptial agreement, the client sought protection by 'the law' although nikahs are not considered marriage contracts to be up-held in an English court as such. Equally, non-Muslim prenuptial agreements are only persuasive in court with the final arbiter being the judge. While

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mosques can possibly include the same wide variety of conditions in the nikah contracts they deal with,[64] it is significant that this particular client chose to proceed through a solicitor offering Islamic legal services. Is it that an agreement drawn up by a legal professional as opposed to an intra-familial agreement serves to provide protection in the absence of strong family ties? Is it that law in this case functions as a stronghold against culture, a site where cultural traditions can be challenged more easily and more successfully than from within what can be considered the realm of culture and religion?

The image, or the idea that law and its professionals act for the protection of individuals against culture or as protection in case of failure of more cultural-traditional settlements also resonates in the following statement by Mousa. In response to the question of the difference between Islamic legal services offered by a solicitor and those offered by Sharia councils, he says:

> The Islamic services department usually acts for Muslim women who are stuck in unsuccessful marriages when the marriage has broken down and reconciliation has usually been tried, and there is no future in the marriage. So they instruct us. So the difference between instructing [our firm] and instructing the Sharia council…is that with instructing a set of solicitors you are instructing somebody to act for you, so they represent *you*, you are instructing someone who is acting in your best interest (Mousa, my emphasis).

The figure of the solicitor as acting in the best interest of the client in a personally difficult situation such as marriage breakdown was a very common theme in interviews with solicitors. This is clearly an important aspect of how legal professionals see their role, and how their clients perceive what they can expect from their services. In Mousa's self-understanding it is important to differentiate the firm's services to a client from the setting of a Sharia council, which acts less as an advocate for a particular party than as a forum for dispute settlement between different parties. In subjectivities of British-Muslim solicitors, law and its representatives thus become

[64] There has been a concerted effort by a group of Muslim scholars to promote a model Muslim marriage contract, led by the Muslim Institute. Its optional conditions are 'clarifying the rights and responsibilities of the spouses and by moving towards equality and justice in the family. These are rights that are guaranteed under the Shariah. These are also rights that are included in the Muslim family law or personal status codes for Muslims in many countries' (Muslimmarriagecontract.org). That brings the model Muslim marriage contract closer in line with English legal practice. The contract was launched in 2008.

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to feature as the champions of individuals' interest in contrast to less legalised, less formalised realms.

In the examples above, English law is conceptualised as up-holding women's interests, as acting as a neutral arbiter removed from culture or the family. Feminist scholarship, however, challenges such construction of law (for a critique of the presumed neutrality of the law see Phillips 1991; Scott 1996; Zerilli 2005). Rather, experiences with family law (and other areas of law) are gendered in their outcome. The term 'family law' in itself hides the conflicting interests of men and women subjects within the realm of the family and its legal regulation (see Walby 1994 for a discussion of how the family is not an individual but composed of multiple people who are not 'private' from each other). Far from being 'a unit', the family is not an interest-free space. Therefore, while formulated in a gender-neutral manner, the same legal provision may affect men and women differently. As an example, the cut in legal aid for family law cases had a prejudicial effect on women, which was intensified at the intersection with disadvantages faced by migrant women such as language difficulties and a tendency not to rely on public services for help such as the police (a more detailed discussion of how transnational experiences can exacerbate already disadvantaged subjects is provided in chapter eight). Kate, who has been working as a solicitor for many years experienced the reduction of legal aid funding in her practice in the following way:

> I work with a lot of women who have maybe not learnt English, who have maybe not socialised outside of the family … They certainly won't have phoned the police, they won't have told the doctor, and they don't see anyone else really apart from their family. That's in a large number of cases I have worked over the years. And also on the whole, you just don't speak outside the family about what is going on. I think that has prejudiced an awful lot of Muslim women since the law changed in 2013, because, whereas they used to be able to come and see me and say 'I have not told anybody before but I have been a victim of violence for years', and we would then take whatever steps were necessary to protect them. Now we are having to say 'have you told anyone, have you told your doctor, have you told the police, is there any proof?', and I think that has been a prejudicial step and I think it has disproportionately impacted migrant women. That is my experience (Kate).

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Kate's experiences in her practice call into question the image of law and state legal practice as impartial and neutral. More than highlighting that law cannot be understood as dispensing justice equally to all its citizens, Naffine argues that such perception of law as neutral arbiter contributes to 'its task of assisting in the reproduction of the conditions which subordinate women (as well as other social groups)' (Naffine 1990, p. 3). This resonates with the findings by McCann and Scheingold that engagement with the legal process tends to reproduce existing social hierarchies (Scheingold 1974; McCann 2006). Hence the call for differentiated citizenship by feminist scholars (Young 1990; Walby 1994; Lister 1997a, 2001), because ensuring fair and balanced participation in the polity requires differentiated rights that take into account the complexities of the political-legal subject that results from intersections of gender, faith or professional status to name just a few that are particularly relevant to the workings of British-Muslim family law. Drawing on feminist scholarship here is very helpful as its contributions are central to highlighting power relations within family law as well as within families and the role of the family in shaping social life, including citizenship, which was for very long, a male subjectivity.

Investigating the boundaries between law and culture reveals what becomes to constitute 'law' in the field of British-Muslim family law. However, another important dimension is the juxtaposition of law with religion as a prominent dynamic in constructing legality in the field. In scholarly debates, the question of accommodation of Muslim legal practices in British or European legal systems is often framed as one of interaction between law and religion, or between law and religious law. Such a focus implicitly furthers an understanding those practices as 'religious' or as 'religious law', contrasted with a notion of law as removed from the sphere of religion and thus secular. Douglas et al., for example, begin their inquiry by asking about 'the place of religion in people's lives' and 'how far English law should accommodate religious legal systems' (Douglas et al. 2013, p. 185). Such positioning of Muslim practices as religious practices is true also for Rowan William's speech on 'Civil and Religious law in England: A Religious Perspective'. To dampen the 'political explosiveness' of his intervention, it was highlighted in many places that his argument was not that Sharia in Britain is inevitable (as headlines suggested) but rather that he was attempting, as would be expected from the then Archbishop of Canterbury, to strengthen the role of religion in society and law more broadly by referring to the case

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of Muslims in the UK. Gaudreault-DesBiens comments that Williams was arguing for 'inclusion of religious sensitivities into the British legal process characterized by a form of uneasiness about religion' (Gaudreault-DesBiens 2010, p. 59). The British legal system might be uneasy about religion but ultimately in this portrayal, secular state-law law has the capacity and power to handle religion, which is per definition not on equally legal standing.

This debate around Muslim practices as primarily religious or legal also surfaced in professional practice. Solicitors working in the field of British-Muslim family law, be that Muslim or non-Muslim individuals, engage in the question of what constitutes 'the legal' in their work. In interviews the answers to that question were at times straightforward. However, beyond the immediate verbal responses one can detect how experiences with the complex reality of practice begin to undo some of the firmly held assumptions. Joanna has an interest and experience in Sharia law. She works for an inner city law firm in the family law section. She is not Muslim herself and has not studied Islamic law as a qualification, but has become familiar with this terrain through her work on a case in which the validity of a Muslim marriage played a central role. At the start of our interview I asked her to describe to me her area of work and how Muslim law filters into it. Her response was telling in that she did not pick up on the notion of Muslim *law* and instead chose to refer to how *religion* plays a role in her daily practice:

> The way religion comes into [my daily work] is obviously dependent on the clients that you get through the door. We have a fantastic international network of clients and associates offices overseas. So we can have a lot of clients who are very international people and who sometimes are of Muslim religion… The Muslim community in England is currently huge. Whilst, like a lot of other religions, they have their own marriage ceremonies, beliefs and codes as far as marriages is concerned, if they're here and marrying here or divorcing here then obviously the English law has to come into play and therefore they have to seek English legal advice (Joanna).

Through her experience with a number of cases involving Muslims residing in the UK, Joanna sees how issues specifically concerning Muslims, such as validity of marriage or nikah agreements, cannot be separated from the English legal system and indeed find their way before an English judge. However, she remains sceptical about

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what the points of reference or the basic tenets of a more formalised interaction could be. In reference to *Radmacher v Granatino* in 2009 concerning the validity of a continental European prenuptial agreement, Joanna agrees with the judge's statement regarding the exclusion of Muslim prenuptial agreements from being recognised.[65] This is because

> incorporating religion into any law is obviously difficult, lots of times they are polar opposites… especially Islamic law, or Islamic religion, because it is so different from the current laws are of this country. Trying to introduce them would be very difficult and so in that case I think it is sensible to say we are excluding any of that (Joanna).

Joanna's professional experience dealing with Muslim clients and their needs is quite unusual as the majority of lawyers specialising in Islamic legal services appear to be Muslim themselves. The fact that non-Muslim solicitors without formal training in Islamic law are also beginning to work in this field of British-Muslim family law shows how far-reaching practices of Muslim marriage, divorce and wills have become in the UK. Possibly Joanna's own background means that she is more hesitant to speak about Muslim law as law and rather conceptualises it as religious practice that crosses her professional path. It is also telling that many of her firm's clients come from abroad and that she describes them as part of this huge international network. 'Islamic law', or 'Islamic religion' – as she corrects herself – thus remains a slightly more 'foreign' phenomenon in her account than for example in Alsana's and Mousa's description of their daily practices. English law is different from Islamic religion in that it provides the stable, constant frame of reference or system through which religious aspects of citizens' lives can be regulated. But the notion of Islamic law *qua* law destabilises this hierarchy to some extent.

7.3. Formalisation, professionalisation and citizenship practices in the everyday

In conversations with a number of solicitors, and clients, it became increasingly clear that individuals see themselves as occupying quite different heterogeneous subject positions. One example of the variety of subjectivities prevailing among solicitors in

[65] *Radmacher v Granatino* (Rev 1) [2009] EWCA Civ 649, [2009] Fam Law 789.

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the field is the question of whether it is within the scope of solicitors' practice to be involved in Muslim divorces at all. Interviews revealed no consensus about what, if any, documents solicitors should be issuing in relation to Muslim divorces. As these documents are not legally valid certificates of divorce under English law, there are no official guidelines as to what these documents should contain or even whether solicitors should be involved in issuing documentation like this. At one end of the spectrum some solicitors argue that they are simply acting on behalf of their clients' wishes when asked to draw up certificates confirming Muslim divorce if the clients themselves are satisfied that the 'religious' element is met. Somewhere in the middle are other solicitors who work closely with more firmly established authorities such as mosques or Sharia councils in confirming that the qualifying elements of the Muslim divorce are met and hence the divorce is valid from a Muslim legal point of view. However, the actual file handed over to the client would still come from the solicitors' office. At the other end of the spectrum I have spoken to solicitors who generally oppose the idea of becoming involved in the Muslim legal side of the processes at all and who refer their clients on to their local imams for anything outside the standard remit of solicitors working in the area of family law in divorce. However, I argue that solicitors are beginning to carve out for themselves a more distinct role within the field. By positioning themselves as different from other 'actors' in the field, they also arguably become more coherent and distinguishable as a group. Performance of law is 'stage' dependent. In its performance actors gain subjectivity from local contexts and in juxtaposition to others. They are solicitors, they perform British-Muslim family law, and through practice they also learn disavowal: 'I try to not bring [faith] into my work because at the end of the day this is not what I have been taught at university. I've been taught to apply the law' (Fareeda); 'I'm not an imam…I'm not a scholar' (Mousa); 'we couldn't do this [issuing Muslim divorces] as English lawyers' (Samira).

A key development for the central positioning of solicitors in the field of British-Muslim family law is the process of *formalisation* (as discussed in chapter five). On the one hand, the increasing influence of solicitors in the emergent legal field of British-Muslim family law suggests that formalisation is likely be of increasing importance in the construction and perception of 'the legal'. On the other hand, more formalised practices will require more involvement on the part of 'professionals' in case of dispute. Billaud too points to something like a trajectory or a development that

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is taking place among Muslim populations in Britain when she says that 'the creation of Sharia councils reflects the development of Islamic religious practices in Britain. Indeed, mosques were the first institutions that Muslim immigrants to the UK created upon their arrival' (Billaud 2013, p. 162). This statement suggests that the types of Muslim institutions in the UK are changing over time. Here, Sharia councils developed to deal with specific issues and challenges of regulating family life in the UK without having to seek recourse to religious – or I would contend legal – services outside the UK. This is in line with the view of the scholar I interviewed at a Sharia council who explained how local Muslims increasingly needed Islamic divorces to be available in the UK as most of their family relations were here.

I argue that the field's embeddedness in the UK context with its multiple drives for legal privatisation has a further transformative effect with the figure of the solicitor, women and men, featuring more prominently. The professionalised, formalised practice of solicitors contributes to creating spaces for the British-Muslim subject position in the field of law. As White argues, law is a form of constitutive rhetoric in the sense that 'the law constitutes a world of meaning and action: it creates a set of actors and speakers and offers them possibilities for meaningful speech and action that would not otherwise exist' (White 1990, p. xiv). The experiences of solicitors working in the field serve as illustrations of the constitutive and performative nature of law. In my conversation with Mousa, he offered me a very interesting inflection on the phrase 'to practice as a solicitor':

> It is always about practice isn't it. The work that solicitors do for example across the country, they deal with the big high-profile cases and they deal with the small matters. But every case is important. But it's practice that makes a good solicitor (Mousa).

Being able 'to practice as a solicitor' is commonly understood as having completed all stages of exams and training, being admitted to the roll of solicitors and having received the first practising certificate. However, I would like to offer a differently nuanced understanding of what it means to practice as a solicitor. Mousa's comment prompted me look at the idea of legal practice in a different light. The term 'practice' also refers to training, exercise, repetition, routine, ritual or performance. On the one hand, solicitors in this incipient legal field are literally in the process of training and trying out new legal techniques resorting to English as well as Muslim law. On the

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other hand, their daily activities as they are repeated often become routinised over time and through the growing volume of business and thus contribute to them performing the figure of the British-Muslim solicitor.

This insight is crucial for my understanding of the Islamic legal services market as constituting a site of citizenship, in the sense of political subjectivity forged in everyday practices of professionals and their clients. This image of routinised, repetitive practices congealing over time into a novel frame of political subjectivity can be captured only when citizenship is explored also in its everyday aspects, which is discussed in more detail in chapter three. Mousa's comment above as well as other discussions in this chapter exemplify how such a conceptual framework of citizenship highlights the politically constitutive power of everyday engagement in law. At the moment, the emergence of British-Muslim family law as a site of citizenship is still ongoing. While law can be mobilised to challenge the terms of existing institutional and social orders, it is also noteworthy that scholars observe that law 'generally works to support status quo conventions and hierarchical relationships' (McCann 2006, p. 17). Similarly, on the one hand, Scheingold's work has been crucial in establishing 'a novel way of conceptualizing the power and function of law' and with this its transformative potential (Silverstein 2012, p. 65). Yet, on the other hand, Scheingold also highlights the failure of law to deliver on its promises (Scheingold 1974, p. 5). As Silverstein poignantly puts it 'law – lawyers, litigation, and rights in particular – … promises order and tranquility, stability and adaptability, rules and rights, legitimacy and coherence, and ethics and efficacy' (Silverstein 2012, p. 67). However, courts and rights often fail to deliver on these promises in practice. In light of Silverstein's argument, is a uniform state legal process the most effective avenue for achieving gender justice in British-Muslim family law? Will increasing 'feminisation' of the field lead to substantial changes in the culture of professional practice and/or the outcome for women in their bargaining positions when claiming rights and justice in the legal field?

In a number of instances, illustrated well by the conversation with Fareeda (section 7.1.1.), the subject position of the woman solicitor that is emerging appeared complex yet also tied to a particular context where women solicitors appear to feel compelled to foreground their professional identity as to avoid criticism of bias, activism or emotionality, which may in turn negatively affect their career progression. Regarding

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the potential of a 'feminisation' of the profession, Menkel-Meadow poignantly asked 'whether women will be changed by the profession, or whether the legal profession will be changed by the increased presence of women' (Menkel-Meadow 1986, 899-900). That change will be effected simply by increasing the number of women solicitors has been questioned in scholarship; still Sommerlad recognises a 'potential for subversion and contestation' of gendered and exclusionary professionalism in law (Sommerlad 2007, p. 195).[66] It is important at this point to mention that an uncritical focus on the transformative potential of women solicitors or the process of 'feminisation' of legal practice, risks reinforcing stereotypical, 'naturalised' characterisations of women as more caring, emotional and able to express empathy. This thesis aims to counter such essentialising view. Interview participants did not highlight a difference of being a woman or man in how they see their work. A common thread was an overall emphasis of the importance in their work to understand and well the details and the importance of Muslim aspects of clients' cases. This corresponds with findings by Felstiner, Pettit, and Olsen who argue that it is, for both women and men, 'socially desirable for lawyers to listen to their clients carefully…to be concerned with them as people' (Felstiner, Pettit, and Olsen 2003, p. 27). While interview participants did not see a difference in how men and women dealt with clients, when speaking to interview participants, there was a clear sense that they are aware of the gendered nature of position-taking in the professional context. Thus, individual solicitors navigated the gendered complexities of the legal field differently but it nonetheless structured their positioning.

To sum up, an analysis of the contribution of legal professionals to British-Muslim family law needs to maintain a critical perspective and pay attention not only to the transformative but also the conservative characteristics of legal practice. This is a very important point because while the incipient field opens possibilities of creative interventions, as described above, there is a danger that it maintains or reinforces the production of conditions that disadvantage women and other social groups in legal power relationships as they go about arranging their family lives. As Scheingold notes, law is a game but not a 'parlor game, it is a social institution bound up with the most important dimensions of human freedom and oppression' (Scheingold 1974, p.

[66] Yet, such a transformative process is not one-directional. Sommerlad and Sanderson, for example, also overserved new practices of social closure in response to increased numbers of women entering and moving up the hierarchy of the profession (Sommerlad and Sanderson 1998).

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157). Given these tensions, are there possible alternatives? Looked at through the lens of the everyday, the *modus vivendi*, the idea of differentiated citizenship can contribute to the legal sphere an understanding of how differentiated rights are possible and more equitable in certain circumstance while not giving up on a universalist idea of justice and equality as a value (see Mookherjee 2009). Similarly, Young argues that 'where differences in capacities, culture, values, and behavioral styles exist among groups, but some of these groups are privileged, strict adherence to a principle of equal treatment tends to perpetuate oppression or disadvantage' (Young 1989, p. 251). More empirical research is needed to be able to make conclusive statements about the extent to which rights claims under British-Muslim family law substantially improve access to justice. For the moment, approaching this topic from a question of citizenship, and specifically a right to differentiated citizenship allows for flexibility because citizenship as a concept remains open but also provides a framework within which to engage and analyse what is happening in different parts of British society. The different ways of engaging in the field of British-Muslim family law are part of the building blocks that give birth to the figure (or subject position) of the Muslim citizen – be it as professional or lay – firmly staking their claim to a place in the legal arena of family law. The emerging field of British-Muslim family law is thus at the same time the outcome and source of sustained struggles around rights and obligations of Muslims in Britain navigating normative spaces of law, religion, culture, ethics and politics. Here, the figure of the British-Muslim solicitor is central to the development of the field in that it is the conduit between English and Muslim family law.

7.4. Conclusion and outlook: Transnational citizenship and legal practices

While the field of British-Muslim family law is best described as *in formation*, it is also *informing* the figure of the British-Muslim solicitor to take a position – about their remit of work or vis-à-vis non-professionals and other professional actors. This figure would not be able to act unless there was a field within which it is possible to do so. In turn, solicitors' particular education, professionalisation and formalisation contribute to British-Muslim family law emerging as a hybrid *legal* field (see also chapter five for a discussion on professionalisation). While self-understanding might be one of simply providing services to their clients, solicitors help formulate in

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particular *legal* languages rights to differentiated citizenship that extend beyond the cultural or religious domain. Solicitors in their practice engage with Muslim clients' needs and their interrelation with English law. These needs are gendered in particular ways, some of which are in tension with gender roles established in English family law. The challenge in everyday practice is about how to fulfil particularly women's needs equitably and fairly. A focus on legal professional '*practice'* – in both of its meanings as professionally regulated conduct as well as everyday practices of solicitors, as Mousa's thoughts quoted at the beginning of this chapter illustrate – gives examples of how citizenship can be understood as both 'citizenship in law' and 'citizenship in practice'. What is key here is that solicitors in the British-Muslim field of family law at the same time draw on existing legal rights but also facilitate, or broker, the formulation of new claims to justice located outside the realm of state law or national boundaries. Their work is thus crucial in the incipient legal field, which facilitates for subjects to claim rights to differentiated citizenship.

The notion of everyday citizenship and the concept of hybrid subjectivity reveal how in theory mutually exclusive notions of religion, culture or law come together in how individuals perform themselves as British-Muslim citizens. This is not to say that such interrelations take place without contestations. These contestations are important because it is along these fault lines that sense-making and place-making can happen. It is thus in negotiations between law, religion and culture that the subject of the British-Muslim citizen emerges. Taking day-to-day legal practice as a site of contestation, this chapter sought to investigate the evolving figure of the British-Muslim solicitor and interrogate its role in the legal field. While a subject's subjectivity is complex (Lauretis 1987), a number of traits emerged from my interviews and field research that characterise the figure of the British-Muslim solicitor: Ethical and religious considerations have a strong influence on their subjectivities and they navigate what it means to 'do the right thing' in their practice. While the fluidity of the field leaves space for certain flexibility when it comes to interpreting the scope of their legal services, they share concerns for professional integrity and duty of work deriving from their training in English law. It is the solicitors' association with the semantic field of law, which determines their positioning in the field. More than simply applying the law and the wishes of their clients, however, they contribute to redefining law and the right to differentiated citizenship through practice, even if they may not perceive their role in this way. The complexity of the task of the British-Muslim solicitor is that they

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are not simply mixing English and Muslim law. In their practice they are moving beyond the scope of each on its own in order to meet their clients' demands. Solicitors tend to position their work within the realm of law and distinguish themselves from other legal professional actors in the field, such as Sharia councils, by highlighting their professionalism, focus on process and procedures and the fact that they act *for* their clients.

What is more, British-Muslim solicitors also challenge a purely national or state-centred approach to citizenship. This is because solicitors are proficient in both registers – Muslim and English law – and in many instances have to work across different jurisdictions and cultures. This also raises important questions about the extent to which their activity can be contained in a national framework or must be conceptualised as a transnational practice. The following chapter sheds light on the question of British-Muslim family law as a transnational field by looking in more detail at different personal experiences across borders. It does so drawing on both legal professional and non-professional subjects' transnational experiences. While the present chapter focused solely on the figure of the British-Muslim solicitor, the developments described above arguably also have an impact on the perception of the legal field by the clients of solicitors offering Islamic legal services and advice, or people seeking advice and help through Sharia councils. As the 'face' of Islamic legal services changes, new ways of performing oneself as a client in this transnational legal field emerge too.

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Chapter 8. Citizens living transnationally: Belonging, politicisation and the state

> *Everywhere there are individuals who… feel the tug and pull of multiple attachments and identifications to family, country, ethnic group, neighbourhood, and so forth (Croucher 2004, p. 7).*

As discussed in chapter seven, legal practices in British-Muslim family law raise questions about the 'boundaries' of what is commonly termed law, culture and religion. Beyond that, they also raise questions about the national 'borders' of legal practice and subjectivity emerging in British-Muslim family law because they are transnational in character. In this final chapter, I am adopting a bigger-picture lens and ask the question how the practices and subjectivities emerging in the everyday are related to the British (nation-)state, national politics as well as global trends in citizenship in the 21st century. Overall, the chapter takes a critical look at questions of belonging of the Muslim subject, not only in Britain but more widely, in a world after 9/11 and 7/7 and how transnational practices of belonging have become politicised.

In an increasingly transnational world, some subjects can enhance their position in the field of British-Muslim family law (section 8.1.2.). Still, becoming entangled with the transnational element of the field can be deeply problematic for others especially because of the gendered constitution of the field, which may put women in disadvantaged negotiating positions (section 8.1.3.). This chapter explores the experiences of both professionals and non-professionals in transnational legal practice and how they contest existing conceptual frameworks. Following *The Black Atlantic* (Gilroy 1993) in its privileging of the hybrid over a constructed communal origin for diasporic populations, this chapter adopts an approach that investigates the spaces in between (or beyond) countries of origin and residence and so contributes to a nuanced understanding of belonging and citizenship. As Young observes there is no pre-existing politics, it is always a process and struggle subjects are already immersed in (Young 1990, p. 190). By providing an alternative exploration of transnational legal practices and belonging in the everyday, this chapter aims to provide imaginaries for citizenship as multiple, contested and not limited to existing solely within a singular nation state or state-legal framework. It describes the field of British-Muslim law as transnational because it transcends national boundaries. However, it does not dissolve

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state boundaries or the power of state law and its institutions. The state, wider national politics and international developments must therefore come into the frame of analysis. This is not only a story about state boundaries and state law becoming less important for how individuals conceive their citizenship and belonging. It is also a story about state law and its institutions, and how government attempts to regain some of the control lost in an increasingly transnational field affect the people involved in British-Muslim family law. This chapter argues that state-led interventions contribute to the politicisation of legal practices of Muslims in the UK, embedded in discourses that are characterised by a particular nexus of concerns with Muslim women's equality and security concerns (section 8.2.). In contemporary counter-extremism projects, however, Brown observes that 'the rights of Muslim women are usually only incorporated as a means of justifying policy, rather than as part of an endeavour which acknowledges their political agency' (K. E. Brown 2008, p. 472). Finally, if citizens' interaction with law draws on transnational sources and is not limited to state law several important questions arise in terms of a conception of citizenship as a settled legal institution. An exploration of transnational lives of people in the British-Muslim legal field thus arguably adds to discussions about the meaning of citizenship in the 21st century, the role of the state and everyday political practices (section 8.3.).

As Moore puts it 'in contemporary Britain, questions of religious identity, belonging, and citizenship in a multicultural society continue to dominate social, political, and academic thought. Perceptions of Muslims in Britain continue to rely on the construction of the Muslim Other as disloyal to the state and in conflict with democratic principles of individual choice and equality' (Moore 2010, p. 22). The politicisation and exceptionalisation of British-Muslim transnational legal practices in political and media discourse is concerned with more than an isolated question of rights of a minority in British society. This is because the publicly amplified discourse of the Sharia debate fuels constructions of an ontological (orientalist) binary between English and Muslim law, and through this also 'a particular kind of nation-state comes into being, as does a particular kind of national subject' (Razack 2008, p. 6). While this chapter is concerned with analysing this public discourse, the simple fact that this contentious discourse exists is an expression of the importance of the emergence of British-Muslim family law as a site of citizenship. To borrow from Lister's words 'the key determinant of whether or not an action constitutes citizenship should be what a

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person does and with what public consequences, rather than where they do it' (Lister 2007, p. 57). The aim of this final chapter is thus to situate the emergence of British-Muslim family law within wider public (political, legal and media) debates.

8.1. Multiplicity of transnational experiences

Multiplicity of transnational experiences may contribute to a different conceptualisation of citizenship as bounded belonging in a single nation state. On many occasions, interview participants told me of their travels, their international experiences and international relationships. The way these stories were told was somewhat surprising for me in terms of diversity of experience and geographical spread; they paint a very complex picture of transnational lives that includes a wide range of very different personal experiences, and goes beyond narratives of a dominant connection with their country of origin (Kymlicka 1995; Levitt 1998; Bhimji 2008; Rohe 2009). Inspired by the concept of the legal field and legal pluralism scholarship, this thesis understands legality as not limited to state law. This approach allows for interesting practices to become visible where legality is hybrid between English law, Muslim law, or customary law. The hybrid field of British-Muslim family law orders and structures the emergence of a new citizen subject whose legal performance is not limited to English state law, yet is an integral part of British society today. Conceptualising the British-Muslim legal subject in this way extends the possibilities of what it means to be a British citizen.

The following sections will explore different transnational stories of people and what they tell us about the changing role of the state in British-Muslim family law. To start with, however, I would like to make some remarks regarding my understanding and use of the term 'transnational' in the field of British-Muslim law and how conversations with people can arguably inform existing discussions on transnational issues by bringing to the surface potentially problematic approaches.

8.1.1. Conceptual limitations of the transnational framework

The term 'transnational' is used in many different ways in literature (Vertovec 1999), however, as a baseline I take the approach that when speaking of the transnational, 'we usually refer to sustained ties of persons, networks and organizations across…multiple nation-states, ranging from little to highly institutionalized forms'

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(Faist 2000, p. 189). As a term it certainly has its limitations as discussed below, however, I use it for the discussion of British-Muslim family law, because it serves two particular purposes. First, individuals may experience 'multiple attachments' to several states, countries or local places and their lives therefore take place *across* these boundaries. The 'trans' in 'transnational' emphasises the importance of the crossing of those boundaries, but not necessarily in the sense of physically crossing state borders. The transnational also overlaps and subverts national borders. To illustrate, because of many transnational links converging in places like London, this particular local place is well covered by Islamic legal services of solicitors, Sharia councils and legal experts. Other particular 'hubs' for Islamic legal services have evolved in Bradford, Birmingham, Leeds and Manchester according to documentary research of solicitors' websites offering these services relating to family law. However, the availability of professional services changes outside the capital – and specific hubs, I would like to add – as Samira explains: 'in terms of family law, I think there has been a huge surge in the last even ten years where people have been talking about Islam and have actually tried to understand it. All of a sudden those services are available'. But she contends that the situation varies, 'for different regions it is very different. In London we are very fortunate' (Samira). The comparatively better availability of Islamic legal services in a limited number of places is relevant because it shows how the effects of transnationalisation and its integration with practices of (national) state law is highly uneven and concentrated.

Second, the term highlights the relevance of the (nation-)state even in a globalised world.[67] This is because the policies of states and especially migration controls have very material effects on transnational lives of people in the British-Muslim legal field (see section 8.1.3.). The term also distinguishes itself from the idea of 'cosmopolitanism', which tends to invoke an image of belonging in which restrictions of national states are overcome and moved out of the frame (Lee 2014, p. 75). What is

[67] In a globalised world it is not only states in the sense of the nation-state but also other regulatory structures that govern transactions across borders. While I decided to continue using the term 'state', Isin and Nyers for example propose to use the term 'polity' to signal the limitation of the concept of the state and 'to move away from the idea that the state is the sole source of authority for recognizing and legislating rights. There are international polities such as the European Union or the United Nations as well as many other covenants, agreements and charters that constitute polities other than the state' (Isin and Nyers 2014, p. 1). Also, more broadly speaking, due to neoliberal politics dominating to a large extent on a global and national scale, 'there are real questions as to whether citizens, even in the most powerful states, can control their domestic affairs in the face of globalized structures and influences' (Hudson and Slaughter 2007, p. 7).

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more, the idea of being British, Pakistani, Bangladeshi, Muslim, or a Londoner for example provides meaningful markers of identification as I noticed when interview participants referred to themselves as, for example, 'British Muslim with Bangladeshi origin' or 'British Pakistani' (see sections 4.3. and 4.3.1. for more details on data collection). While intertwined, these identifications or identities are called upon by individuals for different purposes. Soysal gives a good example of how this may work out in practice: 'when they make demands for the teaching of Islam in state schools, the Pakistani immigrants in Britain mobilize around a Muslim identity, but they appeal to a universalistic language of "human rights" to justify their claims. And, they not only mobilize to affect the local school authorities, but also pressure the national government, and take their case to the European Court of Human Rights' (Soysal 2000, p. 4). While we cannot discard ideas of the state in relation to belonging and assume post-national cosmopolitan citizenship, the practices of people involved in the British-Muslim legal field, be it as professionals or clients, often cross boundaries transnationally. Therefore, I continue to use the term 'transnational' to describe the practices in the British-Muslim legal field but at the same time challenge a limitation in the scope of existing conceptual frameworks. I argue that this limitation arises from a failure to take account of the complexity of transnational lives and experiences, as I would like to discuss below.

Studies concerned with migration and citizenship frequently focus on the exchange – or the fading of the boundaries – between 'original' and 'host' countries, states, nations, cultures, or communities. For example, Kymlicka re-affirms this notion by saying: 'the expectation of integration is not unjust…so long as immigrants had the option to stay in their original culture…In deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership' (Kymlicka 1995, p. 96). The language of sending and receiving country also features in anthropological analysis, for example, in Levitt's study on social remittances travelling between 'receiving-country' and 'sending-country' communities (Levitt 1998). Furthermore, studies concerned with legal aspects of citizenship are paying attention to the growing phenomenon of dual or multiple nationality (Feldblum 2000, p. 478). By doing so, these studies too put their emphasis on sending and receiving countries as the main categories of research and analysis. Specifically in literature on legal pluralism in Europe, one approach is to study the phenomenon through a focus on jurisdictions of home and receiving country through

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the workings of private international law. Rohe's focus is such as he argues that 'Shari'a has entered European parliaments, administrations and courts, which are, every day, applying foreign law in civil law matters in accordance with the provisions of private international law' (Rohe 2009, p. 93). By limiting the concept of legal pluralism to instances of private international law, however, research only includes people who have conducted their family law matters in a country different from that of their residence. Following a similar approach studies of citizenship in relation to British Muslims are often, in my opinion, too ready to assume that the nature of British Muslim transnational practices is influenced predominantly by experiences of interaction with their or their family's country of origin. Bhimji, for example, although she investigates the *cosmopolitan belonging* and diaspora of British Muslims focuses exclusively on travel to South Asia. She states that 'in the age of global interconnectedness the idea of nationhood and belonging becomes much more fluid, and that it therefore becomes crucial to examine how diasporic communities transcend national boundaries and exhibit global forms of belonging' (Bhimji 2008, p. 414), and yet she excludes from her study potentially relevant experiences in countries other than those of her respondents' parents' national origin.

Undoubtedly, the notion of a 'country of origin' remains crucial when it comes to arranging family networks. Williams lists as one of the key characteristics of transnational communities that they 'have a diasporic consciousness through their shared imagination of an original homeland represented by a (possibly loose) sense of cultural, traditional and/or religious authenticity' (Williams 2010, p. 99). I do not intend to dispute this; however, my findings from interviews prompted me to reflect on the methodology of research studies that may not pay enough attention to 'unexpected' transnational experiences beyond interaction with the country of origin.[68] The risk is that such methodological-analytical frameworks reproduce a certain orientalist expectation that the ethnic, cultural or national origin remains the by-far dominant influence in the transnational experiences of British Muslims.[69] The

[68] While Ballard et al. emphasise the continued importance of 'ongoing relations with places of origin', rather than migrants' exclusive orientation towards receiving countries, they also draw our attention to the role of 'international diasporas in the global ecumene' in the experience of lived transnationalism (Ballard et al. 2009, p. 9).

[69] For example, the practices of arranged transnational marriages are often portrayed in popular media and public discourse as first generation migrants forcing second and third generation migrants to adopt a traditional form of marriage different from a more liberal form based on romantic love and personal choice, which is thought to be the predominant norm in contemporary Britain. Pande notes that this 'contributes to the process of *othering* the migrants from the mainstream population because they are

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potential consequence of this is ultimately the domination of a narrative of British Muslims as 'diasporic group' in a host or receiving country (for a critique see Akhtar 2013b).

This chapters aims to counter a certain orientalist expectation that ethno-cultural origin, or country of origin, remains the dominant factor in the migratory experiences of British Muslims (Morey and Yaqin 2010, p. 146). As Morey and Yaqin put it, 'the Muslim presence in the West… like that of other migrant communities, works against nativist myths of a timeless national past. Moreover, as a supposedly unassimilated interloper, the Muslim stranger's allegiances are always in question' (Morey and Yaqin 2010, p. 150). Akhtar too calls 'for progression beyond notions of "host" community and Muslims as a Diasporic group in Britain, in favour of an integrationist model which recognises similarities and belonging, while accepting divergences as a matter of course' (Akhtar 2013b, p. 389). As stories in the following sections will demonstrate, the widening of the analytical framework beyond the British national scope is important. Yet, the continuing linking of British-Muslim practices to 'migrant' experiences is problematic, because of the exclusionary 'culturalising logics' of migration scholarship (Çağlar 2016). This has implications for current debates in a political context where the loyalty of British Muslims to British society, state and values is being questioned (see section 8.3.). Findings from interviews, however, suggest a much more complex scenario.

8.1.2. Counter narratives: Empowering transnational practices

The stories I came across in my research are of people who travel to countries like Pakistan or Bangladesh but not as regularly as would be required to claim a dominant influence. In fact, experiences of living and working in countries other than those considered countries of origin forge considerable personal, educational or professional links, which contribute greatly to the way in which people – especially legal professionals – perceive their role in the British-Muslim legal field. Similarly, Molz for example highlights the importance of round the world travel for the enactment of spatial and civic affiliations (Molz 2005), and Conradson and Mckay refer to emerging 'translocal subjectivities' (Conradson and Mckay 2007).[70]

represented as bearers of cultural norms that are in contrast to the mainstream norms of British life' (Pande 2014, p. 75).

[70] The notion of international experiences as constituting an effect as well as a source of transnationalism is something that Williams also recognises in connection with transnational marriage

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In sections 8.1.2. and 8.1.3., I analyse professional as well as lay experiences of transnational issues simultaneously, which may be counter-intuitive as the two categories are often discussed separately. However, as argued in chapter five, the distinction between professionals and non-professionals is not pre-defined but socially constructed. Professional and lay subjectivities are constituted precisely through practice and concrete experiences, which becomes more evident when both are looked at together. It was interesting to see how solicitors spoke about their transnational experiences as generally positive or empowering episodes, which enriched their careers too. While the clients I interviewed also referred to transnational aspects of their lives as a positive, it was nonetheless telling that in their narratives the challenges and troubling aspects of transnational lives featured more strongly. Thus, it is in the concrete practice and experience that the distinction between professional and lay manifests itself and acquires meaning for the subjects.[71] As the examples of Samira and Alsana below illustrate, for the solicitors I interviewed, their training and often also their financial background come to have a different bearing in the transnational situation. Samira described her journey of becoming involved in Islamic legal services linking it to her experience of travelling to a variety of countries, not only the country of her parents' origin.

> Where I got a lot of insight from was travelling, because I did a fellowship some years ago now and I travelled out to India and Sri Lanka, and that's where I picked up a lot of subtleties. For instance, in India you always have a kind of three tier system. So you've got the national law, then you've got Hindu law, and you've got Islamic law. It just blew my mind that they managed to make it work. But it makes sense why because you still have a huge influence of what is known as tribal law, which is the village elders making decisions. And when you have the tribe system it makes sense to have that set of laws because they have the pre-existing conditions. It is pretty mind-blowing stuff (Samira).

practices in saying that 'cross-border marriages are both a consequence and an instigator of transnationalism' (Williams 2010, p. 99).

[71] Due to the fact that non-professionals I interviewed sought advice and services from solicitors it is to be expected that their particular experiences have been challenging. Nevertheless, what the examples discussed in this chapter illustrate is that the availability of material, personal and professional resources mean that legal professionals may generally be better equipped to deal with legal complexities of transnational life. Access to these resources, understood as particular social capital, are key in the formation of the subject position of the legal professional in the field.

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Initially, I was slightly puzzled that Samira had a positive view of the co-existence of national, Hindu and Muslim law in India. She did not make any reference to a deeply problematic relationship between established tribal or religious structures and the disadvantaged situations of women that have been highlighted in the international press at least since the brutal gang rape and murder of Jyoti Singh Pandey in New Delhi in December 2014. Clearly, Samira is very aware of and concerned with violence against women, as she travelled to India for research on this topic. Her positive surprise at discovering that dealing with Muslim law as part of the state legal system is perfectly possible and that 'they managed to make it work' is, I believe, due to the fact that the English legal system works differently and her legal training means that she is familiar mostly with this system.[72] What is most important about Samira's statement though is how the current socio-political background determines an individual's appreciation of what seems possible and what not. They form the structure underlying the subjectivity of individuals engaged in the British-Muslim legal field. Through travelling and working abroad in a variety of countries, the people I interviewed experienced different social, policy or legal backgrounds. Crucially, this allows them to engage critically with current British policies on Muslim family law and to expand their professional knowledge and symbolic capital.

In a similar account, Alsana, whose parents moved from Pakistan to the UK, explained to me how her professional experience in the Middle East working as an intern at an international organisation and learning to speak some Arabic helped her to increase her client base from the region. She also now regularly travels to Saudi Arabia for Omra and has already completed Hajj there as well. She liked the fact that, in Saudi Arabia during Omra, 'people often thought I was Arab and started talking to me in Arabic straight away… I'm not sure but it might be because I've been to [the region] before for such a long time or maybe the way I look…This is maybe also why I'm getting more and more clients from the Middle East, I think it really helps' (Alsana). Alsana's ability to relate to a wide variety of Muslim backgrounds arguably helps her business of providing Islamic legal services. Her clients are not limited to those from 'Pakistani', or 'British Pakistani' origin or to her 'local community' (in her own words). The extent to which the lives of British Muslims have become transnational as part of a broader trend in 21st century living, for young professionals

[72] It is important to mention that the personal legal system in India was in fact created during the time of British colonialism (Parashar 2013, pp. 6-8).

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in particular, may explain in part the success of Islamic legal services. Travelling, living abroad, working abroad and building personal international connections are common practices, aspired to and facilitated through various factors including digital platforms and devices. It is important to mention here that, although not framed in these terms by either Samira or Alsana, the state legal framework and its migration control mechanisms play a significant role in their lived experiences in the sense that as holders of a British passport they were able to freely travel to and work in a range of countries. Thus, while English immigration and nationality law does not feature explicitly in their stories, as it does for Shahira and Katja whose stories I will recount in the following section, the importance of the state and state law in the international legal system is still maintained by the above accounts.

While international experiences can be empowering for some individuals, the transnational element of British-Muslim family law can be deeply problematic for others. This became clear when speaking to a variety of people as part of my research. The examples I refer to in the next section critically interrogate the narratives of empowering transnational experiences and add complexity to the above accounts by expressing the messiness, problems and contradictions of everyday practices.

8.1.3. The challenges of transnational legal practices

While boundaries of citizenship are more fluid in the 21st century, and transnational experiences can be empowering, some stories of people I interviewed were testament to the fact that national borders and nationally bound legal regimes remain highly relevant and may cause very real and material challenges to individuals. The transnational field of British-Muslim family law thus creates 'new landscapes of both vulnerability and empowerment' (Çağlar and Mehling 2012, p. 160). While the accounts of people I interviewed are not completely negative and do also involve positive aspects of transnational lives, arranging family links across borders is clearly challenging especially for individuals, even more so for those who do not have specialist legal training.

An example of this is the case of Shahira, who was married to her husband in Pakistan and was told about the marriage only one week before her flight was scheduled to leave from London Heathrow. On her parents' wish, she went ahead with the marriage in an Islamic ceremony in Pakistan, which is equivalent to a civil ceremony in the UK in the sense that the Islamic marriage is the prescribed proceeding according to state

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law in Pakistan and thus fully valid under English law. After a few troubled years of marriage back in the UK and the birth of her daughter, Shahira decided to leave her husband and seek divorce. In her understanding, the marriage she went through was an Islamic one, which led her to think that she would need to contact a Sharia council in the UK to ask for a divorce. However, she was told then that she could not obtain an Islamic divorce through a Sharia council without the decree absolute issued by an English court. As Shahira had not consulted with a solicitor in the UK, she automatically assumed that she had to go back to Pakistan to file for divorce there first as the marriage was concluded in that country. It is easy to see why she had come to this conclusion as she had travelled to Pakistan and got married there.[73] The fact that her marriage did not take place in Britain but was, in her words, 'arranged for' her by her parents with the son of someone in her parents' network in Pakistan meant that Shahira entered a transnational legal space that was difficult for her to make sense of.[74] Only days before embarking on what would have been an unfruitful trip to Pakistan on her own, a friend of hers referred her to a solicitor who offers Islamic legal services and who advised her that under English law the correct procedure was to file for divorce in Britain because she was domiciled there (Family Law Act 1996). And so she did. The divorce from the English court was then also valid in Pakistan under the rules of private international law and the couple have since separated.

Shahira plans to also pursue an Islamic divorce through a British Sharia council later on and consulted her solicitor about options. She had also hoped that the divorce would have the effect of her husband having to leave the UK but as he naturalised as a British citizen shortly before the divorce this will not be possible. When speaking to

[73] Sharira's approach is certainly not an isolated case. I interviewed a scholar on the board of a Sharia council who drew my attention to a similar development. The scholar has dealt with four cases recently that all involved non-Muslim women who, before knowing about the Sharia councils, were considering travelling abroad to file for Islamic divorce from their Muslim husbands in their husbands' home countries. The women all had an Islamic marriage in a mosque and concluded that they needed an Islamic divorce to end the marriage appropriately.

[74] An arranged marriage is defined by Pande as follows: 'in arranged marriages, the arrangement involves matchmaking by parents and family, but it is not forced…[it is] a mode of matchmaking…administered and mediated by the self and the family and where the exercise of choice and agency may be conditioned by a number of socio-economic factors' (Pande 2014, p. 76). However, it is difficult to give a precise distinction between an arranged and a forced marriage because choice is always conditioned by various factors and thus never completely free (see chapter six for a detailed discussion on the notion of free choice and women's agency). Shahira's story is, in my opinion, a very problematic borderline case between arranged and forced marriage and clearly the margin of choice given to her was extremely limited by the fact that she was told about the plans of her marriage only shortly before her departure to Pakistan. Yet, I refer to the marriage as 'arranged' because Shahira used this term in the interview to describe her experience and explicitly called it 'not a forced marriage'.

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her, she told me about her frustration and how she had felt let down by the Sharia council because she was not explicitly informed about the necessary steps for a civil divorce in England. She spoke about how uneasy she had felt at the idea of having to go back to Pakistan by herself 'as a woman on my own' and having to deal with the courts in a legal system she 'had very little idea of'. Also her relationship to her parents has suffered. She resents them for having arranged a marriage for her but she also feels sorry for them because they feel very guilty for not having chosen a good match for their daughter. As a woman, she felt that the best thing was to move back in with her parents together with her daughter as her mother could provide childcare while she continued working in the insurance department of a large international company. At the end of our conversation, Shahira mentioned that, for her own daughter, she would never choose an arranged marriage. 'He'd need to be Muslim, that's all - even if he's just converted', she added.

The gendered reality of divorce and family relations meant for Shahira that she had to return to her parents' house while her ex-husband remained at their former home. She is unhappy with what her family, friends and neighbours – many of whom associate themselves with the '[local] Pakistani community' – think of a single mother living back with her parents and she hopes to move at some point. Through the experience of transnational legal practice, Shahira had to redefine her attachments to the local Pakistani community, to the place where she lives, and her immediate family. What Shahira's experience illustrates well is how gender is central in understanding the effects of transnational legal practices (this is discussed in more detail in section 8.3.). Another aspect of transnational lives that Shahira's story shows is that while the way people live transnationally arguably affects their sense of belonging and their citizen subjectivity, this does not come about without its challenges. It is true that 'formally… citizenship refers to membership in a state, but in substance it involves a broad array of civil, political, socioeconomic, and cultural rights people possess and exercise' (Croucher 2004, p. 61). One should add legal rights to this list provided by Croucher as the stories discussed in this chapter show. She goes on to say that 'in various ways, globalization has affected availability, access and awareness regarding these substantive rights and demands for their fuller and fairer extension' (Croucher 2004, p. 61). However, the individual experiences of my interview participants also add a different, more dampened, flavour to the debate around transnational lives, globalisation and citizenship. Shahira's case is not an isolated instance of how the

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complexities of the transnational aspects of British-Muslim family law affect people's experiences when arranging family lives and how structural disadvantages of women in family and economic terms, can become exacerbated in this process.

The transnational dimension featured as an additional layer of disadvantage also in Katja's story. Katja, a Lithuanian national, who married her husband who is from the Middle East in a nikah ceremony conducted by an imam in England in 2007, described to me how worried she presently is about maintaining custody of her children since her marriage has become increasingly troubled in recent years. When the couple decided to get married they opted for an Islamic marriage as the husband was still married civilly to his then estranged first wife. She is now worried that her husband might take the children to the Middle East without her knowledge and that legislation there may favour the father as a legal guardian of the children. She says 'I don't know anything about [the Middle East] I realised. I've been there for holidays and everyone was nice to me but I don't really belong there you know? Nobody of his [the father's] family would help me out' (Katja). She is aware that the document of her Muslim marriage has no legal bearing under English law. In addition, she feels insecure because she does not hold British citizenship but her children do. 'In case of an international dispute, who would help me out? Who would be responsible?', she asked. In order to improve her position she told me that she was thinking of applying for British nationality as she has been living in England for many years. But as she has given up work to stay at home with her children she is finding it difficult to get together the money necessary to pay the fee for the naturalisation application. In Katja's case, a Sharia council or a solicitor familiar with Islamic legal services would be able to provide some of the solutions, but her ability to navigate the complex transitional legal situation is significantly curtailed. There remains the question about specialist advice and assistance to ensure that Katja does not lose access to her children. With recent cuts in legal aid this is made considerably more difficult. In addition, her financial situation makes it less likely that she will be able to apply for British nationality. These or similar factors may put women in difficult positions where particular disadvantages intersect with others in the process of ending a marriage. For example, although this is changing in contemporary society, lack of financial resources is still often the effect of a gendered division in family relations where women take up responsibility for unpaid domestic work, which in turn restricts

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their access to legal protection (Pateman 1992; the effect of cuts in legal aid are discussed in section 7.2.2.).

As the above examples demonstrate, access to legal expertise and English or Islamic legal services (as necessary depending on the particular situation) is a real issue in the British-Muslim legal field. While Samira's experience in South East Asia and Alsana's travels to the Middle East had a positive and empowering influence on their professional ability to understand family law in transnational settings, in other cases transnational transactions caused grief and problems. In cases like Shahira's or Katja's stories, individuals may find themselves disempowered by the complex interplay of English, Muslim and international private law together with gender relations in family traditions and customs. The discussion above thus shows how increasing transnationalisation and hybridisation in legal practice is a double-edged sword. The point I want to make about these differences in transnational lives is that people's experiences also act as a prism through which one can observe the changing role of the state and government in British-Muslim family law. Two distinct but related observations emerged from the stories of people I interviewed. On the one hand, the influence of (nation-)state boundaries as mutually exclusive 'containers' or points of reference for belonging, citizenship and law diminishes with increasing transnational legal practice and subjectivity. This trend certainly raises questions regarding how we think about citizenship, not only in the UK but globally.[75] On the other hand, the state seeks to intervene. Attempts at controlling transnational legal practices in family life have considerable effects on individual experiences and hence the state framework remains highly relevant in an analysis of British-Muslim family law. It is for this reason, as I discussed above (section 8.1.), that the term 'transnational' is most appropriate to describe British-Muslim legal practices as they cannot be thought of in isolation from state frameworks. These state interventions, I argue, also contribute to the problematisation, politicisation – and strategic de-politicisation – of transnational

[75] Research is responding to the question of belonging in a transnational, digital world. Literature on the topic of citizenship, identity and belonging is vast and continues to grow. In *The Routledge Handbook of Global Citizenship Studies* the editors argue that 'citizenship studies is at a crucial moment of globalizing as a field. What used to be mainly a European, North American, and Australian field has now expanded to major contributions featuring scholarship from Latin America, Asia, Africa, and the Middle East' (Isin and Nyers 2014, p. i). See also Feldblum on trends in citizenship research (Feldblum 2000, p. 477, footnote 3).

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legal practices of Muslims in the UK in public discourse and in the everyday experiences of British Muslims.

The question of belonging for Muslim populations in the UK thus becomes a pressing issue, this thesis argues, because policy and public scrutiny of their citizenship practices has increased sharply. Rendering the family law practices of Muslims in the UK a matter of public policy concern invites and justifies state intervention in British-Muslim family law. The notion of a 'boundary' between the family, as a space free from state intervention, and the political is challenged in these developments. By 'legalising' and politicising what is conventionally deemed 'private', such interventions also make visible that the distinction between private and public realms has been an artificial one to start with.[76] Such schematic and oppositional characterisation is in reality much more complex, and Lister speaks of 'direct and indirect state regulation of the family' (Lister 1997a, p. 120). Against this background, the following section examines how British-Muslim legal practices are increasingly becoming politicised in a number of key initiatives concerned specifically with Muslim law in Britain. These are two almost simultaneous reviews of the working of Muslim law in Britain, the Law Society's practice note on Sharia compliant wills and Baroness Cox's Equality Bill (section 8.2.1.). These very visible, highly publicised initiatives also effect different forms of politicisation 'on the ground' (section 8.2.2.), which must be read in connection with strategies of de-politicisation of Muslims in the UK (section 8.2.3.).

8.2. The politicisation of British-Muslim legal practices

As discussed in chapters six and seven, everyday legal practices within the field facilitate the emergence of claims for recognition of differentiated citizenship in relation to marriage, divorce, upbringing of children and inheritance. There are two important aspects to this development that deserve to be repeated at this point. First, the question of recognition does not represent a concerted effort to formally 'recognise' Muslim law in English law but rather it is about changing the framework within which and the terms according to which citizenship rights emerge (see also

[76] Walby offers an important critique of the 'elision of the distinction between "individual" and "family" via the concept of "private"' as this erases the divergence of interests between men and women within the family (Walby 1994, p. 383).

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Young 1989; Tully 1995); it is about having a say in how to govern family matters and gender relations. Second, it is important to mention that the process by which changes to the citizenship framework take place is not through explicit and formalised claim making. In the field of British-Muslim family law, repertoires through which rights and justice claims are made are performed in the everyday. These 'repertoires' (to borrow from Tilly), practices and subjectivities are not contentious in the way we have been accustomed to analysing them as. Everyday practices in the field certainly have become politicised but strategic de-politicisation equally operates in the field. People are not taking to the streets in masses; rather they are getting on with their lives. Yet, the figure that goes to a solicitor to draw up a will according to Muslim law, or the figure of the solicitor advising on aspects of Muslim and English law, are arguably as powerful as the one going to the street to demonstrate and protest. They are purposively, but not intentionally, conducting themselves as hybrid legal subjects whose everyday practices and claims can be read as expressions of a claim to differentiated citizenship. Gender relations are a central part of these everyday struggles. For a conception of citizenship to be inclusive, Lister argues, women's needs must be taken into consideration as political issues (Lister 1997b). For example, although women may emphasise the importance of the realm of family in their lives, as many of my interview participants have done, 'by doing this, they do not necessarily accept as legitimate the hierarchical organisation of the household' (Brah 1996, p. 76). Gender is also central to the articulation of everyday citizenship practices where existing power imbalances in Muslim family law between men and women subjects are being perpetuated while at the same time the performance of these legal practices creates openings for challenging normalised gender relations and well as traditional authorities in the field (see also chapters six and seven). The performative force of the British-Muslim legal field makes its subject a more powerful figure than one imagines and this is reflected in how far reaching and politicised the Sharia law debate in Britain has become.

To provide an insight into the politicisation of British-Muslim family law, it is necessary to consider the current political-legal context and climate surrounding its practices. The selected initiatives in the following section, which illustrate what I mean by '(legislative) politicisation' need to be read in relation to a tension between the concept of the state and transnational practices of citizenship as well as a tension between the gendered constitution of the British-Muslim legal field and principles of

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gender equality in public policy. Because of the dominance of the state, any political activity is an enactment of citizenship in practice, which however challenges and contests the state if it occurs in its transnational form (Archibugi 2008). As a result, in an increasingly transnational world, we witness a variety of attempts at restoring state dominance. The current political climate is one characterised by problematisation and securitisation of Muslim (legal) practices (Fekete 2006; Razack 2008; Eliassi 2013), as well as public scrutiny of gender relations in the field. Attention to the role of Muslims in the UK, Europe and North America in particular intensified after 9/11 and 7/7 in relation to questions of citizenship.[77] It is somewhat telling that the front cover of Croucher's 2004 *Globalization and Belonging* pictures a group of young, veiled girls holding candles and the US flag. While the full title of the book reads 'Globalization and Belonging: The Politics of Identity in a Changing World' referring to questions of belonging more generally, the front cover picture visually puts the spotlight on the issue of belonging regarding Muslim citizens. Not only does there appear to be a focus on Muslims as 'problem communities' but also as security concern (Liberty 2004; K. E. Brown 2010; Choudhury and Fenwick 2011). This is linked to the 'introduction of counter-terrorist legislation [that is] facilitating the construction of Muslims as a "suspect community"' (Pantazis and Pemberton 2009, p. 646). In the UK, an increasingly hostile climate is exacerbated by controversial policies like the 'Prevent' anti-terrorism strategy (Hamid 2016, pp. 113-115). In this context, 'what emerges from the collision between government policy, the established conventions of media communication, and ideological pressures having their historical roots in Orientalism, is a consensus within which those perceived "negative", "threatening" features of Muslim belief and behaviour are constantly promoted and reinforced' (Morey and Yaqin 2010, p. 146). The effect is that transnational practices of British Muslims continue to be associated with the orientalist idea of them not truly belonging to the British citizenry, they continue to be viewed with suspicion and their 'loyalty' questioned (K. E. Brown 2010, p. 171). As discussed in chapter three, the current Sharia debate constructs Muslim legal practices as the ultimate 'other' and a threat to Western civilisation. Against this background, initiatives like Baroness Cox's Equality Bill seek 'to frame a legislative response to such anxieties' (The Lord Bishop

[77] The attacks of 9/11 in the United States serve as an important point in history that symbolises not only a turning point in US policies and the creation of a discourse of fighting terrorism in the name of freedom. The global ramifications of 9/11 also present a broader challenge to the very notion of nation states and their boundaries as 9/11 defeated the idea of an enemy being a state..

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of Manchester 2012). The following section will discuss in more detail the different public initiatives in relation to British-Muslim family law: two reviews of the working of Muslim law in Britain, the Law Society's practice note on Sharia compliant wills and Baroness Cox's Equality Bill.

8.2.1. Public initiatives and legislative politicisation

Baroness Cox introduced the Equality Bill to the House of Lords for the first time on 10 May 2012.[78] The Bill had its second reading and debate on 19 October 2012, but did not proceed at that point. It was re-introduced a few years later and had its first reading in the House of Commons on 11 February 2016 but there was no debate on the Bill at this stage. The Bill aims to 'make further provision about arbitration and mediation services and the application of equality legislation to such services; to make provision about the protection of victims of domestic abuse; and for connected purposes' (Arbitration and Mediation Services (Equality) Bill [HL] 2015, preamble). Although at no point does the text of the Bill actually refer to Sharia councils, it is widely perceived that the purpose of the Bill is to restrict the activities of institutions such as Sharia councils. In the media, the initiative was picked up as being 'drawn up because of "deep concerns" that Muslim women are suffering discrimination within closed sharia law councils' (McVeigh and Hill 2011). When introducing the Bill in the House of Lords in 2012, Baroness Cox stated that 'awareness of the need for the Bill arose from mounting evidence of serious problems affecting some women in this country from the application of Sharia law' (Lords Hansard, 19 Oct 2012, Column 1683), and that 'the first fundamental concern my Bill seeks to address is the development of a parallel quasi-legal system based on inherently discriminatory principles' (Lords Hansard, 19 Oct 2012, Column 1684). An interview with Baroness Cox in *The Telegraph* gives further insight into the background to the Bill:

> 'I prefer to think of myself,' she muses over Earl Grey and scones in the House of Lords tea room, as the 'voice of the voiceless'. Her latest crusade is to rally to the defence of British Muslim women, spurred on by the recent decision of the Law Society to publish 'good practice' notes for solicitors on making wills

[78] Private Member Bills are put forward by individuals who are not government ministers and the chance of passing are low; however, they generate debate and direct attention to the issues they seek to address.

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compliant with sharia. This can deny women equal shares of inheritance, and exclude children born out of wedlock (Stanford 2014).

However, as rightly pointed out by Maret, the Equality Bill does little to solve the problems it claims to address. On the contrary, 'legislative reform alone will not affect the desired goals of the Equality Bill. Without engaging in complementary social reforms, the Equality Bill may actually work to augment the growing divide between England's governing legal system and its society' (Maret 2013, pp. 282-83). Douglas and Sandberg suggest that 'Baroness Cox's Bill seems to miss the point' (Douglas and Sandberg 2011).[79] While the Bill might fail in creating effective legislation, I would argue that its effect is to problematise and politicise Muslim (non-state) legal practice and thus to justify initiatives aimed at controlling such practices. In these initiatives 'gender equality' often features as a 'hallmark of liberal democracy' which is used to 'justify restrictive law and policies, particularly around Muslim women's and men's expression of religiosity' (Korteweg 2017, p. 217; see also Yurdakul and Korteweg 2013). By co-opting gender equality in this way, Korteweg argues, 'attempts to further liberation turn into illiberal practices' (Korteweg 2017, p. 217). Similarly, Razack argues that policy initiatives in Norway, for example, had the result of associating the issue of violence against women with Muslim practices and used 'the opportunity to justify a number of initiatives that have to do more with teaching "them" how to behave than it does any meaningful anti-violence objective' (Razack 2004, p. 108; see also K. E. Brown 2008 for a similar argument). In the Sharia debate in Britain, the inequalities of gender intersect with those of orientalism in the production of the subjectivities of citizenship. Kundnani argues that a liberal '"integrationist" discourse emphasizes the Enlightenment values associated with secularism, individualism, gender equality, sexual freedom and freedom of expression as markers of civilizational superiority' and that in this discourse 'various efforts are made to

[79] As Douglas and Sandberg state in their blog in 2011, Baroness Cox's Bill – in its first draft back then – would effectively apply only to a very limited number of arbitration institutions. As of this moment, only the Muslim Arbitration Tribunal operates within the Arbitration Act 1996, which means that this would be the only body to be affected by the changes suggested by the Bill in relation to governance of religious arbitration. Another crucial point is that Sharia councils are different from other religious tribunals (in the case of Douglas and Sandberg their study included the London Beth Din and the Catholic National Tribunal for Wales together with the Sharia council of the Birmingham Central Mosque). They may process a significant number of Islamic divorces of marriages, which have never been registered under English law in the first place. Again, for these cases Baroness Cox's proposed legislation would be of no material legal effect because the Bill 'proposes extending the public sector equality duty to place an obligation upon public authorities to inform individuals of the need to obtain an officially recognized marriage in order to have legal protection under civil law' (Douglas and Sandberg 2011, no page number).

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"civilize" Muslims in particular into adopting these values' (Kundnani 2012, p. 155), as they need to 'be made ready for citizenship through [such] "civilizing process"' (Kundnani 2012, p. 162). Since the lecture by the then Archbishop of Canterbury Rowan Williams in 2008, which sparked fierce political debate, recent initiatives such as Baroness Cox's Bill have further contributed to an increasing politicisation of practices of Muslim law in Britain.

Another episode that demonstrates well how politicised British-Muslim family law has become is the Law Society's attempt at providing advice to solicitors dealing with legal questions around Islamic wills in English law. On 13 March 2014, the Law Society published a practice note on Sharia succession rules,[80] intended to 'assist solicitors who have been instructed to prepare a valid will, which follows Sharia succession rules'. It summarised the situation by stating that 'solicitors who are dealing with clients where Sharia rules may be applicable should be aware of the following: determining when Sharia rules may apply; the basics of Sharia succession rules; Sharia compliant will drafting; Sharia trust issues; disputes over Sharia estates' (The Law Society 2014).[81] The eight page long document then details how, in practice, solicitors can best deal with these issue areas and how they interact with existing English legal provisions on succession.[82] After its publication, campaigners for secularism called for the withdrawal of the note. This followed 'a storm of protest after *The Telegraph* disclosed in March [2014] that the society had issued a practice note to solicitors effectively enshrining aspects of Islamic law in the British legal system' (Bingham 2014b). The initial campaign kick started by *The Telegraph* argued that solicitors would be 'penalising widows and non-believers' (Bingham 2014a). Eventually, the Law Society, while non-partisan with no explicit political agenda, succumbed to pressure from popular media, legal professionals, publics and politics to take down their practice note on Sharia compliant wills. On 24 November 2014 the Law Society withdrew the note and the Society's president at that time, Andrew Caplen, apologised publicly saying 'our practice note was intended to support

[80] Practice notes are the Law Society's view of good practice in a particular area but do not represent legal advice.
[81] A copy of the original document is on file with the author. The public copy has been removed from the Law Society's website.
[82] For instance, the practice note stated that 'certain principles of Sharia are different to English succession laws. For example, it is not possible to inherit under Sharia rules via a deceased relative… this means you should amend or delete some standard will clauses. For example, you should consider excluding the provisions of s33 of the Wills Act [1837] because these operate to pass a gift to the children of a deceased "descendent"'.

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members to better serve their clients as far as is allowed by the law of England and Wales. We reviewed the note in the light of criticism. We have withdrawn the note and we are sorry' (The Law Society 2014). The Law Society's practice note fuelled similar anxieties as those addressed by the Equality Bill, namely that Muslim law presents itself as a threat to the state legal system in Britain (see also Bakht 2007 and Korteweg 2017 on a similar observation in the case of the Sharia law debate in Ontario, Canada).

While concerns about gender equality and the protection of Muslim women also featured prominently in the speech by then Home Secretary Theresa May, the securitisation of the debate became evident when she announced a review of Sharia law, among a series of other measures to combat Muslim extremism, as part of a new counter-extremism strategy (see K. E. Brown 2010 on the securitisation of Muslim practices). In her speech on 23 March 2015 entitled 'A Stronger Britain, Built on our Values: A New Partnership to Defeat Extremism', she spoke of plans that the government will commission a study of the impact of Sharia law in England and Wales. Explaining the work of the government's new Extremism Analysis Unit she said

> there are some areas where – like in the application of Shari'a law – we know enough to know we have a problem, but we do not yet know the full extent of the problem. For example, there is evidence of women being 'divorced' under Shari'a law and left in penury, wives who are forced to return to abusive relationships because Shari'a councils say a husband has a right to 'chastise', and Shari'a councils giving the testimony of a woman only half the weight of the testimony of a man. We will therefore commission an independent figure to complete an investigation into the application of Shari'a law in England and Wales (CCHQ Press 2015).

May explicitly refers to the application of Sharia law as a *problem*, although she does not know the extent of the problem yet. Given that the problem was raised in connection with the government's counter-extremism strategy, it can be assumed that the problem referred to is also one of security. The review was eventually launched on 26 May 2016. Almost simultaneously, in June 2016, the Home Affairs Select Committee launched their inquiry specifically of the practice of Sharia councils operating in the UK. The Committee invited submissions of evidence in selected areas

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including concerning, among other questions 'the role that Government has, or could have, in overseeing or monitoring Sharia councils' and 'the extent to which Sharia law is compatible with the principles of British law' (UK Parliament News 2016).

A discourse that essentialises, stigmatises and securitises Muslims in Britain may create particular challenges for Muslim women who are disadvantaged because of a subordinate positon in gender relations. In their intersection, these two dynamics highlight the gendered victimisation of women who are thus subject to dual (or multiple) discrimination as women (called victims) and Muslims within a discourse of securitisation (for a similar point see Mookherjee 2009, p. 157). Brown argues that the gendered impact of the securitisation of Muslims has not attracted much attention in policy and research (K. E. Brown 2008, p. 472). An uncritical and simplistic framing of public campaigns around combatting injustices on behalf of Muslim women as well as around security concerns therefore not only further a gendered orientalism. They also perpetuate a patriarchal discourse that renders women in general as 'vulnerable' and in need of protection. When public initiatives locate Muslim women's oppression within the realm of family and so justify increased scrutiny and possible intervention, they align with a discourse that sees the family as a key locus of subjugation but disregard the role of the family – and transnational family networks – also as a 'site of protection' from, for example, racism, which is particularly relevant in British-Muslim family law (Lister 1997a, p. 124). As Brah observes 'for Asian women, family support may also become necessary in the struggles against the onslaughts of racism' (Brah 1996, p. 76).

Securitisation and gender equality are key contestations in British-Muslim family law in contemporary Britain (see also sections 1.3. and 1.4.). These dynamics are central and characterise the discourse in current policy debates and legislative initiatives. This is the context within which British-Muslim subjectivities evolve. This is also reflected in interview participants' accounts of their experiences discussed in the following section. The increasing institutional scrutiny of Muslim practices in family law in Britain has effects beyond state-institutional and policy circles. The politically contentious context clearly reflected in how both lay people and legal professionals I spoke to during interviews engaged with the current context of their work and lived experiences. This is not to say that the people I spoke to would explicitly describe themselves as 'politicised' by government interventions, or representations in popular

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media. In fact, not many of my interview participants considered themselves as politically active in the sense of actively contributing to public debates on the issue or getting involved in related policy initiatives. While there are a few public figures such as Aina Khan (discussed in more detail in section 5.2.2.), the people I spoke to were in the main very hesitant to present themselves as speaking to me about the 'political aspects' of the debate. Nevertheless, the socio-political tensions and attempts to increase state control described above clearly have an impact on their lives and affects how legal and political subjectivities emerge. In an often very ambivalent way, people are aware of these tensions and perform as citizens accordingly.

8.2.2. Politicisation of everyday legal practices

Some of the interviews demonstrated an acute awareness of a problematised image of Muslim law, or more broadly Islam in Britain. In my interview with her, Rania was talking about the ongoing debate around whether Muslims should better register their Muslim marriages civilly or not. She thinks policy that takes gender justice seriously would need to either make nikah contracts valid or improve rights of cohabitees but 'not single out one group of people for not understanding the law; there are so many people who don't get the law right… Why are Muslims being exceptionalised?' (Rania). The current discourse, policies, and legislative initiatives focusing specifically on the position of women in British-Muslim law evidently impact on Rania's subjectivity. She is not satisfied that the standing of women is really being improved through policy interventions and rather feels 'exceptionalised' by them. Also when talking to solicitors, it became clearer to me to what extent their daily practice is influenced by concerns regarding their professional reputation and the political tensions around Muslim law in Britain. In the end, their jobs, or the reputation of their field of work, is dependent on and linked to current images of Muslim law. It has been impossible for these professionals to avoid getting engaged (in one way or another) in the politics of the Sharia debate. One of the solicitors I interviewed is Mousa, whose story already featured in the previous chapter. Mousa is content that with his help and thanks to his legal training in English law, the Sharia council he assisted with setting up certain procedures would sustain scrutiny from the outside were they to be checked. He argued, however, that a lack of transparency or standardised procedures could potentially damage the standing of Sharia councils in the UK more widely. He explained to me that in his opinion 'in the current climate Sharia councils are under a lot of scrutiny and cannot afford to not have their things in

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order legally as well'. Mousa's assessment 'of the current climate' was based on his experiences even before the two official reviews of Sharia council practices in 2016.

Although they work as legal professionals in this field, some solicitors I interviewed are hesitant to speak up favourably in public about British-Muslim family law as can be seen from the example of Ibrahim who works as a solicitor in England. He published an article prompted by the 'neither very factual nor balanced' debate around the Law Society's practice note in March 2014. He initially decided to write the piece calling for pragmatism in the debate and focus on the need to support legal practice with reliable information as this is what he saw as lacking in his daily practice as a solicitor offering Islamic wills. However, to his surprise, he was overwhelmed by the negative responses to his article. In the end, as he told me during our interview, he removed his article because he thought 'it was damaging his business more than helping it'. He works as part of a firm that offers, among other (English legal) services, Islamic wills to the local Muslim clients. Ibrahim is generally doing well in his business. He has a clear career path in mind and his portfolio is expanding steadily. He says in response to my question of whether he has thought about advertising his services more widely that as solicitors, '[we] have certain criteria and we market our services. But advertising Sharia wills can be damaging in terms of the image of the firm. It reflects badly on oneself if people aren't familiar with it… the reactions might be that someone is looking at the word Sharia and that's the end of it. So I'm not sure whether it's worth offering this [actively marketing Islamic legal services]' (Ibrahim). Having experienced considerable negative comment in relation to the article he published, it is understandable that he is hesitant to market his business more publicly. Except for a select few very public figures in the field, it certainly does not always help 'everyday business' to be visibly engaged in political debates.

Other people I spoke to, and who do not work as legal professionals in the field also feel affected by the political context, the government approach and especially media coverage of Muslim legal practices in Britain. Sophia and Farhat are both in their early twenties, working in health care services, and hope to get married very soon – Sophia to her boyfriend of many years and Farhat to a young man who was introduced to her by her cousin. They were talking to me about the prospect of getting married and how they would like to organise their wedding ceremonies and celebrations. They

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both emphasised how important it was to them and to their families to 'do everything properly religiously as well as getting the marriage registered'. This means that both will have a nikah ceremony with the imam of their choosing. When I asked them why they planned a nikah ceremony their answer was that 'this is just the thing you do'. Following this, I asked them whether they thought it would be a good idea to recognise Muslim law as part of the English legal system, so that the nikah certificate would be valid under English law. Their responses to my question marked a shift away from the light-hearted tone of our earlier conversation towards more serious reflection. Farhat said

> I'm not too sure about that. People seem to be so scared about Sharia law and the whole process. And the media keep going on about Muslims wanting to have their own separate system and how bad Sharia is for women etc. Just recently again in the papers they had this story about Sharia courts and about the government looking to ban them. It makes me wonder why they are focusing so much on Muslims. I mean everybody gets married, some get divorced. We just have a nikah as well, that's just what we do, as Muslims. What's the problem? (Farhat).

Sophia added 'Yes, I think the media and also the government to some extent are targeting Muslims in this country unfairly' (Sophia). It is clear that the two women found it difficult to ignore the wider debate in the media and government about for example Sharia councils and the position of women. It is interesting to observe that Farhat refers to Sharia courts rather than Sharia councils, which reflects the language used in some media reporting that is mostly critical of their existence (as discussed in more detail in section 7.2.1.). What seemed to bother them most was an impression that Muslims were being targeted unfairly and treated as an exception, which links back to the notion of Muslim citizens' loyalty being questioned because of the transnational character of Muslim legal practices.

The problematisation and politicisation of British-Muslim family law through increased scrutiny by state institutions, the tensed political climate and public discourse arguably all have an impact on the experiences of people engaging in the field (for a similar observation see Jarvis and Lister 2017). While some interview participants explicitly referred to how they experience the politics surrounding

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Muslim legal practice, as discussed above, others were shying away from bringing politics into the mix and performed what I refer to as 'strategic de-politicisation'.

8.2.3. Strategic de-politicisation

Looking at the question of the impact of the political debates on everyday practices in the Muslim legal field, I suggest that there is a certain 'strategic de-politicisation' taking place on the ground that many people exhibited during interviews. Some of the people I spoke to do get involved actively in social issues locally, but they would not want to call their activities related to broader political debates.

It was interesting to see how – different from Farhat and Sophia – Mohamed stressed that he does not see himself or the Muslim communities he works with as an exception but rather as part of issues affecting people in Britain more generally. Mohamed is an active campaigner for a Muslim centre in the town where he was 'born and bred'. He found that the Muslim community in his hometown is split between a Bangladeshi mosque and Pakistani mosque. Because Mohamed does not speak either Bangla or Urdu, he did not feel he fitted in at either of them. He therefore came up with the idea of a community centre for Muslims in the centre of the town that would 'cut across community boundaries', with a modern design and a centre that was fit for its purpose. As his idea of a new centre was gaining traction, Mohamed noted, he 'realised that actually praying would take about one hour in total per day and that if the centre's main purpose was prayer, we'd miss out on a lot of potential for using the space available'. Mohamed's main argument for planning more than just a prayer hall is that Muslims in his town 'think that certain things don't happen among Muslims, such as domestic violence, teenage pregnancy etc. But we are just like any other community, there is no difference'. Therefore, the centre should be doing all sorts of things for the community, of which one is prayer. He plans for the centre to house a nursery as well as a youth centre. In the future he is thinking of buying houses around it and turning them into safe houses for women suffering from domestic violence or homeless youths. He emphasised that 'we are like the others, and we have the same issues and problems like the other communities'. Mohamed wishes to transcend community and national boundaries. His sense of belonging crystalises in the tension between either 'purely' Bangladeshi or Pakistani; Neither of which seem to fit with the needs of his daily practice. These tensions provide the drive for him to embark on a project of devising a hybridised space that is not designated as any particular national or ethnic forum. His ambitions reflect not only a concern with

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intra-Muslim boundaries but also with the differentiation between non-Muslims and Muslims in Britain. By emphasising that the issues he wants to address are not exceptional to one particular group, Mohamed directs the focus away from particularly Muslim practices and thus resists the narrative of Muslim populations as 'problem communities' (K. E. Brown 2010, p. 171, K. E. Brown 2008). In a related debate, feminist scholars have argued that the right to difference and the simultaneous right to sameness is not necessarily a contradiction if one considers the subject as complex and internally contested. Yet within this complexity, shared struggles for justice and rights emerge. Patriarchy, as the examples named by Mohamed illustrate, is a system that transcends communities and national boundaries while its particular local expressions may differ across place and time. For this reason, Young (1990) sees the possibility of sisterhood even across highly diverse experiences of women. Certainly, within the Sharia debate Muslim women are exceptionalised. In such debates Razack refers to the 'hyper-visibility' of Muslim women (Razack 2004, p. 130). However, it is important to emphasise that the struggles for gender justice are not limited to Muslim or ethnic minority groups. In a way, like Mohamed, Young's approach is based on emphasising shared struggles for justice rather than focusing on essentialised difference. The formulation of such shared struggles is made easier, I argue, within the hybrid space of British-Muslim family law that recognises English law and Muslim law as not necessarily mutually exclusive through the logic of practice implicated in its functioning.

While I argue that there is a certain kind of strategic de-politicisation on the part of subjects in the legal field, I would also like to point to a strong self-confidence that people experience when conducting themselves as British Muslims in the legal field, whether as lay people or professionals. The figure of the British-Muslim citizen is not a passive one, who becomes political in spite of themselves only because of external world events having an impact upon them. My interview participants expressed on many occasions, for example, how crucially important it is in their lives to actively conduct themselves as Muslims when it comes to arranging their family matters. In these conversations, I sensed an interesting dynamic between self-confident, proud statements regarding their practices in the British-Muslim legal field and at the same time a self-conscious, hesitant and even apologetic attitude prompted by the very

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contentious political context in which they operate.[83] To find these contrasting sentiments contributing to the subjectivities of British Muslims demonstrates how the British-Muslim legal subject is not a coherent figure in that it expresses different sentiments and opinions at the same time. This may even include opposing views and experiences as the subject is understood as a dynamic 'composite of multiple subjectivities that emerge from different situations and relations' (Isin and Ruppert 2015, p. 4; see also chapter six for a more detailed discussion on British-Muslim legal subjectivity).

Notwithstanding a clear self-confidence of the subjects practicing in the British-Muslim legal field, it is hard to imagine that in the near future there will be any strong claim, supported by a wide base of individuals, to ask for the British state legal system to formally recognise Muslim family law. Quite the contrary is probably the case, especially given the government's announcement of increased scrutiny of British-Muslim legal practices in the UK as part of the government's counter-extremism strategy. Yet, people in Britain continue to practice important legal aspects of British-Muslim citizenship *in the everyday*. I argue that, without necessarily naming it that way, people's claims to rights and justice in the field of British-Muslim family law as well as those following the obligations set out for them transcend national and state (law) boundaries. In doing so they create, sustain and shape contemporary transnational citizenship through new ways of 'transnational' belonging, which nevertheless remain shaped considerably by national politics and the confines of state law. In comments, stories and reactions I sensed how the politicisation of public debate continued into the realm of daily, or routinised experiences of legal transactions. Here, gender relations are central to how citizenship is practiced in the everyday. It is important to remember that for a long time citizenship in its public, presumably neutral form excluded women. However, modern citizenship did not simply exclude women from citizenship all together. Rather, it 'contained' their contributions to citizenship and as citizens to the domestic sphere where motherhood and family welfare were the domain of the woman subject. It is in this domestic sphere that difference featured prominently and was in fact essential for the constitution of relations between individuals (wife, husband and children) (Lister 1997b, pp. 41-42). Feminist scholarship is key here in uncovering, however, that there

[83] Of course, one must not forget that the interview situation is in itself exceptional; for more details on research methods see chapter four.

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is never a divide between the public and the private but always a relation that is shifting and not always easy to pin down. Pateman notes how 'women's everyday experience confirms this separation yet, simultaneously, it denies it and affirms the integral connection between the two spheres' (Pateman 1989, p. 131). Experiences of my interview participants illustrate how gender relations in everyday practices relate to family law provisions, nationally and transnationally, and vice versa albeit in complex ways. To recognise women's (everyday) needs as political issues is thus central to formulating inclusive models of citizenship. This contests the conventional distinction between 'the public' and 'the private', which reveals how this normalised 'divide' is in fact 'a shifting political construction, under constant renegotiation, which reflects both historical and cultural contexts as well as the relative power of different social groups' (Lister 1997b, p. 42). This thesis thus argues that practices of the everyday need to be brought into the frame to fully understand emerging British-Muslim legal subjectivities and how their analysis can contribute to further developing an understanding of citizenship as political subjectivity constituted through everyday practices.

8.3. Belonging, the state and transnational practices of citizenship

As demonstrated in the sections above, everyday practices on the ground effect a reaction, or a response, in national policy and media debates. Strategies of de-politicisation only work to some extent. People involved in the field often need to take a stance, they may feel compelled to position themselves in response to public initiatives, media reporting or indeed when asked by the researcher as part of an interview. Thus, people's subjectivities are taking a particular shape vis-à-vis ideological categories of English law, Muslim law, the state, religion, tradition and so on. There is a link between individual accounts and wider national debates, which is however more complex than simple translation from one level to the other. As McCann notes, 'when one looks at the forms of organized power that privilege some and discourage others "available ideas" appear different. It is relevant in this regard that we [are] very careful to resist claiming that these larger forces from "above" [are] directly shaping the legal consciousness of variously situated citizens, while also saturating popular culture at many levels' (McCann 2012, p. 482). On the one hand, debates on issues such as 'the role that Government has, or could have, in overseeing

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or monitoring Sharia councils' or 'the extent to which Sharia law is compatible with the principles of British law' (Home Affairs Select Committee) demonstrate a political position of dominance of English law. Yet on the other hand, they open up the possibility of an interaction by making it *expressible* and *thinkable* in the first place that English law considers the presence of Muslim family law and vice versa. This relates to the idea of the 'mythic character' of law, as described by Scheingold, which conceptualises the power of law as including the imaginative level of how law functions in everyday discourse (Scheingold 1974). The question of family law has become, I argue, a crucial part in the ongoing political struggle over the place of Muslims in contemporary Britain on the one hand, and normalised gender roles in society on the other. The Sharia debate thus raises broader questions of how (transnational) family life should be governed in multicultural Britain. From this perspective, it also acts as a platform for position-taking over how Muslims in Britain can 'narrate themselves into the nation' (Moore 2010, p. 5), and what constitutes transnational citizenship practices. While formulated in neutral terms, English family law is not an interest-free space and is central for changing, normalising and contesting gender relations. As Estin puts it

> in the liberal democracies of Europe and North America, the legal system is understood to be based on universal and secular principles, affording the same rights to all citizens and rejecting any formal differentiation on cultural or religious grounds. The rules of official family law are far from neutral, however, and define a culturally specific set of minimum requirements and expectations for family formation and behavior (Estin 2009, pp. 451-52).

The stakes are high when it comes to amending family law in (multicultural) societies because it deals with the intimate relations of the individuals involved, which are also closely linked to questions of personal and national identity. Family laws enable the control of personal and group identity specifically through their influence on the role of women and by extension the upbringing of children (Malik 2012, p. 6). In this way, on the one hand, family law has a 'close connection with women or rather the female side of the gender dualism' (Boshoff 2007, p. 41). Yet, on the other hand, naming this area of law as 'family law' also erases the differences in interest between men and women in this process (Walby 1994, p. 383). Far from being an interest-free realm, family law is frequently a locus of contestation regarding gender and social relations

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as well as the relationship between individuals and the state. The discourse around British-Muslim family law (in policy circles as well as everyday enactments) therefore becomes a playing field within which collective identity, self-image and normalised gender roles are being negotiated by subjects and institutions.

An analysis of the stories recounted in this chapter, and indeed in previous chapters, suggests the prevalence of a 'new normal', a new reality of transnational subjectivities for many individuals in the field of British-Muslim family law. Is this part of citizenship in the 21st century more broadly speaking? Croucher wrote *Globalization and Belonging* in 2004, trying to make sense of the questions that surfaced regarding citizenship post 9/11, particularly in Europe and North America. Due to a variety of factors that can be summarised in the catchphrase 'globalisation', she argues that it has become commonplace that 'everywhere there are individuals who… feel the tug and pull of multiple attachments and identifications to family, country, ethnic group, neighbourhood, and so forth' (Croucher 2004, p. 7). While a bounded national belonging to one state only and purely based on a civic identity has probably always been more myth than reality on the ground, it is valid to say that, especially since 9/11, in research and policy 'examples of fragmenting political communities and fluid political allegiances bring into focus questions of citizenship – both the theory and practice' (Croucher 2004, p. 51). When picturing practices of transnational citizenship, what often comes to mind are transnational activist networks who first of all address social causes that extend beyond the national boundaries and, secondly, who inhabit (physically or virtually) more than one national space (Porta et al. 2006). Hudson and Slaughter summarise an image of transnational citizenship that can be found in much of the literature and research projects on this topic. 'These processes of globalization open up the need for new forms of political responsibility and citizenship beyond the state, as well as the claim that new forms of civic activity are taking place within the processes of globalization in the form of activists and social movements who articulate their interests and values at a global level' (Hudson and Slaughter 2007, p. 1). Hudson and Slaughter go into more detail about what they understand as 'political practice' of citizenship as opposed to 'citizenship as a normative disposition'. When speaking about the practice of citizenship, the focus is clearly on transnational activism only while other forms of transnational political practice such as transnational legal activity for example are not considered. This

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limitation appears when they speak about political activity only in relation to transnational activism:

> The often politically sensitive activity of transnational activists demonstrates that their activity is often very agonistic, in that governments are often resistant to the efforts of human rights and environmental NGOs. Consequently, there is an increasing tendency to use the term 'transnational citizenship' and 'transnational civil society' to emphasise that while engaged in transnational political practice, they are not necessarily cosmopolitan and may indeed be focused on quite specific political interests (Hudson and Slaughter 2007, p. 9).

The practices of people in the British-Muslim legal field interrogate this conception of transnational citizenship as explicitly political activity, agonistic in its nature and addressing national governments; they call into question the very definition of what is to be considered (transnational) 'political practice' of citizens. In order to offer a different perspective of what constitutes political engagement, I draw on Lister who argues that 'placing value on informal politics as an expression of citizenship does not, however, mean ignoring the continuing need both to open up formal political arenas to women and also to make formal politics more accountable to informal' (Lister 1997b, p. 34). I argue that the stories of Shahira and Katja, for instance, engage core legal and political questions of how family relationships and gender relations are to be governed transnationally in contemporary Britain. Hence, the findings of this thesis add to existing literature on transnational citizenship by broadening the perspective from a view of transnational citizenship as enacted mainly by transnational activist networks. Legal practices of arranging family lives can become equally politically sensitive in a politicised context and become part of struggles for citizenship and belonging, purposively if not intentionally. As detailed in chapter three, this thesis employs a concept of citizenship as political subjectivity emerging from everyday practices and discourses, which extends the locus of citizenship beyond government initiatives or legal status. Taylor and Wilson elaborate this idea when they say that

> Ordinary people often engage with the powerful in scenarios that, at first sight, seem to have little to do with the stuff of citizenship…yet in politicized context these activities have a great deal to do with the nitty-gritty negotiations of power, reckoning up of political deals, exercise of political agency,

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> declaration and redefinition of 'belonging' and, therefore, the very fabric of citizenship (Taylor and Wilson 2004, p. 157).

In a similar vein, I argue that the examples in this chapter are an indication for how we can observe transnational citizenship struggles in the realm of law. To what extent is citizenship instituted in state law or in practice? What is the role of the (nation) state, its laws and institutions? How are experiences of transnational legal practices gendered and differentiated along lines of professional-lay? How does British-Muslim family law contest nationally bound ideas of law and citizenship?

In trying to answer these complex questions, I would like to return to the stories of Shahira and Mohamed. Shahira's story is that of her arranged marriage in Pakistan that was to be dissolved in the UK. Her story is telling in many ways. It shows how the transnational, intersecting and sometimes disconnecting legal systems, authorities and attachments (subjectivities) affect the lived experiences of Muslims in Britain. Clearly, this suggests, today law and citizenship operate through multiple registers and not in isolated and sealed manners. On the one hand the story shows how states, state boundaries and state law remain relevant in a globalised world. For example, the right of unconditional abode in state territory as a holder of a British passport has a very material effect on Shahira's life as her ex-husband remains in the same town as herself. On the other hand, Sharira's case cannot be analysed solely along the lines of British state boundaries and state law. Her Muslim marriage in Pakistan became an issue for state law in Britain, while a Muslim divorce in Britain remains outside this state's legal realm. In the first instance she consulted the authority of a Sharia council, which is not an 'official' authority. In the end, a British trained and registered solicitor experienced in transnational legal cases became the crucial mediator between English and Pakistani law, which both came into play through her marriage. Shahira's experiences also bring to light her struggle with gendered workings of the legal field, where she lacked the right to initiate unilateral Muslim divorce as a woman and where the expectations of her family and her childcare responsibilities as a woman meant that she had to move back to her parents' home. It also shows how multiple attachments or belongings to Britain, her family, Pakistan and the local Muslim community cannot be viewed in isolation as their combination produces a complex set of tensions that are gendered in a particular way. For instance, she resents her parents for having asked her to proceed with the arranged marriage as they considered it

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proper according to their values of religion and family in Pakistan. Yet, she perceives that as an unmarried woman she 'belonged' back to her family. At the same time, this positioning of her belonging leaves her in tension with her local community, as she feels troubled by their reactions. The citizen subject emerging from this story is one constructed and constrained within the local social context, existing gender relations, culture and law. Shahira's experiences 'as a woman' in a transnational scenario presented particular difficulties. Nevertheless, Shahira was the one who initiated the end of her marriage and navigated the complexities of her case. Rather than retreating into a position of powerlessness or passivity, she developed determination to pursue justice that matters to her. She thus challenges the very normative framework she operates in. She herself wants 'to do things differently' but maintains that while any potential future husband of her daughter may not be Pakistani he would still need to be Muslim.

Also Mohamed wants to do things differently. He aims to build a hybrid community centre that makes space for subjectivities and practices that are not rooted in one particular ethnic or national framework. While the desire is to create something quite special, Mohamed at the same time tries to homogenise the project within mainstream society. He argues that Muslims in his town face the same issues as any other community. I argue that his narrative is a result of a political discourse in the Sharia debate where Muslim practices are particularly problematised and politicised, especially in relation to the position of women, as this chapter exemplified with a number of initiatives. The experience of British Muslims is often one of what Rania called 'the magnifying glass on Muslims' (full quote in section 3.2.2.). Mohamed's impetus is a desire to do things differently without attracting too much attention. Mohamed claims that there is no difference. It raises the question though why he needs a designated Muslim community centre. This suggests that the story is more complex than he argues, and that being Muslim is somehow distinct – it might be that one hour every day is reserved for prayer, yet, there might be additional Muslim practices that require specific solutions (the question of the right to differentiated citizenship is discussed in section 6.3.). In any case, Mohamed operates in a highly politicised context. Like other interview participants, both Shahira and Mohamed just want to get on with their lives but cannot escape a series of tensions, which brings these individual cases and the incipient legal field into the bigger picture of national and global politics.

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Isin and Nyers express these tensions – or the tug and pull – between community, national, and transnational forces that play out in individual lives very well when they say 'the citizen of a polity almost never belongs only to that polity but to several nested, if not overlapping and conflicting, series of polities' and that 'clearly, in the contemporary world the dominant polity is the state, but even its dominance is now implicated in various international and regional polities… This places a citizen in a web of rights and duties through which he or she is called upon to performatively negotiate a particular combination that is always a complex relationship' (Isin and Nyers 2014, p. 2).

8.4. Conclusion

To sum up, transnational lives are complex, empowering and challenging at the same time. Transnational experiences are often thought of as relationships and practices between a 'country of origin' and a 'host country', and tend to exclude from the frame of analysis a larger variety of international experiences that are not necessarily connected to the national origin of the person involved. From a transnational perspective, the possible emergence of British-Muslim family law also addresses bigger questions about the changing role of the state and its political subjects. On the one hand, the state becomes less important as citizenship is less nationally bounded. On the other hand, attempts at regaining control by the state, its institutions and laws feature prominently in an analysis of the incipient British-Muslim legal field as they contribute to the politicisation of British Muslim transnational legal practices.

Many people in the British-Muslim field of family law would not necessarily like to see themselves as political actors who challenge the British state. In fact, my research suggests that people strategically depoliticise their activities to avoid attention as much as possible, with some notable exceptions of a number of public figures. They perform rather common, routine activities – with a certain pride and self-confidence – in legally arranging family life. Yet, they conduct themselves in a politicised environment in which Muslim family law in Britain becomes increasingly problematised and securitised. Political debates in Britain in policy circles, government, professional associations as well as popular culture mediated through press and social media are also linked discursively to broader international

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developments. These developments pitch Islam against the West and implicitly and explicitly question the loyalty of Muslim citizens in the UK leading a transnational lifestyle portrayed as problematic if not threatening.

What is clear, in everyday transnational lives of Muslims in the UK, the overlapping of and sometimes disconnection between legal systems mean that law and citizenship operate through multiple registers and not in isolated arenas. What is more, they are also not neutral, interest-free institutions but affect women differently from men, professionals differently from non-professionals. While it generates openings for creative interventions, transnational legal practices often sustain structural disadvantages of women and lay subjects in this process. The discussion in this chapter of how British Muslims often lead complex transnational lives therefore challenges modern state-centric and universalist conceptions of citizenship as, for example, everyday citizenship practices are experienced differently by women and men and in turn produce and reproduce a citizen subject that is differentiated, not unitary or 'difference-free'. The transnational level can act as magnifier of such gendered experience where women become doubly disadvantaged. The examples in this chapter and previous ones thus demonstrate the gendering of citizenship and the need to be attentive to gender difference in engaging with the specificities of the everyday of British-Muslim family law and its impact upon citizenship.

The fact that these legal practices of transnational lives generate contentious and sustained public debate as well as legislative initiatives, is an expression of the extent to which the emergence of the British-Muslim legal field has become a site of citizenship in contemporary Britain. The main question raised in this thesis was whether it is possible to understand the development of the field of British-Muslim family law as a new site of citizenship that challenges orientalist expectations of an incompatibility between orientalised and occidentalised political subjectivities? While I certainly made the case for this argument in the past chapters, further research in other places will be useful in order to compare and establish other emergent sites of citizenship struggles in the 21st century.

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Chapter 9. Conclusion

At least since the lecture by Rowan Williams, then Archbishop of Canterbury, on 'Civil and Religious Law in England' in 2008, questions of Muslim law in the UK have attracted considerable public and academic attention. Contemporary anxieties around the place of Islam in British society continue to surface in the resulting 'Sharia debate'. In this context, traces of orientalism become especially visible in the modern conception of citizenship and in the portrayal of Sharia as the 'other' and in an essentialist understanding of 'Sharia' as being in opposition to 'the West'. The exclusionary force of an orientalist dynamic in how modern citizenship is conceptualised not only excludes from the framework of citizenship those legal practices of British Muslims that do not explicitly enact the civic, rational, secular, emancipated subject; it also constructs British-Muslim (legal) practices and subjectivities as a threat to society by invoking an image of Sharia law as fundamentally incompatible with British or Western civilisation – a perception best described as 'legal orientalism'. Resisting the narrative dominated by legal and gendered orientalism, this thesis sheds light on a series of hybrid practices and subjectivities that undermine the orientalist assumptions implicated in the notion of modern citizenship. By adopting a perspective that focuses on the practices and subjectivities that sustain the legal field, this thesis moves away from abstract ideas of law by asking questions about the interaction between Muslim law and English law as well as evolving forms of transnational, hybrid legal subjectivity. People are conducting themselves by seeking advice, buying services and selling services. This is constituting legal subjects who are, on the one hand, entitled to receive these services, indeed expect to receive these services and, on the other hand, now feel obligated and responsibilised by the judgement that they render. This is the dual role British-Muslim family law plays in the formation of hybrid legal subjects: not only the substance of the law but also the subject implicated in the legal field is hybrid. It is at the intersections with the law that British-Muslim legal subjectivity is emerging. As one of the solicitors I interviewed pointed out in relation to his work: 'I speak from the general practice point of view, divorce, death and marriage are the main points when Muslims living in this country do take it upon themselves to bring Islamic practice into their lives even if they are not practicing per se' (Mousa). The emergence of such British-Muslim legal practice, which relates to something other than English law

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alone, raises a new set of challenging questions about our understanding of law, about law outside formal legal norms and processes, and about the hybridisation of English and Muslim law in everyday practice.

The thesis argues that British-Muslim family law represents an incipient hybrid legal field with fluid yet distinct characteristics, emerging at the borders of English law. Its clear embeddedness within its socio-political context means that the field emerging is a distinctively *British* variant of Muslim law (see also Pearl and Menski 1998, 2008b; Shah 2005; Sona 2014). The particular opportunity structures it is embedded in underwent significant changes during the period of my research starting in 2010; and the field remains highly dynamic, which makes it a difficult task to draw definite conclusions. The contemporary socio-political context in Britain is one characterised by a problematisation, politicisation and even securitisation of Muslim practices in family law. Yet, on the ground, citizens who wish to conduct their family affairs using Islamic legal services continue to stake an ever-firmer claim to a right to go through the legal process in Britain *as Muslims*. As a result, the settings in which British-Muslim family law is being enacted become increasingly formal such as Sharia councils or law firms. This points toward a formalisation of these socio-legal practices, which serves to establish the field and to distinguish itself from other fields of normativity. Formalisation takes place through the vehicle of legal language and the symbolic power to name; through legal language, social reality is turned into legal reality. Hand in hand with these processes goes a certain 'materialisation of practice' in British-Muslim family law. Materialisation of practice refers to the physical presence of authority that renders it more palpable for individuals involved. Set structures, processes and regulations of conduct are all markers of the legal field. These manifest themselves in written documents, online presence, and physically designated space such as 'offices' or 'councils'. People often do not realise they are engaging in a legal field until they enter an institution or sign a document. A legal field is also clearly characterised by professionalisation that produces a division between professionals and lay people. While an analysis of the field requires investigation of actors beyond who is commonly accepted to be part of the legal profession, the *process* of professionalisation itself is nonetheless an important marker or characteristic of the working of any field and reflects present struggles for power in it. The field of British-Muslim family law also has a corresponding market of professional legal services. This market, just like the field associated with it, has its

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own logic – the logic of practice implicated in the interaction of Muslim and English family law. And the logic of the British-Muslim legal field is such that its hybridity makes perfect sense for actors who are either providing or buying services available on its market. The emergence of the Islamic legal service market is thus a sign of its embeddedness within current social trends – such as privatisation, formalisation and entrepreneurship in legal practice – rather than an expression of an uncoupling of Muslim legal practices from the mainstream. This thesis argues that the development of Islamic legal services can also be read as an indication for an increasing interaction between Muslim legal practices and 'formal' English law.

I found that looking at current practice on the ground as an incipient legal field was best suited to uncover and examine the *legal* character of these practices without understanding them as a predominantly religious or cultural force (Bourdieu 1987). A pluralistic socio-legal analytical lens offers a conceptual framework for an empirically based challenge to the legal positivist paradigm, which maintains there cannot be *law* outside state law (Griffiths 1986). An analysis of the legal field in that sense demonstrates that these practices are justifiably called 'law' in their own right, which is key to the argument of this thesis in relation to citizenship: Understanding Muslim law as a foremost religious phenomenon would miss an opportunity to critique positivist ideas of law. This is important because such positivist idea of law as the state's governing tool for society is inseparable from the concept of modern citizenship as juridical-political status of the individual belonging to a geographically bounded nation state. Law is also a crucial element in the constitution of the modern occidental Western subject – the citizen – whose construction relies on the oriental subject as its counterpart. To challenge dominant notions of citizenship and their inherent orientalist force, this thesis takes as its starting point not modern citizenship as based on state, law and territory, but citizenship understood as political subjectivity (Isin 2002, 2012, 2013, 2017), as 'negotiated practices' of living together constantly being re-made rather than already given in law (Tully 2014, p. 9). As Staeheli puts it 'citizenship is always in formation, is never static, settled, or complete, and identities or subjectivities as citizen are similarly unstable' (Staeheli 2011, pp. 389-399). Similarly, this thesis demonstrated that how people make British-Muslim family law work in the everyday is what sustains the legal field more than self-referential exegesis of abstract ideas of law (Lewis 2004; Staeheli 2011; Neveu 2014, 2015).

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Alsana's approach to her work as solicitor is very practice-oriented in the sense that she provides workable solutions for her clients, like the one who had converted to Islam but whose family had not and were therefore non-Muslim (discussed in chapter seven). To him, drafting an Islamic will was of central personal importance; however, in Islamic law as a Muslim he could not make bequests to non-Muslims that exceed one third of his estate. The client nevertheless asked for the flat he was sharing with his mother to be declared as a gift to her and for a gift of £50,000 to be given to his cat. Alsana followed his request with a very pragmatic attitude and drafted an Islamic will with a Muslim making a bequest to a non-Muslim exceeding a third of his estate, which would not have been possible in a jurisdiction applying Islamic law. The very fact that British-Muslim family law is a hybrid allows for this. Under English law, wills can be drafted rather flexibly, allowing the distribution element to be Islamic. An Islamic will which does not entirely follow the Islamic distribution element would not be valid in a jurisdiction based on Islamic legal principles but can still be enforceable under English law. This gives considerable room to navigate personal needs between various legal demands. It is therefore essential to accommodate the potential creativity and agency of the legal subject in the framework of this research focusing on legal subjectivity. The findings of this thesis illustrate how the subjectivities constituted and developed through engagement in the British-Muslim legal field are multifaceted and relational, never singular or coherent in the sense of expressing one single opinion at a time. Rather, the people I interviewed negotiate a way through various positions and make sense of sometimes opposing views and experiences. From conversations with interview participants it is interesting to see that the subject positions created through these discourses are not inhabited perfectly by individuals and do thus challenge the ontology of existing categories. For example, Kate inhabits the subject position of the professional in British-Muslim family law while not necessarily being Muslim herself. She sees her role as different from 'white British solicitors' who, according to her portrayal may not understand Muslim legal requirements in enough detail, and this distinction is what constitutes herself as a British-Muslim legal professional. The thesis represents an inquiry into how subjectivity is formed, maintained and put into practice by legal professionals as well as non-professionals in *everyday* engagement with the law.

This thesis employs the notion of 'the everyday' to include routinised and processual family practices into the repertoire of citizenship. Indeed, I argue, people in Britain

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continue to practice important legal aspects of British-Muslim citizenship in the everyday when they marry, divorce, bring up their children and arrange for inheritance in the British-Muslim legal field through solicitors, Sharia councils and by bringing claims related to Muslim law before English courts. Within its conceptual and methodological framework of citizenship as political subjectivity, this thesis argues that individuals in the field of British-Muslim family law constitute themselves as citizens by either claiming rights or addressing injustices that they perceive as the important legal and social issues in their lives, without necessarily doing so under the umbrella of 'citizenship' or within national and state (law) boundaries. Mousa deals with a number of clients who seek to get their mahr payment on divorce, and ask him 'well this is my right, this is my dower what can I do to get it back?'. The language of right(s) – as both political-legal entitlements as well as ethical or religious norms – in the field give an indication of the importance of considerations of justice and ethics for individuals who engage in the field.

Here, the field facilitates claims to rights and justice that transcend the fuzzy boundaries of English and Muslim law, and that synthesise understandings of gender justice, ethics, professional duty, religion or culture. This thesis proposes that these claims could be conceptualised as expressions of a right to differentiated citizenship (Young 1990; Pateman 1992; Walby 1994; Lister 1997a, 2001; Yuval-Davis 1999). This concept was developed in relation specifically to the inclusion of women in notions and processes of citizenship. Therefore, it is well suited for underlining the fact that neither modern institutions of citizenship or law can be thought of as interest-free, neutral spaces. As they are conceptualised based on secular, white, male models of being they effect an exclusion of subjects and subjectivities that do not correspond to this blueprint. In contrast, the idea of differentiated citizenship resonates with the experience of interview participants of this study who stake claims to maintain difference while being fully part of the contemporary British citizenry. I would like to emphasise here that the claim for citizenship to be differentiated relates not only to marginal groups in society; far from it, as Phillips succinctly puts it 'all of us are different in many different ways, and that being "different" is the norm' (Phillips 2000, p. 41). In this thesis, the notion of a right to differentiated citizenship also serves to tease out how practices of British-Muslim family law are often not seen as expressions of citizenship especially when looked at through the frame of gender equality and the question of free choice in a neoliberal sense, a concept which is

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linked to an orientalist construction of the autonomous Western subject posited against its oriental counterpart. This thesis thus follows Lister's support for a conceptualisation of citizenship as dialectical and dynamic process, which is 'particularly important in challenging the construction of women (and especially minority group women) as passive victims, while keeping sight of the discriminatory and oppressive male-dominated political, economic and social institutions which still deny them full citizenship' (Lister 1997b, p. 35).

Rania's statement sums up the contested nature of what it means to exert agency in British-Muslim family law: 'on the one hand, the government is cutting legal aid because they want people to go to alternatives; but when they choose alternatives such as a Sharia council, they close down and say that's not an alternative you can go to' (Rania). Thinking of the right to differentiated citizenship as an entitlement has the potential to render visible the struggle for forging and shaping the space for Islam in the UK. What is important here is that people feel entitled to conduct themselves in a certain way in the legal field, even if these practices are commonly not referred to as a way of actively claiming one's rights as a British citizen. The right to differentiated citizenship is brought into being by strategic performances of crossing boundaries of established legal subject positions as either British or Muslim legal subjects and as such challenge orientalist ontologies of an incompatibility of 'British' and 'Muslim', 'occidental' and 'oriental' legal and political subjectivity.

Approaching British-Muslim family law as a legal field necessitates extending the framework to actors, practices and discourses that would not necessarily be considered part of the English legal system. On the one hand, the study therefore includes lay people and how their experiences, practices and understanding of the law contribute to the field of British-Muslim family law. On the other hand, the definition of 'professionals' for the purpose of this thesis leaves space to include Sharia council board members or Muslim scholars. While this thesis deliberately includes voices beyond self-designated legal professionals, there is no denying that the distinction between lay and professional and the strategic positioning of professional actors across different fields contribute to the emergence of a circle of expert actors in the field. Solicitors trained and qualified to practice English law, operating at law firms, carry a strong association with 'the law'. They perform as key actors in a legal 'market' of supply and demand for particular legal expertise emerging in the

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interaction between Muslim and English law. Solicitors position themselves as specialist actors in the field by highlighting their professionalism, focus on process and procedures and the fact that they act *for* their clients. In relation to solicitors' practice, the thesis explores how questions of relational power and gender relations come together in emerging subjectivities of legal professionals in the British-Muslim legal field. In the process of professionalisation, we observe legal subjectivity emerging that is differentiated along gender and other social boundaries. Thus, the very process of professionalisation does not erase existing social inequalities but, in fact, remains structured along lines of gender, ethnicity and class.

Although solicitors may understand their role as merely executing the wishes of their clients, this thesis shows that they exercise a considerable amount of personal activism, agency, authority, and judgment in the scope of their practice, and the actual decisions they take or advice they give. Professionals in their practice – while not describing it that way in their own words – thus question 'what law is' in the British-Muslim legal field. What is law, and what is right? are concerns that engage many of them and that are prompted in the first place because British-Muslim solicitors are being confronted with these questions in their everyday practice. As Alsana said 'because I am Muslim myself, we believe that we have to answer for everything, your actions, etc. So I don't want to go around pronouncing somebody's divorce when technically they are not divorced'. Ethical and religious considerations therefore exert a strong influence on their subjectivities as they navigate what it means to 'do the right thing' in their practice. Solicitors engage with Muslim clients' needs and how they relate to English law. These needs are gendered in particular ways and can be in tension with gender roles established in English family legal provisions. The challenges solicitors navigate in everyday practice are about how to fulfil particularly women's needs fairly, equitably and practicably.

What is more, British-Muslim solicitors also challenge a purely national or state-centred approach to citizenship. This is because solicitors are proficient in both registers – Muslim and English law – and have to work across different jurisdictions and cultures. This raises important questions about the extent to which their activity can be contained in a national framework or must be conceptualised as a transnational practice. The emergence of hybrid and often transnational forms of legal subjectivity also have implications for how we think about citizenship. This thesis offers a counter

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narrative to dominant notions of belonging in transnational lives – grounded in the conversations with people I interviewed – as multiple transnational experiences beyond a framework of country of 'origin' and 'residence'. For example, experiences of living and working in a variety countries forge considerable active personal, educational or professional links, which contribute greatly to the way in which people – especially legal professionals – perceive their role in the British-Muslim legal field. However, while transnational experiences are empowering for some individuals, the transnational character of British-Muslim family law is deeply problematic for others. A discourse that essentialises, stigmatises and securitises Muslims in Britain creates particular challenges for Muslim women who are disadvantaged because of a potentially constrained bargaining positon in gender relations in transnational legal practices. In their intersection, these two dynamics highlight the gendered victimisation of women who are may become subject to discrimination as women (called victims) and Muslims within a discourse of securitisation. An uncritical and simplistic framing of public campaigns around combatting injustices on behalf of Muslim women as well as around security concerns therefore not only further a gendered orientalism. They also perpetuate a patriarchal discourse that renders women in general as 'vulnerable' and in need of protection.

Clearly, in the everyday experiences of my interview participants, the transnational character of diverse, overlapping and sometimes disconnecting legal systems, mean that today law and citizenship operate through multiple registers and not in isolated and sealed off contexts. On the one hand, the story of the emergence of British-Muslim family law is about state boundaries and state law becoming less important for how individuals think of their citizenship and belonging. On the other hand, it is a story about how state law and state institutions, and government attempt to regain some of the influence lost in an increasingly transnational world and the effects these attempts have on the people involved in British-Muslim family law. Practices of transnational legal activity in the field therefore also act as a prism through which one can observe the changing role of the state and government in British-Muslim family law. In recent years, there has been a series of initiatives and public campaigns that specifically address Muslim legal practices in the UK. These include the independent review into the application of Sharia law in England and Wales launched by the Home Secretary and the Home Affairs Select Committee's inquiry, the Law Society's practice note on Sharia compliant wills and Baroness Cox's Equality Bill. These

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initiatives have, since the lecture by the then Archbishop of Canterbury Rowan Williams in 2008, contributed to a further problematisation, politicisation and securitisation of practices of Muslim law in Britain by nurturing a narrative of incompatibility with English law and British values, and by bringing the narrative into the security frame of counter-extremism policies. Given the politicised context of practices in British-Muslim family law, it is not surprising that the people I spoke to during interviews engaged in sometimes cautious ways with the current context of their work and lived experiences. The field's embeddedness in the socio-political context results here in what I call 'strategic de-politicisation'. Ultimately, people just want to find just and practicable solutions in legal practice. After all the stories of people who feature in this thesis are about getting on with the business of their lives, and in doing so – often unwittingly – they are developing new, creative, hybrid legal subjectivities.

To sum up, the emergence of British-Muslim family law challenges how we think about citizenship and law in the following ways. First, by establishing that hybrid subjectivity across and between English and Muslim law (and various other sources) can thrive and provide a space within which individuals take up meaningful subject positions, we begin to unsettle orientalist presumptions of incompatibility between occidentalised and orientalised forms of political subjectivity. The former is seen as a superior form of civic citizenship which is juxtaposed to the latter forms of primitive belonging locked into relationships of religion, status, gender and so on (Isin 2002, pp. 19-20). The paradigm of ontological difference between the two appears less and less sustainable when we consider the emergence of a field of British-Muslim family law and its corresponding, flourishing market. In this market professionals successfully build careers out of exactly what has been conceived as impossible: the creative navigation between and merging of different legal orders.

Second, by practising British-Muslim family law in the everyday, new subjectivities of citizens and of belonging are arguably being forged. Modern conceptions of citizenship theorise membership in only one, clearly defined and often territorially limited, polity. These new forms of subjectivity, however, turn to more than one source for authority and reference, which may characterise them as hybrid, transnational and as belonging to multiple polities. Given that citizens have to navigate between different legal fields, it makes sense that British-Muslim family law

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produces a hybrid legal subjectivity constituted in the interplay of different norms and frameworks: rules and regulations provided by the English legal system, norms of Islamic law coming from authorities in and outside the UK, family and community structures and so on.

Third, the fact that Muslim legal practices involve, to a large degree, authorities located outside, or only partly within, the established state legal framework indicates that citizenship, even in its legal aspect, cannot be the sole domain of the state. Western modern conceptions define the citizen as a member in the nation state answerable to the rule-of-law governed by the state and its institutions (Heater 1990; Pakulski 1997). There is limited if any role for the legal subject in creatively constructing the legal field outside, or only partly within, state law and its formal processes in conventional ideas about citizenship. The proposition that in British-Muslim family law non-state legal authorities or actors enact themselves as citizens and contribute to the legal field, and even state law, thus questions the definition of the citizen as governed solely through the formal legal system of the nation-state.

Fourth, scholarship on citizenship critiquing its understanding in mainly juridical-status terms convincingly argued that citizenship is difficult to sustain without everyday practices nourishing it. My contribution is to highlight the importance of socio-legal practices that sustain citizen subjectivity in the everyday. I understand citizenship as political subjectivity constituted in the everyday, routinised practices of British-Muslim family law. Here the everyday is to be understood in the sense of practices that are not explicitly political, activist or causing momentous change in existing social norms. Yet, these practices and incipient hybrid subjectivities introduce ruptures, understood as transformations in family law that bring about a steady shift over time in a routinised everyday manner. Also, the practices I study are not recognised as citizenship practices, even in its social form, in dominant conceptions of citizenship. If anything, the emergence of British-Muslim family law may be seen as an indication of lack of citizenship, belonging and identification with imaginary British core values. Yet, I argue that the creative navigations and legal innovations in the field of British-Muslim family law are in fact an expression of a sense of belonging being forged, and a place for Islam in Britain being negotiated that brings together different registers of British and Muslim law, not without contestations, but

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clearly overcoming perceived incompatibilities between occidental and oriental ways of life.

Last but not least, as well as petitioning, demonstrating or marching, citizens also marry, divorce, bring up children and arrange for inheritance in British-Muslim family law. These are also repertoires through which citizens re-negotiate their belonging in the political-legal landscape of what it means to be a British-Muslim citizen and subject of law and bring into question what it means to be political outside established repertoires.

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Annex I: List of Statutes, Bills and Cases

List of Statutes

Wills Act 1837

Marriage Act 1949

Slaughter of Poultry Act 1967

Slaughterhouses Act 1974

Arbitration Act 1996

Family Law Act 1996

Finance Act 2003

Adoption and Children Act 2002

Divorce (Religious Marriages) Act 2002

Legal Aid, Sentencing and Punishment of Offenders Act 2012

List of Bills

Arbitration and Mediation Services (Equality) Bill [HL] 2015

List of Cases

Radmacher v Granatino (Rev 1) [2009] EWCA Civ 649, [2009] Fam Law 789

S v S 2014 [2014] EWHC 7 (Fam), [2014] Fam Law 448

Uddin v Choudhury & Ors [2009] *EWCA Civ 1205*

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Annex II: Interview participants

Aida works for a large international company advising on immigration law. One of her former peers at law school had since specialised in Islamic legal services; this is how she has become aware of these services. At the time of the interview, Aida was planning her own wedding including a nikah ceremony.

Alsana is partner in a law firm offering Islamic legal services in England. Alsana's parents moved from Pakistan to the UK. She gained professional experience in the Middle East working as an intern at an international organisation. She continues to travel frequently to the Middle East and works with clients from the region. Alsana completed her post-graduate studies in Islamic law in the UK in addition to her law degree.

Asima is a solicitor based in England who started up her own independent business offering Islamic legal services in addition to other family law services. She herself is a qualified UK solicitor and trained in Islamic law at Masters level at a British university in addition to her first qualification.

Farhat is in her early twenties, working in health care services, and at the time of the interview planned to get married to a young man she had recently become romantically involved with after her cousin introduced him to her. Farhat works with and is friends with Sophia, and both participated in the interview.

Fareeda is a qualified solicitor under the law of England and Wales. She is interested in the issues of Muslim law in the UK especially in relation to women. We initially met at a conference discussing the issues arising from unregistered Muslim marriages and she is a supporter of the call for civil registration of Muslim marriages because in her daily practice she sees hardship for women whose Muslim marriage certificates do not provide them with adequate protection in case of relationship breakdown.

Kate has been working as a solicitor for many years. She herself is not Muslim but came to practice at the intersections of English and Muslim law over the years and has learned about Muslim law through her work. She did not set out to have this type of practice but it evolved over the years and with clients and agencies recommending her services. She now handles cases from all over the UK.

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Katja, a Lithuanian national, married her husband who is from the Middle East in a nikah ceremony conducted by an imam in 2007. Because the marriage was never registered under English law, and because of financial and legal complexities, she is worried about maintaining access to her children since her marriage has become increasingly troubled in recent years.

Ibrahim works as solicitor in England. Ibrahim is generally doing well in his business as solicitor. He has a clear career path in mind and his portfolio is expanding steadily. He published an article and experienced considerable negative comment in response, which prompted him to question the benefits of marketing his services more publicly or online.

Jill got married to her husband over 30 years ago and only later converted to Islam. When they got married her husband insisted on making sure that the 'Islamic upbringing' of any future children was agreed should the marriage not be successful. They got married in a mosque and subsequently registered the Muslim marriage under English law.

Joanna has got an interest and experience in Muslim law. She works for an inner city law firm in the family law section. She is not Muslim herself and has not studied Islamic law as a qualification, but has become familiar with this terrain through her work on a case in which the validity of a Muslim marriage played a central role.

Layla works as a professional and has got many years of experience both in the UK and the Middle East. About ten year ago she moved from the Middle East to Scotland for professional reasons and for the education of her children. She used Islamic legal services to draw up an Islamic will that would be valid under English law.

Mohamed is an active campaigner for a Muslim centre in the town where he currently lives. He found that the Muslim community in his hometown is split between a Bangladeshi mosque and Pakistani mosque. Because Mohamed does not speak either Bangla or Urdu, he did not feel he fitted in at either of them. He therefore came up with the idea of a community centre for Muslims that would cut across community boundaries.

Mousa is a solicitor specialising in Islamic legal services at an inner city law firm in England. Mousa has also been working with the local Sharia council, which

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was led by someone living in the neighbourhood. In the exchange, he helped to develop rules and procedures for the council.

Rania has studied law at university but is currently not practicing as solicitor. She is interested in legal matters concerning Muslims in the UK, both in English and Muslim law. She chose not to register her Muslim marriage and to go through a nikah ceremony only.

Samira is a solicitor based in an inner city law firm. She described her journey of becoming involved in Islamic legal services as linked to her different experiences of travelling to a variety of countries, not only the country of her parents' origin.

Shahira is in her mid-twenties and works in the insurance department of a large international company. She lives with her parents and her young daughter. She was married to her husband in Pakistan and was told about the marriage only one week before her departure. Shahira divorced her husband with the help of a solicitor specialising in English and Muslim law.

Sophia is in her early twenties, working in health care services, and at the time of the interview planned to get married very soon to her boyfriend of many years. Sophia works with and is friends with Farhat, and both participated in the interview.

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