

Religious courts are not in competition with secular ones

The Archbishop of Canterbury's lecture in 2008 on 'Civil and Religious Law in England' raised a storm of protest about the existence of 'competing' forms of religious law in Britain. Yet an in-depth study of the working of three kinds of religious court in the UK, by a team at Cardiff University, suggests that there is no ground for alarm. Such 'law' does not compete with British law, its 'courts' are not adversarial in the same way, and they are not seeking recognition by the state.

Between 2010 and 2011, Gillian Douglas, Professor of Law at Cardiff University, led a year-long project funded by the [Religion and Society Programme](#) investigating the operations of three courts in relation to marriage and divorce. These were the Jewish London Beth Din of the United Synagogue, the Roman Catholic National Tribunal for Wales, and the Muslim Shariah Council of the Birmingham Central Mosque. Interviews with staff were complemented by workshops, observation, and analysis of statistics.

The project found that none of these courts undertakes binding arbitration on marital issues. They are flexible and relatively autonomous in their decision-making, drawing upon religious law, but not tightly bound by precedents. Applicants freely choose to seek the guidance of these courts, and Jewish and Muslim litigants often 'shop around' for a court or judge who is known to be reliable, sympathetic or well-recognised by the community. They also have recourse to civil law to obtain binding determinations of their status or the consequences of the ending of their marriage.

Decision making takes place in different ways in the three different courts. Divorce constitutes roughly 20% of the Beth Din's activities and the court fulfils a supervisory role, witnessing the correct procedure for the production and handing over of the document signifying a divorce (the *get*). The *get* certificate is not issued until a civil Decree Absolute of divorce has been obtained, helping Jewish women avoid becoming an *agunah* (chained wife), which can happen if a husband will not agree to a civil divorce. The Shariah Council's applicants are almost always wives as men can divorce unilaterally under Islamic law. The Council spends about 90% of its time on matrimonial issues, with over half the marriages it deals with not recognised under English law. There is a mandatory mediation stage before the court can be satisfied that there are valid grounds for declaring the marriage over. A civil divorce is considered sufficient, meaning a religious divorce is not also required for the parties to remarry under Islamic law. All the work of the Catholic National Tribunal concerns marriage. A civil divorce is required before seeking an annulment. The approach is inquisitorial, and a marriage can only be annulled if there are grounds for considering that it was not genuinely sacramental. The staff in all three courts work part-time and many are volunteers. Applicants pay a fee. All the courts advise that only civil courts may give binding rulings in relation to marital status under civil law and the consequences of the divorce.

Find out more...

- Read the project's full report:
<http://www.law.cf.ac.uk/clr/Social%20Cohesion%20and%20Civil%20Law%20Full%20Report.pdf>
- Read an LSE blog post Gillian Douglas and team member Russell Sandberg wrote about the project:
<http://blogs.lse.ac.uk/politicsandpolicy/2011/08/16/religious-courts/>
- Read an international consideration of the issues concerning sharia courts to which Gillian Douglas contributed: <http://www.cqpress.com/product/CQ-Global-Researcher-Sharia-Controversy.html>
- Look up Russell Sandberg's 2010 article 'Islam and English Law' published in issue 164 of *Law and Justice*: <http://www.lawandjustice.org.uk/LJabstracts.htm>, the Rt Hon Lord Justice McFarlane's "'Am I Bothered?' The Relevance of Religious Courts to a Civil Judge' based upon a lecture given at a project symposium (2011, *Family Law*, no 41, pp 946-955), and Douglas et al's, 'Marriage and Divorce in Religious Courts: A Case Study' (2011, *Family Law*, no 41, pp 956-961):
<http://www.jordanpublishing.co.uk/publications/family-law/family-law-0#overview>
- Read the Archbishop of Canterbury's 2008 'Civil and Religious Law in England' lecture:
<http://www.archbishopofcanterbury.org/articles.php/1137/archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective#Lecture>
- Look out for an edited volume on religion and legal pluralism which Russell Sandberg will co-edit and will feature a chapter on the project from Gillian Douglas to be published as part of the Ashgate AHRC/ESRC Religion and Society series.

You might also be interested in...

- The findings from a research network on shariah also funded by Religion and Society:
http://www.religionandsociety.org.uk/research_findings/featured_findings/does_changeless_shari_a_change
- The Religion and Society project on Muslim chaplaincy led by project team member Sophie Gilliat-Ray:
<http://www.cardiff.ac.uk/share/research/centres/csi/research/muslimchaplaincyproject/index.html>
- The article 'Sacramental sharing in Roman Catholic canon law' by Eithne D'Auria whose Religion and Society-funded doctorate on the use of professional experts in marriage cases in the Roman Catholic Church is supervised by member of the present project's team Norman Doe. Published in the *Ecclesiastical Law Journal* in 2007, vol. 9, no 3, pp 264-287:
<http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=1311336>

Award Title

Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts



Arts & Humanities
Research Council



Team

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