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Modern Traditions in Muslim Marriage Practices, Exploring English Narratives

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ABSTRACT

Marriages formed by religious ceremonies which are not legally recognized are often cited as synonymous with unregistered Muslim marriages. The conceived illegitimacy of such unions and the need for legal interventions has been raised in political discourse in the UK, as such marriages are deemed to counter women's rights and wider legal and cultural norms. The recent independent review into the application of sharia law in England and Wales in particular brought the issue of legal reform to the fore. This article uses the concept of liminality to argue that these relationships may in fact indicate signs of integration, not isolation. Liminality is employed here to signify a process of transition from one set of cultural norms to another, and unregistered religious-only marriages in this theoretical framework represent a transition from state recognized unions, towards the widely accepted cultural norm of cohabitation. This new cultural practice remains in flux. This article draws on empirical research seeking to explore 'English narratives' where Muslim marriage practices are concerned. Focus group discussions and discourse analysis methodology are utilized to explore marriage practices in order to ascertain emerging norms and the perceived need or otherwise to register marriages with the state. These narratives are key to understanding the trend towards unregistered marriages. This article explores two key thematic areas which emerged in this research, namely, (i) integration: to register or not to register; and (ii) categories of *Nikah*.

1. INTRODUCTION

In its 2015 scoping exercise, the Law Commission for England and Wales defined 'religious-only' marriages as a marriage 'formed by a religious ceremony not recognized as legally valid'.[1] This form of marriage is most often portrayed in current literature as synonymous with Muslim marriage practices and is described as a

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1   The Law Commission (2015), *Getting Married, A Scoping Paper,* 13.

burgeoning trend.[2] 'Unregistered'[3] Muslim marriages are seen in all jurisdictions, whether Muslim citizens form the minority or indeed the majority.[4] However, while in Muslim majority states they remain exceptional, in Muslim minority contexts research suggests that they may account for the majority of Muslim marriages. In the most recent and extensive survey of its kinds, True Vision Aire and Channel 4 commissioned a survey of 903 Muslim women during 2016–17, and found 60 per cent of the respondents were in religious-only marriages.[5]

Questions over the legal status of these marriages arise due to non-compliance with formal marriage requirements. In England and Wales, the Marriage Act 1949 requires marriages to be preceded by a period of 28 days' notice, celebrated in a particular location[6] and conducted in the presence of designated officials.[7] In contrast, the *Nikah* (Muslim marriage ceremony) can occur anywhere, at anytime; with no specific ceremony, usually, although not exclusively, in the presence of witnesses. The couple involved may ponder on the legalities of their marriage at various points in time: prior to the religious ceremony, following the celebrations, at key points during 'married' life, or upon breakdown of the relationship. The discourse around the need or otherwise to undergo a legally recognised ceremony of marriage will differ according to the point in the relationship, and the associated priorities.

Sharp focus on the outcome of such relationships has been drawn by the recently published 'Siddique Report,'[8] an independent review into the application of sharia law in England and Wales. Amongst the recommendations were changes to the Marriage Act 1949 and Matrimonial Causes Act 1973 to 'ensure civil marriages are conducted' and included suggested reforms whereby 'the celebrant of specified marriages, including Islamic marriages, would face penalties should they fail to ensure the marriage is also civilly registered. This would make it a legal requirement for an Islamic marriage to be civilly registered before or at the same time as the Islamic ceremony.'[9] Such

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2   The earliest study was by Shah Kazemi, *Untying the Knot: Muslim Women, Divorce and the Shariah* (2001) Nuffield Foundation. Further research has been undertaken by Rajnaara Akhtar, 'Unregistered Muslim Marriages: An Emerging Culture of Celebrating Rites and Conceding Rights' in Rebecca Probert, Jo Miles and Pervez Mody (eds), *Marriage Rites and Rights* (Hart Publishing 2015) 182; Vishal Vora, 'The Problem of Unregistered Muslim Marriages: Questions and Solutions' (2016) 46 Family Law 95; Kathryn O'Sullivan and Leyla Jackson, 'Muslim Marriage (non) Recognition: Implications and Possible Solutions (2017) 39(1) Journal of Social Welfare and Family Law 22.

3   The use of the term 'unregistered' marriages in this article signifies a lack of adherence to legal formalities. However, it should be noted that being 'unregistered' does not necessarily mean the marriage will not be recognized by the state.

4   Maaike Voorhoeve, 'Law and Social Change in Tunisia: The Case of Unregistered Marriage' (2018) 7(3) Oxford Journal of Law and Religion 479–497; Eva Nisa, 'Unregistered Marriages of Indonesian Migrant Workers in Malaysia: Contrasting Positions of State Agents' (2018) 6 Sociology of Islam (forthcoming), Islam Uddin, 'Nikah-Only Marriages: Causes, Motivations and it's Impact on Dispute Resolution and Islamic Divorce Proceedings in England and Wales' (2018) 7(3) Oxford Journal of Law and Religion 401–426; and Annelies Moors, Martijn de Koning and Vanessa Vroon-Najem, 'Concluding an 'Illegal Islamic Marriage' in the Netherlands: Controversy, Criminalization and Contestations', (2018) 6 Sociology of Islam (forthcoming).

5   *The truth about Muslim Marriages* Survey Findings, <http://truevisiontv.com/films/details/295/the-truth-about-muslim-marriage> accessed 28 November 2017.

6   s 44(2).

7   s 44(2)(a) and (b), Marriages Act 1949.

8   The independent review into the application of sharia law in England and Wales, February 2018. <www.gov.uk/government/publications> accessed 18 June 2018.

9   ibid at 17.

invasive changes to the law should be approached cautiously in the absence of extensive empirical research into marriage practices within Muslim communities, including a better understanding of the motivations of couples who opt out of formal recognition.

This paper serves to provide some evidences of the complexity of the issue, presenting an exploration of the narratives emerging in discourse between Muslims within the UK, and placing this within its wider cultural context. This range of voices is often missing in political and media discourse on the issue, both of which, as demonstrated by the Siddiqui report, are often preoccupied with the singular paradigm case of disadvantaged Muslim women whose rights are being usurped by a legal system which does not recognise religious marriages. However, examining the discourse of individuals whose relationships have not broken down is imperative to understanding this issue in a more universal way. This allows for engagement with narratives around marriage practices and potential motivations for religious-only marriages, understanding of the legal system and its function in upholding family ties, and the emerging cultural norms evident in the marriage practices of Muslims living in England and Wales.

A key issue is whether religious-only marriages display signs of isolation, or whether they in fact display signs of 'integration'. Focussing on wider social norms and practices pertaining to relationships and family arrangements, statistics indicate that informal family arrangements are becoming increasingly prevalent in both the UK and wider European jurisdictions.[10] How do such 'post-modern' relationship types impact on religious-only marriages? This paper analyses the concept of liminality[11] as the underpinning theoretical paradigm to test the argument that religious-only marriages are a sign of cultural transition for British Muslims. In legal terms, a religious-only marriage is treated as cohabitation. These arguments will be built around the 'interpretative repertoires' or thematic issues of discussion which arose from empirical research undertaken in the form of two focus groups. The themes are (1) integration: to register or not to register, and (2) categories of *Nikah* (the Muslim ceremony of marriage).

THE PARADIGM CASE

'Religious-only' marriages are not a new phenomenon in the British context,[12] and modern unregistered marriages are prompted by a plurality of contextual realities. However, in political, media and practitioner led discourse, it is what I term the 'paradigm case of unregistered marriages' that is the main if not sole focus.[13] This is

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10 'Cohabiting couple families were the fastest growing family type between 1996 and 2016, more than doubling from 1.5 million families to 3.3 million families.' Families and Households in the UK: 2016, Office of National Statistics (see <www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmar riages/families/bulletins/familiesandhouseholds/2016> accessed 12 November 2017.

11 Introduced by Arnold van Gennep, *The Rites of Passage* (University of Chicago Press 1909), and later elaborated by Victor Turner, 'Betwixt and Between: The Liminal Period in Rites de Passage' in *The Forest of Symbols, Aspects of Ndembu Ritual* (Cornell University Press 1967) 93–111.

12 Dating back centuries, such 'clandestine' marriages were once the purview of Anglican clergymen who solemnised marriages which did not adhere to canon law prerequisites. See Shabana Saleem and Rebecca Probert, 'The Legal Treatment of Islamic Marriage Ceremonies' (2018) 7(3) Oxford Journal of Law and Religion 376–400.

13 Rajnaara Akhtar, 'Unregistered Muslim Marriages in the UK, Examining Normative Influences Shaping Choice of Legal Protection' in Foblets and others, *Personal Autonomy in Plural Societies* (Routledge; Law and Anthropology 2018) 140–55, 146.

the case of the disadvantaged female spouse and empowered male bread-winning spouse, which results in the 'wife' being left homeless and penniless upon relationship breakdown. While this is a problematic issue, the paradigm case does not represent all unregistered marriages and there are in fact a myriad of underlying motivations for and forms of, religious-only marriages which will be discussed at appropriate points throughout this paper.

Previous research[14] indicates that 'religious-only' marriages are largely inspired by a desire on the part of observant Muslims to adhere to normative Islamic religious principles in entering a physically intimate relationship. Therefore, the ability to enter into a religious-only marriage is synonymous with the 'right' to enter into a sexual relationship. The absence of the *Nikah* (the Muslim ceremony of marriage) results in such a relationship being considered sinful. However, those who enter unregistered marriages do not display a homogenous group identity, much like its closest associated relationship type – the cohabiting couple. Further, women in religious-only marriages mirror the difficulties faced by women in cohabiting relationships labouring under the mistaken assumption of legal protection. In the case of England and Wales, there are limited rights available to them.[15] This gives rise to the question of how these practices are construed in wider society, and the core issue of whether religious-only marriages indicate signs of isolation or integration.

LIMINALITY: MARRIAGE PRACTICES IN TRANSITION

The theoretical framework underpinning this paper is the concept of 'liminality'. While the roots of liminality are found in the ideas of rituals,[16] its transferral to political and cultural changes is of significance here. Anthropologist Arnold van Gennep's seminal work on the area begins by deconstructing society into separate social groupings, and describing the passage and transition from one group identity to another as being separate and distinct for the sacred – rites of religious passage.[17] Thus, liminality in its van-Gennepian traditional sense is described as 'being on the threshold' in reference to the inner phase of a rite of passage which transfers a person from one stage in their life, to another. This idea of liminality serves to expound the basic premise of the concept of transition and Thomassen[18] further describes this process as being where rites mark the passage of an individual or social group from one status to another, rather than this simply being the result of the passage of time. The development of this concept has featured in theories of cultural change such as organizational culture in the work of Howard-Grenville et al,[19] and in illustrating the 'transcultural dynamics' of transmigrants,[20] to name but two.

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14 Akhtar (n 2).

15 Akhtar (n 13).

16 Liminality definition from the Encyclopaedia of Religion (2005) <http://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/liminality> accessed 18 July 2018.

17 van Gennep (n 11) 1–2.

18 Bjorn Thomassen, 'The Uses and Meaning of Liminality' (2009) 1(1) Journal of International Political Anthropology 5–27, 6.

19 Jennifer Howard-Grenville and others, 'Liminality as Cultural Process for Cultural Change' (2011) 22 (2) Organization Science 522–39.

20 Allen Bartley and Paul Spoonley, 'Intergenerational Transnationalism: 1.5 Generation Asian Migrants in New Zealand' (2008) 46 (4) International Migration 63–83. Shirlena Huang, Brenda Yeoh and

The stages of liminality are described as three-phased; separation, margin (or *limen*)[21] and aggregation.[22] Separation involves a detachment from the preexisting position or place in society, the limen phase entails a shift into a new realm which is unlike the previous state, as well as unlike the state to come, in other words it is the threshold of the transition and Turner describes this as 'ambiguous'.[23] The final stage of aggregation brings about the transformed and changed person, who occupies a different place in society. Turner describes this phase as returning the person to a stable state once more, and by virtue of this, is expected to 'behave in accordance with certain customary norms and ethical standards.'[24] This liminality process can be reflective of cultural transitions. As attested by Thomassen, van Gennep 'always insisted that individuals make choices and effect social situations in any kind of society.'[25] Thus, it indicates a shift in practice, making sense of liminality as unfolding 'social dramas'.[26] Changes in cultural practice have previously been linked to 'jolts' which give rise to 'unsettled' periods of time.[27] However, Howard-Grenville et al[28] propose that 'intentional cultural change' can occur in the absence of 'initiating jolts' when considering changing cultural practices within organisations,[29] and this can also be extended to social groups. This supports the assertion that culture is not static and that a change in culture can occur organically or in a positively engineered and structured way.

In a development of van Gennep's theory beyond the study of ritual passages in small scale societies (and thereby, moving out of strict Anthropology), Victor Turner[30] describes the 'experience of being betwixt and between' referring to the 'state' of a person who is undergoing a transition or transformation, to include 'physical, mental or emotional condition in which a person or group may be found at a particular time'.[31] Turner refers to transition as a process or a 'becoming' which culminates in a new state, taking a processual approach.[32] Thomassen describes Turner's approach as broadening the application of liminality leading to parallels being drawn with modern societies instead of the specific ethnographic tribal context which van Gennep was concerned with. 'Turner realized that 'liminality' served not only to identify the importance of in-between periods, but also to understand the human reactions to liminal experiences: the way in which personality was shaped by liminality, the sudden foregrounding of agency, and the sometimes dramatic tying

Theodora Lam, 'Asian Transnational Families in Transition: The Liminality of Simultaneity' (2008) 46 (4) International Migration 3–13.

21   Limen is the Latin for 'threshold'.
22   van Gennep (n 11).
23   Turner (n 11) 94.
24   ibid.
25   Thomassen (n 18) 11.
26   ibid 13.
27   Ann Swidler 'Culture in Action: Symbols and Strategies' (1986) 52(1) American Sociology Review 273–86, 278.
28   Howard-Grenville and others (n 19).
29   ibid, 535.
30   Turner (n 11).
31   ibid 94.
32   Thomassen (n 18) 14.

together of thought and experience.'[33] Transformation and transgression may not reach an end point however, and the state of 'permanent liminality'[34] is entirely possible.[35]

In modern terms, a formal legally recognized marriages can be seen as a rite of passage in many contemporary societies, where the couple transition from individuals into a family partnership bringing with it a new identity. This paper is not, however, focussing on marriage itself as a rite of passage, but rather, the process and formalities of entering a marriage and the subsequent legal status of the relationship, and how this potentially evidences a process of transition and transformation in cultural practices of Muslims living in England and Wales. Thus, how has the process of undertaking a ceremony of marriage transformed in relation to how it is marked and celebrated and linked to the state, in light of wider cultural norms in England and Wales? And what does this indicate in terms of liminality as a process of change from marriage practices in cultures of origin to behaviours which reflect relationship norms in wider British society, thereby indicating a possible transition in practice to British cultural norms where family relationships are concerned.

Thommasen[36] sets out the various dimensions of liminality which can now be identified in subject, temporal and spatial terms. These relate to liminal *experiences*, and not the *rites* which were first linked to liminality, reflective of the evolution of the concept over the past 100 years and more. First, these can be related to three different types of subject (individual, social groups, whole societies); three different temporal dimensions (moments, periods of weeks/months/years, epochs (decades/generations)), and three spatial dimensions (specific places (a doorway), areas or zones, or countries/regions). This model can be utilized to map out a process of transition, with the subjects being individual Muslims as well as groups or communities of Muslims. The temporal dimensions of periods and epochs reflect the decades since mass migration from the Indian subcontinent in the 1960s and 1970s. The spatial dimensions are England and Wales as counties with an identifiable legal system and family laws. These demarcations are to an extent fluid, as there may be no absolute separation between the elements of each dimension. Bartley and Spoonley[37] evidence this fluidity in their study of East Asian migrant adolescents to New Zealand where they argue that 'transmigrants'[38] 'engage in such patterns of intense contact and exchange between both sending and receiving societies (and perhaps others as well), the two fields actually merge, and create opportunities to pursue alternatives to the conventional path of settlement and "gradual but inevitable assimilation"'.[39]

With this theoretical underpinning, this article will now analyse the data arising from empirical research undertaken in the city of Leicester with Muslim participants

33 ibid 14.
34 Arpad Szakolczai, *Reflexive Historical Sociology* (Routledge 2000) 215–27.
35 Bjorn Thomassen, 'Anthropology and its Many Modernities: When Concept Matter' (2012) 18(1) Journal of the Royal Anthropological Institute 160–78.
36 Thomassen (n 18) 16–17.
37 Bartley and Spoonley (n 20) 63–83.
38 Nina Gillick-Schiller and Linda Basch, 'From Immigrant to Transmigrant: Theorising Transnational Migration' (1995) 68(1) Anthropological Quarterly 48–63.
39 Portes and others, 1999, 228, as cited by Bartley and Spoonley (n 20) 64.

in two focus groups. The discussions presented fascinating snapshots of the complex negotiations that occur as Muslim individuals' navigate the space between cultural norms, religious doctrine, family law and their various cultural identities. The focus groups were intended to elicit views, practices and opinions of Muslims on family law issues and gauge how the interrelatedness of law and private family life was viewed.

2. ENGAGING THE FIELD

The empirical research conducted was intended to ascertain how views relating to marriage are reached and/or formulated, their basis in fact or subjective belief, and how views are articulated in terms of individual and group identity and notions of belonging. Participants were selected using convenience sampling technique.[40] The two focus groups were not limited to any particular age, gender or other socio-demographic profile.[41]

The following questions were posed:

1. When and where did you get married? (Individual question for each member)
2. What was important to you about the marriage ceremony that you had?
3. Did you think about whether your legal position would change following marriage? And do you think it should change?
4. In your opinion, is it important to register your marriage? Why is or isn't it important?
5. The law requires certain formalities for a legal marriage—like going to a Register office—what, if anything, do you think should happen if those formalities aren't fulfilled?
6. Some people think the law should equally control how everyone gets married and not treat any group of people differently—what is your view on this?
7. Is there anything else you would like to say about the process of getting married?
8. If things go wrong, who do you turn to? Would this differ depending on whether it was a registered or unregistered marriage?

These carefully constructed questions[42] enabled an in-depth exploration of the participants' understanding of the legal position and the impact of entering a legal marriage, the factors which influence decision-making on these issues and general awareness about family law. The data in the form of transcripts was analysed using

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40   Ilker Etikan, Sulaiman Abubakar Musa and Rukayya Sanusi Alkassim, 'Comparison of Convenience Sampling and Purposive Samplling' (2016) 5(1) American Journal of Theoretical and Applied Statistics 1.

41   Participants were only required to be either currently married or previously married, in order to ensure that opinions were informed by subjective experience and practice. Once gathered, participants were asked to complete an anonymous survey collecting demographic data, and they were then each assigned with a unique number as an identifier.

42   Special thanks are extended to Prof Gillian Douglas for her help in exploring the potential questions for the focus groups to ensure coverage of all of the key areas.

the discourse analysis methodologies of Conversation Analysis supplemented by Critical Discourse Analysis.[43]

The use of discourse analysis here is reflective of the intensive as opposed to extensive nature of the empirical research.[44] The use of data from two focus groups in order to conceptualize notions of marriage and legalities adhere to the qualitative framework set out by Onwuegbuzie, Dickinson, Leech, and Zoran.[45] Focus groups enable access to the views of a number of participants simultaneously,[46] while also enabling discussion to ensue whereby participants can inform or challenge the views put forward by others. This is a flexible tool which can be used to analyse the emerging discourses in a range of social settings. Sensitivities around this research area are also overcome by this method, as focus groups provide 'cohesiveness'[47] and the sense of identification between participants gives rise to valuable data.

Utilizing Onwuegbuzie et al's 'micro-interlocutor analysis',[48] the discourses within the focus groups were analysed. However, as a side note, of course discourse is not static, but rather continually evolving, even within the setting of a focus group where the opinions of some clearly impacted upon the views of others where there appeared to be a display of knowledge or perception of greater knowledge.

Conversation Analysis[49] was supplemented with Critical Discourse Analysis and an overlay of 'generic'[50] discourse analysis through the critiquing of the conversations and arguments in the context of legislative provisions of England and Wales in both official and unofficial texts, and the representations of academic scholars and social activists related to these provisions. These methods enabled me to identify interpretative repertoires from the focus group data, and draw conclusions based on the themes that arose within the conversations. Thus, two key thematic issues were identified, namely (i) integration: to register or not to register and (ii) categories of *Nikah*.

3. FOCUS GROUP DEMOGRAPHIC CHARACTERISTICS

The demographic characteristics of the focus group participants can be found in Appendix 1 to this article. Focus group 1 clearly occupied an older demographic profile and displayed greater life experience which informed their opinions. Discussions around marriage and families were experiential, and for many, the practices of their children offered valuable intergenerational data.[51] Focus group 2 had a younger

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43 Margaret Wetherell, Stephanie Taylor and Simeon J Yates. *Discourse as Data, a Guide for Analysis* (Sage Publications 2009) 49–92.

44 ibid.

45 Anthony Onwuegbuzie and others, 'A Qualitative Framework for Collecting and Analyzing Data in Focus Group Research' 2009 8(3) International Journal of Qualitative Methods.

46 Sue Wilkinson, 'Focus Groups: A Feminist Method' in Sharlene Nagy Hesse-Biber and Michelle L Yaiser (eds), *Feminist Perspectives on Social Research* (OUP 2004) 271–95, 184.

47 Donna Ambler Peters, 'Improving Quality Requires Consumer Input: Using Focus Groups' (1993) 7 Journal of Nursing Care Quality 34–41.

48 ibid at 3.

49 Ian Hutchby and Robin Wooffitt, *Conversation Analysis* (2nd edn, Polity Press 2008).

50 Charles Antaki and others, 'Analysing Discourse' in Pertti Alasuutari, Len Bickman and Julia Brannen (eds), *Handbook of Social Research Methods* (Sage 2009).

51 5 of the 8 were university educated, and 4 were married for 20+ years. The majority undertook their religious marriage ceremony first, but all also undertook the civil marriage ceremony. The time gap between

demographic profile, with 5 participants in their 20's and 30's.[52] Of all participants, only one was in a religious-only marriage.

4. INTEGRATION: TO REGISTER OR NOT TO REGISTER?

'The Nikah ceremony is much more important but that is not what we are talking about. I class myself as a British Muslim . . . I abide by Islamic Sharia law and I abide by British law and that is why I wanted both marriage ceremonies and I want it for my children. If I was living in an Islamic country then I would respect and adhere to that law of the land. I live here in England and so I live by the laws here. My day-to-day practices are governed by Islam and how I behave and how I bring up my children and my family life etc., but in terms of the wider world I live by English law and I feel very strongly that I could not imagine myself breaking the law of the land so why would I with marriage?'[53]

The issue of identity and integration go hand in hand. The focus group participants circled around the issue of identity and British-ness in a careful way. The statement above was strongly vocalized by a female participant, aged between 45 and 54 who has lived in Britain since birth;[54] she described herself as a 'British Muslim' and her religious practice as 'understand religious duties, moderately practising'. In understanding these words, and those of other participants cited below, it is important to place them in both their context of the focus group environment and its aims of identifying Muslim marriage practices, and further to this, their co-text of the questions posed for discussion and the opinions of others.[55] Her opinion followed that of another female participant who stated in response to a discussion on whether the civil and religious marriage ceremonies go hand in hand:

'The reason that I haven't got an opinion is that I think that it is very much an individual couple's choice and I think that we do not live in a country that is a Muslim country so Sharia law is not always enforceable and that is why a lot of people rely on the law of the land and you can understand why when these difficulties are happening.'[56]

The plurality of characteristics which vie for simultaneous priority in the internal discourses of individual Muslims but also between Muslims is evidenced by this account. In response to her statement, participant 1:1 was questioned by a fellow

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the two ranged from the same day as the *Nikah*, to days and to months, with the longest being a year. Most described themselves are 'moderately practicing' Muslims.

52 The ethnic profile included Indian, Pakistani, and Somali backgrounds, providing a more diverse group than Group 1. 5 were university educated, two had been divorced previously, 6 had conducted both civil and religious ceremonies, while one had conducted only the religious marriage. The gap between the ceremonies ranged from 1 day to 3–6 months. 4 had lived in the UK since birth, and the remainder had lived here for between 13 and 24 years.

53 Participant 1:1.

54 Married for 21 years, educated to A-Levels, and a mother of 4.

55 Charles Antaki (n 50) 5.

56 Participant 1:6, female, aged 45–54, educated to degree level, 'British Muslim'. She did not define her religious practice, instead writing 'how do you define that?'

participant who asked 'so are you saying that Shariah law is not strong enough to protect us',[57] in apparent disagreement. To which she responded 'no, that is not what I am saying', which participant 1:6 concurred with. In agreement with her, a further participant added 'I think that British law comes in because Shariah law is being abused by Muslims. It comes in to stop Muslims abusing sharia law.'[58] Analysis of this exchange shed light on a fascinating narrative and counter-narrative on the place of religious laws in a secular state of which Muslims are citizens. It also revealed the internal conflict which seemed to be taking place between recognition of the dominance of state laws, and the spiritual loyalty towards ideals of religious doctrine, whereby sensibilities about adhering to the law of the land were easily undermined or at least questioned by one member of the group who believed Shariah laws were sufficient to provide protections for couples choosing not to have a state-recognized marriage. It is interesting that none of the participants attempted to critique the notion that Sharia law is 'strong enough' to provide protection, nor to cite any evidences supporting the contention that problematic and patriarchal applications of religious laws perhaps lead to the most criticism of Islamic religious doctrine. These obvious rebuttals were not something any of those advocating adherence to English laws felt able to contend, and instead, defensively responded in the negative despite the apparent contradiction that then arose between this statement and their previous assertion. If the framework of liminality is applied here, this evidences the liminality process as described by van Gennep, whereby individuals and groups have separated from the pre-existing practice (perhaps in the land of origin) and are within the margin or liminal phase transitioning between accepted religious norms and state practice, where to a large extent they remain in flux. Here, the transition is in process, however, tensions can be seen in its negotiations with religious ideals.

A. Shariah Councils as an Alternative

The reference to 'abusing Shariah law' by one participant, in the co-text of the discourse, was in relation to the use of dispute resolution forums such as Shariah Councils[59] in a manner which empowered the men, while women were expected to follow long-winded procedures to convince a panel of 'elders' of the legitimacy of their claim to divorce. This 'abuse' of religious doctrine was something British legal norms were deemed to safeguard women against. The Siddique report makes specific reference to Muslim women pursuing religious divorces seeking redress from such informal religious bodies as Shariah Councils, and calls for the phasing out of Shariah Councils, by compelling formal registration of marriage.[60] It is noteworthy that it is not religious laws *per se*, but rather their application that this participant took issue with, and the safeguards within the national legal system against such abuses would therefore be transparency, non-discrimination and fair representation. Ahmed and Norton echo these concerns for vulnerable women, stating that religious

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57 Participant 1:2, male, aged 45–54, educated to degree level, 'understand religious duties, fully practicing', 'British Muslim'.

58 Participant 1:7, male, age over 55, educated to degree level, 'understand religious duties, moderately practicing', 'British Muslim'.

59 No detailed critique of Shariah Councils shall be presented here for lack of space.

60 The independent review into the application of sharia law in England and Wales, February 2018 at 4–5.

tribunals can potentially issue rulings which are inconsistent with English family law,[61] however conversely, they also acknowledge that these forums can assist vulnerable religious women by providing a way out of their failed marriages.[62] Inconsistency with English law pertains to issues of non-discrimination.

Another potential positive input by Shariah Councils, as identified by Jackson and O'Sullivan within this scenario, is that they can give rise to the payment of maintenance, which the non-recognition of the marriage by the state legal system negates. They would rely on Shariah law provisions which require financial provision by the husbands for certain types of religious divorces. Islamic law requires the payment of 3 months maintenance to the wife before the divorce is finalized, and if she is pregnant, then maintenance continues throughout the pregnancy and post-birth period until the baby is no longer breast-feeding.[63] It should be noted that enforcement of such provisions is reliant solely on the husband's will and community pressures within this informal system.

This evidences the potential access to maintenance, albeit ultimately unenforceable, which Muslim women may have recourse to if no state family law avenue is availed to them. Ali also contends that Shariah Councils provide women in 'limping marriages' a way out,[64] as they provide a forum where she can access a divorce which is otherwise deemed unattainable. Ahmed and Norton concur with Ali, and further add that religious tribunals can enhance the welfare of vulnerable persons (and that they sometimes harm religious freedom rather than enhancing it).[65]

B. Choice versus Compulsion

'It is very clear that you should not be compelled to do anything, you should make an independent decision, your choice about who you marry and how you marry, civilly or not. When you are not married you don't know much about this stuff at all really. Maybe informing people about this would be useful allowing them to make a proper and informed choice, but certainly not compelling them, it doesn't sound reasonable.'[66]

This discourse was couched in terms of choice and inclined against compulsion, in recognition of wider accepted rights in society to construct relationships as individuals see fit. This further supports the notion that liminality is in play as the same choices would not be the cultural norms in lands of origin. Thus, this view point is a reflection of transitional cultural norms and a process of adaptation where relationship parameters are concerned. The Siddique Report's recommendations can be criticized for failing to take account of this autonomy.

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61   ibid 381.
62   ibid 384.
63   John Esposito,*Women in Muslim Family Law* (Syracuse University Press 1982).
64   Shaheen Ali, *Modern Challenged to Islamic Law* (CUP 2016) 226.
65   Farah Ahmed and Jane Calderwood Norton, 'Religious Tribunals, Religious Freedom and Concern for Vulnerable Women' (2012) 24(4) Child and Family Law Quarterly 363, 366.
66   Participant 2:3, male, aged 25–34, educated to post-graduate level, 'understand religious duties, fully practicing', 'British Muslim'.

In group 2, a discussion ensued about the legality of a *Nikah*-only marriage, revealing what is probably an unsurprising lack of clear understanding of the issue, despite the level of educational attainment of the group overall. Through the course of the conversation, misconceptions were addressed as participants answered each others' questions. Individual experiences played a significant role in perceptions and beliefs.

> 'Youngsters believe that if they have had their *Nikah* done, the mosque, their papers signed etc then they don't have to have their civil marriage done. I faced the same scenario, I had my *Nikah* done and I was told that was it, but no it has no standing at all.'[67]

The younger demographic profile of this group resulted in different dynamics. The groups' narratives were couched more in terms of 'choice', 'independent decision', 'informed decision', 'shouldn't be forced to do it' [register your marriage], 'protection for women'. This again reflects a transitioning of acceptable and expected cultural norms. However, it was clear that knowledge about the reality of that 'choice' in the form of legal repercussions was not evident in the majority of the participants. The outcome of a marriage not being recognised is that when the marriage breaks down, through death or divorce, there are potentially dire financial consequences.[68] The unregistered spouse will not be considered as next of kin, and on divorce the courts cannot make any financial provision order, leaving any vulnerable economically dependent spouse without a remedy except through expensive civil law proceedings.[69] Thus giving rise to our paradigm case of unregistered marriages.

One of the participants who disagreed with the majority stated:

> 'so if you are put in a situation where you are told that you have to have a civil marriage done - well that is protecting you; in the eyes of the law you are being told to do something that is protecting you and you are going to have your legal rights in the same way that if you want to get married Islamically you have to have a *Nikah* done. So, are you compelled to have a *Nikah* done? . . .. I think that not everyone is fortunate enough to have an educated background or an upbringing in that respect, and people don't know, like this lady is saying that she didn't have that legal background and she had so many problems, whereas had she been forced to have a civil ceremony when she had her *Nikah* done she would not be in this situation now. So, we may agree to disagree but I think it is important to be aware and it is important maybe to be forced to go down that route.'[70]

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67 Participant 2:1, female, aged 35–44, educated to A-Level, 'understand religious duties, fully practicing', 'British-Asian-Muslim'.

68 The couple will not be considered as spouses for the purposes of the Administration of Estates Act 1925. There are further implications for pensions entitlements, although some pension schemes make provision for cohabiting partners - *In the matter of an application by Denise Brewster for Judicial Review (Northern Ireland)* [2017] UKSC 8.

69 For examples, relief through equity claims such as common intention constructive trusts or proprietary estoppel.

70 Participant 2:5, female, aged 35–44, educated to degree level, 'understand religious duties, moderately practicing', 'British Muslim'.

This participant argued against the freedom to choose, over compelled formal registration on the basis that it would provide protection and prevent the harms described by others. On the other hand, the rest of the group disagreed, for a variety of reasons. One participant questioned that state's involvement in what he termed 'civilian life' where certain terms were perceived to be dictated by the state, where he was of the opinion that they should fall within the private 'civilian' domain.[71] This idea of marriage as either a 'public affair' or a 'private affair' is a dichotomy that has historically marred marriage laws.[72] In the interests of parity with other religious groups, one participant's view was that 'everybody's religious ceremonies should be considered legally binding'.[73] While she did not cite the religious groups being referred to, only Anglicans benefit from a purely religious marriage ceremony with state recognition.[74] Yet others in both groups also disagreed with this position, citing pragmatic difficulties in incorporating a wide range of different processes.

> 'I feel that as we live here, we still have to abide by the law of the land and you can't expect them to take into consideration everyone's faiths. I don't think that it is practical.'[75] This was supported by another, who recognised the complexities of translating multitudes of religious laws into a workable set of legislation.[76] 'I think that one law for me is quiet alright',[77] stated one, while another opined that having one set of laws regulating everyone simply made things a lot 'easier'.[78]

To the exclusion of those who may suffer under the misconception that their religious marriage is valid and recognized by the state, the fact remains that all the other (no doubt majority) of couples 'never intended to formally marry when they undertook the *Nikah*', and therefore any suggestion that they should nonetheless be covered by the law is deeply problematic. As pointed out by Probert regarding cohabitees, 'it is one thing to relieve the unequal impact of the relationship, but quite another to treat the parties as if they actually had married'.[79] Further to this, the challenging nature of such accommodation has been identified by numerous academics, and Ali takes the position that 'acceding to the demands for accommodating diverse religious and cultural traditions is a slippery slope, since the ingredients of this accommodation are contested, undefined and boundaryless'.[80] The difficulties and

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71 Participant 2:3.
72 Rebecca Probert, 'When are we Married? Void, Non-existent and Presumed Marriages' (2002) Legal Studies 398.
73 Participant 2:2.
74 Jews and Quakers benefit from some ceremonial exemptions, however, they are required to give notice to the Register Office.
75 Participant 2:2, female, aged 25–34, educated to postgraduate level, 'understand religious duties, fully practising', 'British-Asian-Muslim'.
76 Participant 2:6.
77 Participant 2:1.
78 Participant 2:5.
79 Rebecca Probert, 'A Review of Cohabitation: The Financial Consequences of Relationship Breakdown, Law Com. No. 307 (HMSO 2007)' (Fall 2007) 41(3) Family Law Quarterly 521–36, 524.
80 Ali (n 64) 208.

confusion that recognition would potentially give rise to are self-explanatory. Furthermore, the European Court of Human Rights affirmed in the cases of *Munoz Dias v Spain*[81] and *Serife Yegit v Turkey*[82] that civil marriages are available to all people irrespective of their religious or other beliefs and practices, therefore there was no discrimination in a lack of recognition of the Roma and Islamic marriages respectively in these cases.

C. Cohabitation

A religious-only marriage is the functional equivalent of cohabitation, which is a growing trend within the dominant cultures in England and Wales.[83] The message being advocated by this cultural practice is that family relationships outside of the state's domain are perfectly acceptable. As stated by participant 1:7, 'half of the country is [living together] without a civil ceremony and they accept it and are accepted and go on . . . .' His words referred to the acceptability of informal relationships in wider society, of which Muslims form a part. This admission is reflective of the process of liminal transition whereby the legal effect of the religious-only marriage is being analogized with cohabitation, although no discussion was entered on how couples would feel being described at cohabitants. The significance attached to the civil ceremony, where it did occur, was largely absent. 'It was just literally ticking a law box. Something my family said needed to be done.'[84]

This dominant message of society's acceptance of cohabitation outside legal domains is being internalized, and coupled with normative religious dictates necessitating performance of the *Nikah*, which remains unrecognized by the state, Muslim couples are displaying a process of internalization, adaptation, and integration. Where marriage is concerned, there is a transitioning process taking place. However, the outcome of the relationship may look and feel very different to cohabitation, as the *Nikah* imbues Muslim community legitimacy upon the relationship and the couple will very much consider themselves 'married', as was evidenced within the focus group discussion. The purpose of that marriage is not recognition by the state, but rather recognition by God, and thereby the communities in which the couples live. It should be noted that cohabitation may be a commonly occurring practice, however, it raises all of the same issues with regards to legal protection as unregistered marriages. Both Haskey[85] and Barlow et al[86] found that the prevalence of public attitudes reflecting a belief that 'common law' spouses are protected by law stands at around 50 per cent. Similarly, some Muslim couples in unregistered marriages seem to

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81 [2009] Application No 49151/07.

82 [2010] Application No 3976/05.

83 'Cohabiting couple families were the fastest growing family type between 1996 and 2016, more than doubling from 1.5 million families to 3.3 million families.' Families and Households in the UK: 2016, Office of National Statistics (see <www.ons.gov.uk/peoplepopulationandcommunity/ birthsdeaths andmar riages/families/bulletins/familiesandhouseholds/2016> accessed 12 November 2017.

84 Participant 1:3.

85 John Haskey, 'Cohabitation and Births Outside Marriage after 1970: A Rapidly Evolving Phenomenon' in Rebecca Probert, (ed), *Cohabitation and Non-Marital Births in England and Wales, 1600-2012* (Palgrave Macmillan 2014) 179.

86 Ann Barlow and others, 'Cohabitation and the Law: Myths, Money and the Media, in Park A. et al, 24th British Social Attitudes Report (2008, Sage).

labour under the same misconceptions. Therefore, suggestions that legal reform is required to remedy the situation of Muslim women in religious-only marriages, while cohabitees are left without the same consideration is deeply problematic.

The emergence of religious-only marriages and their ostensible popularity in the present day is not unlike the trajectory of cohabitation, and attracts some of the same responses in law and politics.[87] Probert drew the conclusion that modern levels of cohabitation, seen from the latter part of the 20th century, are historically unprecedented.[88] Muslims living in Muslim-majority states do not have the same cultural liberties to enter a non-state recognized marriage.[89] These states have their own sets of marriage formalities, and of course the *Nikah* will form an integral part of it. However, unregistered marriages are still possible, though largely prohibited. Therefore, the presentation of religious-only marriages in places like England and Wales cannot be linked back to lands of ethnic origin.

The 'sending' society norms can be termed normative religious influences prescribing a *Nikah* ceremony for marriage, while the receiving state norms are the relationship practices in wider British society which include cohabitation, and it is the navigation between the two which gives rise to religious-only marriages. These relationships retain the appearance of the marriages of the sending state and the cohabitation of the receiving state, and thus encapsulate a transitional relationship form which reflects attachment to cultural norms of both places. This is analogous to Glick-Schiller and Basch's proposition that transmigrants live simultaneously in the sending and receiving locations, being neither here nor there in the absolute sense, with this unlikely to change in future.[90] While British Muslims will often not be transmigrants, religious-only marriages are similarly neither here nor there: neither a state-recognized *Nikah* nor simply cohabitation. In liminality discourse, Turner suggests that the process of liminality in modern times is not seen in 'central political' processes, rather existing on the margins and in plural forms.[91] This supports the argument that it is a process of liminality, which encapsulates the religious-only marriages phenomenon as this has largely occupied the private space of relationships, and family arrangements which the state has not been privy to.

D. Marriage in Another Form

This gives rise to a very important dichotomy. Are religious-only marriages cohabitation 'by another name', or are they in fact 'marriage in another form'? I argue that they are in fact 'marriage in another form', as couples self-identify as married and enter into the relationship via religiously accepted rites, yet they do not benefit from state recognition for lack of adherence to the requisite formalities within the Marriage Act 1949. Thus, they adhere to notions of liminality, evidencing a transition

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87 This complex cultural exchange should not be ignored where legal solutions to religious-only marriages are being proposed, and the Siddique Report fails to take account of this.

88 Rebecca Probert, *The Changing Legal Regulation of Co-habitaton: From Fornicators to Family, 1600-2010* (CUP 2012) 277.

89 See for example, Voorhoeve (n 4), Nisa (n 4), Zbeidy (n 4).

90 Gillick-Schiller, Basch and Blanc (n 38) 48–63, 56.

91 Victor Turner, *Process, Performance and Pilgrimage: A Study in Comparative Symbology* (Concept 1979), as cited by Howard-Grenville and others (n 19) 525.

from cultures of origin and from wider British cultural norms, leading to the adaptation of a relationship norm which evidences the fusion of both of these different practices.

Further evidences of 'marriage in another form' are substantiated by the manner of celebration of the nuptials, and previous research has indicated that the form of ceremonies are very much aligned with widely accepted customs.[92] Therefore, wedding parties are celebrated with pomp and grandeur, in some instances costing many thousands of pounds and celebrated with hundreds of friends and family members.[93] These weddings bear all the hallmarks of a state-recognized marriage, yet the lack of adherence to the formalities leave them beyond the state's purview. A further distinction is that cohabitees do not undergo any formalities at all although some may have gone through some form of commitment ceremony. The latter does not have public recognition and by the very nature of the relationship, there is no paperwork. In contrast, the unregistered marriage does have public recognition, at least within Muslim communities, and the *Nikah* contract is in written form.

Probert's[94] earlier work on void and non-marriages identified the problematic nature of religious marriages which fail to conform to state formalities. 'It is purporting to be a marriage, in following the rituals prescribed by an external source, rather than being intended as an alternative to marriage. It is believed by all concerned to create a valid marriage. For these reasons it seems inappropriate that it should be treated as a non-marriage.'[95] However, despite this, it is indeed often classed as a non-marriage. The idea of 'marriage in another form' does however raise interesting questions relating to obligations, specifically, whether the form of the relationship should impact on the issue of obligations. Douglas explored the link between obligations and commitment within the family, in a critique of the state's imposition of obligations within the family only in the instance of commitment via the medium of a formal marriage.[96] The question posed to the unregistered couple is: whether the nature of their relationship, and its recognition as a marriage by their communities should give rise to the obligations which the state imposes on recognized married couples by virtue of their commitment evidenced by the marriage. Douglas acknowledges that 'social norms and understandings of family relationships are becoming more contested as family forms and modes of behaviour become more diverse. It becomes more difficult to agree on the content of the obligation, on whom it is to be imposed and to whom it is owed'.[97] Here, the obligation is to financial maintenance, which historically was imposed on the male 'head of the household'. A more gender-neutral approach is seen within the Matrimonial Causes Act 1973. Of course, the obligations only arise on the actual breakdown of the marriage, in other words, when the commitment made through the formal marriage ceases to exist. Douglas clearly identified this apparent incongruity.

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92   Akhtar (n 2).
93   ibid.
94   Probert, (n 72) 398.
95   ibid 406.
96   Gillian Douglas, 'Towards an Understanding of the Basis of Obligation and Commitment in Family Law' (2016) 36(1) Legal Studies 1.
97   ibid at 4.

In a further exploration of the theme of commitment and obligation, the question of how the issue of moral commitment made on the basis of religious and spiritual values impacts on the notion of obligations arises. Studies in non-legal fields have found that perceptions of commitment within a marital relationship can be related to religious beliefs[98] and termed as moral commitments.[99] In the case of Muslims, one respondent within the focus groups stated that the *Nikah* was a 'covenant' and therefore 'something that is huge . . . it is spiritual and meaningful'.[100] He continued in reference to his civil marriage ceremony:

'It is difficult because in those situations where you are thinking about civil marriage and you are going through the process for example, it feels like a state intrusion into civilian life. . . . . I felt like the state [were] being very intrusive, I thought God, I am having to sit here and say these words when really, they have got nothing to do with my marriage. Why on earth is the state getting involved in something that is civilian.'[*sic.*]

This was a deeply revealing disclosure of the extent of the personal and spiritual nature of marriage to this participant. The involvement of the state was felt to be an infringement on what he views as his private personal life. However, this can be challenged, as the very nature of the obligations deemed to arise through the relationship, whether religious or state recognized in nature, require enforcement. Thus, 'privacy' becomes illusory, and state apparatus or indeed religious forums such as Shariah Councils, become involved. Further to this, the very nature of the Nikah within Islamic traditions challenges this participant's ideals, as it is viewed as a civil contract.[101]

E. Illegitimacy of Children

The legal significance of non-registration are broad, and when asked, the Focus group discussions raised a number of issues: immigration ('My wife is not from the EU, so if my marriage was not legal we would not be together'[102]), financial implication in the form of shared assets during marriage, and shared assets upon breakdown, safeguards in the instance that 'things go wrong',[103] inheritance ('it is not just about divorce. Anything can happen'[104]). One particularly striking issue raised in both groups was the issue of the 'legitimacy' of children ('what rights do you have over your own children'[105]), although this is in actual fact largely irrelevant as far as legalities are concerned.

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98   52% of Christian respondents in a study by Judith Nelson and others. Judith Nelson and others, 'Religious and Spiritual Values and Moral Commitment in Marriage: Untapped Resources in Couples Counseling?' (2011) 55 Counselling and Values 228, 237.

99   72% stated it was a moral commitment. ibid.

100   Participant 2:3.

101   See, for example: Tracie Rogalin Siddique, 'Interpretation of Islamic Marriage Contracts by American Courts' 41(3) (Fall 2007) Family Law Quarterly 639–58.

102   Participant 2:7.

103   Participant 2:6.

104   Participant 2:4.

105   Participant 2:5.

' . . . what status am I giving my children? After the civil ceremony my children are legitimate because otherwise they are cast as illegitimate children . . . . and I wouldn't want that for my children.'[106]

'At least if the civil marriage takes place, you know that if there are children involved then everything will be done properly . . . .'[107]

The legal position of children is unaffected by the marital status of their parents. Historically, the Inheritance (Provision for Family and Dependents) Act 1975, Family Law Reform Act 1987 and the Children Act 1989 had a profound impact on the issue of legitimacy of children and consequent legal implications, and the change in law in the UK was the culmination of a major shift in family arrangements witnessed from the latter decades of the 20th century onwards. Children of non-married parents gained the right of inheritance.

The rise in the number of children born out of wedlock from the 1970s onwards are described by Haskey[108] as an inevitable result of social changes which began in the 1920s,[109] and was facilitated by more readily available birth control devices from the 1960s.[110] Today, 'almost half[111] of all children in England and Wales are born outside marriage, with cohabiting relationships accounting for the majority of such births'.[112] The issue of illegitimacy was closely linked to societal expectations, and this makes the references to legitimacy within the focus groups very interesting for the simple reason that there is no question of illegitimacy within the Islamic traditions where the marriage is religious-only. Thus, the concern here is very much the state and its perception of the children born to these couples. The participants were clearly concerned about children being deemed illegitimate and the (erroneous) perceptions of negative outcomes of such a categorization. This indicates signs of integration rather than separation, as the view of the state was deemed to be highly significant. There was a stark contrast between the lesser concerns for the law's recognition of the marriage, compared with the law's recognition of the children.

F. Transition and Navigation

Referring back to the work of Thomassen, 'there are degrees of liminality, and . . . the degree depends on the extent to which liminal experience can be weighed against persisting structures.'[113] He links this to Szakolczai's[114] premise that the convergence of individual and 'civilizational' liminality leads to an intense impact on the subject. Applying this to the case at hand, Muslim communities within Britain cannot be treated as a single defined homogenous entity and the data gathered in this research

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106   Participant 1:1.
107   Participant 1:6.
108   Haskey (n 85).
109   ibid at 190.
110   Rebecca Probert, 'The Context of Illegitimacy from the 1920's to the 1960's' in Probert (ed), *Cohabitation and Non-Marital Births in England and Wales, 1600-2012* (Palgrave Macmillan 2014) 149.
111   47.5%, see Haskey (n 85) 190.
112   Rebecca Probert (ed), *Cohabitation and Non-Marital Births in England and Wales, 1600-2012* (Palgrave Macmillan 2014) 1.
113   Thomassen (n 18) 18. Emphasis in the original.
114   Arpad Szakolczai, *Max Weber and Michel Foucault: Parallel Life-Works* (Routledge 1998).

supports the argument that Muslims are undergoing individual and group liminal experiences as cultures become more aligned, towards transitional cultural norms. In particular, liminality 'represents a possibility for a cultural hybridity that entertains difference without an assumed or imposed hierarchy'.[115] British Muslims are not like the neophytes described by Turner, being here physically but not socially. Rather, with entrenched generations, they are part of wider society, perhaps with some differing practices based on normative religious influences. However, shared language, shared education, and shared social priorities with wider British society means there is less that separates than connects. The idea of liminality as a process to describe the flux which Muslims find themselves in regarding marriage and family practices is entirely appropriate, and it is wholly plausible that this will remain 'permanent' as migration is a continual process with no cut off point. Therefore, Muslim communities are always changing and adapting. This is reminiscent of Szakolczai's view that modernity itself is in 'permanent liminality'.[116]

5. CATEGORIES OF *NIKAH*

The interpretative repertoire from the data led to the identification of the second theme 'categories of *Nikah*.' This is a broad term, encompassing the celebration of marriage, the form of the ceremony, as well as the public/private division pertaining to the performance of the marriage. In this part, the focus shall be upon norms in wedding celebrations, taking account of the manner and form of wedding celebrations undertaken by the participants. This is supplemented by an initial overview of some potential motivations for unregistered marriages which present a complex contextual analysis of the phenomena.

Based on existing empirical research, as well as anecdotal evidences, we will briefly turn to the following non-exhaustive list of motivations which precipitate a *Nikah*: fledgling love, temporary marriage, priorities and lacking paperwork. While a limited amount of empirical research has been conducted on the motivations for entering an unregistered marriage, extensive observations and anecdotal evidences and reports in media such as online chat forums, online news archives and lifestyle magazines can be drawn upon to evidence the diverse range of practices which seem to be emerging.

Firstly, the category of fledgling love refers to Muslim youth and the transition towards British cultural relationship norms. Here, teenagers and young adults wishing to begin physical and emotional relationship similar to that of their peers enter a *Nikah*, which is not intended to be a formally recognized marriage in their communities. A religious-only marriage allows them to venture into this relationship without undermining their religious beliefs. Online chat forums evidence this, and in one thread, a teenage girl lays bare her struggle with a boy she has been dating for 2 years and has already had sexual intercourse with. She confesses her 'sin' and speaks of redemption through a *Nikah* which would mean that all future such relations would be deemed permissible.[117] Such relationships attest to the use of *Nikah* as a bridging

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115 Thomassen (n 18) 18.

116 Szakolczai (n 34) 215–27.

117 <https://uk.answers.yahoo.com/question/index?qid=20101006113643AAkEq54> accessed 29 August 2017.

method which enables a couple to have a relationship while adhering to normative religious doctrine—liminality in process. However, the usual custom of living together following marriage is being eschewed, and seems reflective of a normative cultural practice in the UK of teenage relationships. This relationship type is clearly not being envisaged by the Siddique Report, as implementation of compulsory registration of *Nikah* would compel these young couples to formally marry while very young, or indeed undermine the very possibility of them entering into a relationship at this age.

Moving on to the normative practice of temporary marriages, the acceptance of such arrangements differs according to religious doctrine, and seismic differences exist between Shi'a and Sunni[118] jurisprudence on the issue. Temporary marriages, or *Nikah mut'ah*[119] are accepted within *Shia* jurisprudence, while *urfi*[120] or 'customary' marriages are accepted within *Sunni* jurisprudence, both being unofficial. In a report by the BBC in 2013, the use of *mut'ah* was described as allowing the couple to meet without breaking the 'bounds' of Islamic law. 'We both wanted to date, to go out for dinner or go shopping and just get to know each other better before getting married, which we wouldn't have been able to do otherwise'.[121] It is very much described as a bridge between traditional normative religious influences, and contemporary European cultural norms. *Urfi* marriages differ to *Mut'ah* marriages, being characterized by their informality rather than their temporary nature. *Urfi* marriages are entered into with a view to being permanent, but the fact they are not registered with any state authorities gives the couple flexibility in how and when the marriage is ended.[122]

Not all *Nikah*-only marriages have such variable outcomes, and many couples intend to continue in a lasting and enduring relationship. 'Trial relationships' may be the first step, wherein the couple will enter a religious marriage prior to committing for life, much like an 'engagement' but without being official. Mehvash and Saad,[123] an American couple who met through an online Muslim matrimonial site, dated prior to getting married with a clear view to getting to know each other to ascertain whether they did indeed wish to marry. Saad commented that 'There are people that don't even believe in dating, but with modern Muslim couples that's how it typically works these days.' Mehvash added: 'but at the same time because we've been born and raised in western society, we mix it up . . . but we're still maintaining those values'. This interplay between religious values and 'western' cultural norms are a persistent theme for young people and relationships in a process of transition.

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118   In simplistic terms, the Sunni–Shia divide is theological, and both groups of followers of Islam adhere to the teachings of the Quran. The Sunni Muslims also adhere to the *Hadith* or prophetic traditions, while this is not a priority for the *Shia*.

119   Shahla Haeri, *Law of Desire: Temporary Marriage in Shi'I Iran* (Syracuse University Press 2014) 49–72.

120   Lyn Welchman, *Women's Rights and Islamic Family Law, Perspectives on Reform* (Zed Books 2004) 42.

121   'I do . . . for now. UK Muslims Revive Temporary Marriages', *BBC News* online. <http://www.bbc.co.uk/news/uk-22354201> accessed 29 August 2017.

122   Annelies Moors, 'Unregistered Islamic Marriages: Anxieties About Sexuality and Islam in the Netherlands' in Maurits Berger and others (eds), *Applying Shariah in the West. Facts, Fears and the Future of Islamic Rules on Family Relations in the West* (Leiden University Press 2013) 141–64, 146–47.

123   Chris Zdeb, 'Islamic Nuptials took Months to Complete; but Layers of Tradition, Ceremony and Festivity were all Worth it' [2014] Edmonton Journal.

Moving on to priorities, an earlier research project revealed that the most widespread reason cited for not registering their marriage was practical conveniences, priorities and the demands on time.[124] While the marriages under question ranged in expenditure between a few hundred pounds to £35,000, for most of the individuals, busy arranging extensive celebrations of the *Nikah* with friends, family and loved ones, the need to give legal effect to the relationship was simply one formality that was not a priority. For most of these individuals, adhering to normative religious doctrine was the priority. In these instances, compulsory registration may be helpful in achieving a change in practice.

Finally, there are those who arrive within the jurisdiction without adequate paperwork to prove their identity, and who thereby face problems in satisfying the legal formalities in evidencing their identity, age, and eligibility to marry. Refugees and asylum seekers are the most obvious candidates for this pathway into a religious-only marriage.

It can be argued that religious-only marriages offer a solution to a wide range of challenges, which may be faced by Muslims wishing to enter a personal intimate relationship. For some, a *Nikah* may present a solution to the problem faced by young people who wish to date, but require a resolution which adheres to religious doctrine. While the issue of temporary marriages are hotly contested, this practice reflects the emergence of cultural norms of some of Britain's younger Muslim citizens, whose cultural practices pertaining to relationships are far more reflective of the norms of their peers regardless of religious affiliation. However, these are often secretive suggesting an additional conflict with accepted community and religious norms of the elder generations. Thus, the choices are very individualistic, and these are collectively effecting social change, as attested to by Thomassen in his analysis of van Gennep.[125] Thus, the decisions being made are by individuals rather than communities. However, evidence also suggests there is a transition in community norms, and the recent survey of 903 Muslim women intended to decipher the rate of unregistered marriages found that 60 per cent of women surveyed were in religious-only marriages.[126] This indicates a shift in practice, making sense of liminality as unfolding 'social dramas'.[127]

Of course there are those who deliberately and unapologetically engage in religious-only marriages, fully cognisant of the outcomes when the eventual breakdown through divorce or death occurs. The motivations can range from the desire to protect wealth, the lack of priority for formalizing the marriage, a lack of conviction in the need for a formal recognized marriage, and a desire to maintain their relationship in the private non-state sphere.

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124   Akhtar (n 2).
125   Thomassen (n 18) 11.
126   *The truth about Muslim Marriages* Survey Findings, <http://truevisiontv.com/films/details/295/the-truth-about-muslim-marriage> accessed 28 November 2017.
127   Thomassen (n 18) 13.

A. Celebrating the Big Day

Of those who enter marriages which are either religious-only or adhering to legal formalities, there are a range of priorities in their celebrations. The only global norm where weddings are concerned seems to be the public nature of the celebrations. In order to benefit from the rights of marriage, there is a perceived need to proclaim your status before throngs of witnesses. All participants in both focus groups publicly celebrated their nuptials and all were preceded or followed by formal legal ceremonies, bar one, which at the time was still in progress. This can be contrasted with the statements made by Coleridge J in the case of *Burns v Burns*[128] wherein he refers to the 'the photographer, the marquee and the disco'[129] as being hallmarks of a wedding reception. Such 'hallmarks' are a global cultural phenomenon, and while the order of priorities may be different, Muslim marriage celebrations are no different, while customs and cultures may differ.[130] Thus, marching bands, photography, music and a DJ, tiered wedding cakes, dancing, speeches, were all part of the wedding celebrations of participants in an earlier empirical study.[131]

In response to the question 'what was important to you about the marriage ceremony that you had?', an interesting dimension was offered by participant 1:5, who stated immediately:

'I guess the most important thing for all of us Asians is the presence of the family and as I see all of us Muslims here, then obviously the religious aspect of it comes into it as well . . .. the Islamic aspect as well as the traditional family aspect-making sure that close family are all involved and attending.'[132]

This participant put forward a view which he deemed was reflective of the entire group's position, based on the identities of 'Asian' and 'Muslim', whereby he concluded that Asian families have large weddings and being Muslim results in the prioritization of the religious dimension. This was followed by female participant 1:7 who agreed, but clearly distanced community norms from her own preference, stating 'I think that if I had it my way, it would have been just the immediate family and that's it'. She stated that her wedding was bigger than she wanted, and that she would have been happy with 30 guests, but instead there were 300 present. This tension between so called 'Asian' norms and the participants own desire, reflective of wedding celebrations in the UK, evidences a transition in the manner of celebration.

Participant 1: 6 told a very interesting story:

'My circumstances were very different, so I had my Nikah done but I wasn't 18 for another month and I had to wait a month before I could have my civil ceremony but then that was a job because my parents had my passport and they were going to take me to India [to get married] so the threat was always there

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128   [2007] EWHC 2492 (Fam), [2008] 1 FLR 813.
129   ibid [6].
130   Akhtar (n 18).
131   ibid.
132   Participant 1:5, male, aged 25–34.

until I got legally married . . . For me, my civil ceremony was very important, it made me feel safe.'

Thus, in this situation, the civil marriage ceremony was pivotal to the participant safeguarding herself from potential abduction and/or forced marriage. This use of the civil ceremony as a protective mechanism revealed a different dimension to the proceedings.

The tensions around the wedding celebrations were made apparent by other participants, with 1:8 attempting to shed some light on the intergenerational conflict and lack of agreement on priorities. She stated that her wedding was 'quite big' but in those days that was the norm. While acknowledging that celebrations have been 'cut down', she still placed a great deal of value on the wedding as a 'time to get together as a family and share in that special moment with them' as a rationalization for wanting to invite distant relatives to her son's forthcoming nuptials. He, on the other hand, could not understand the need to invite 'so-and-so's uncle [who] we haven't ever seen'. She went on to explain that the wedding was a special day for her (as mother of the groom) and for the relatives, not just for the couple being married, reflecting on particular family values which may not be shared across the generations.

Participant 1:6 had a different experience with her wedding, as her family did not approve and so she felt that she was deprived of the presence of loved ones at her wedding, with only 30 people present, which also led to a deeper appreciation of that aspect of the celebrations. Participant 1:4 on the other hand had 10 guests present, and stated clearly that the priority for her was the religious obligation and so only 'close and important' people were present.

The transnational dimension of many Muslim families was brought to the fore by participant 1:5, and following on from his earlier comments, he elaborated that his wedding consisting of 750 people in Pakistan included a lot of extended family members who he met as a 'once in a lifetime opportunity' as weddings were deemed to be that one occasion when everyone would come together to celebrate. He ended by stating 'I have not seen 90% of those people since'.

This discussion around priorities where wedding celebrations are concerned clearly focussed on family presence and the fulfilment of religious obligations. Only participant 1:1 mentioned the civil ceremony, which was only attended by herself, her husband and 6–7 other guests:

'Even though that was really small, we started saying the vows and that meant so much to me and they were really important to me because you don't get that at the religious ceremony, you are just answering questions . . ."do you want to marry this man". That was really important to me and a little bit more meaningful in what we were promising each other.'

This reflection on the vows was an interesting admission, as the *Nikah* ceremony simply requires affirmation of marriage by the bride and groom to the other. This was also in contrast to the participant 2:3 who asserted the exact opposite sentiment about his civil ceremony, evidencing a plurality of views.

Within Focus Group 2, the general consensus was that the priority for the wedding celebration was the *Nikah*. This was followed closely by the presence of the bride and groom's family members. Everything else was described as 'paraphernalia' (participant 2:3). Participant 2:2 described the 'push away from the ethnic cultural norms as a bride' which allowed her to prioritize her own wishes relating to her choice of wedding dress and order of events. Tensions were apparently due to conflicting expectations of parents and other family members, however, the very fact of the assertion of the right and freedom to observe certain practices at weddings can of itself be said to be reflective of transitional cultural norms.

Related to this, participant 2:6 described her identity as a British Muslim as a key part of her wedding where dress was concerned:

> '.I consider myself British. Even in terms of picking the wedding outfit- I got married in a white wedding dress but according to Islamic principles; I was fully covered, I was wearing a hijab but for me that was quite an important thing because I felt that my identity was more British.'

Both of these female participants fall within the 25–34 age category, and having been married for 4 and 7 years, it is possible that their views are more strongly influenced by a British cultural identity converging with religious values.

Participant 2:5 described herself as a 'bit different' as she grew up in Britain but with strong ties to her Indian heritage. She married in a traditional red saree as this was her mother's wish, and she adheres to Indian cultural traditions in keeping with her family norm. However, she describes her father as 'an educated man' which prompted her civil ceremony taking place 3 months before the religious ceremony in recognition of the lack of legal status of the religious ceremony, thereby resulting in that occupying its own position of priority over the normative religious practices. She described a balancing act between culture and religion.

Within focus group 2, a discussion took place that was not identified nor discussed by the first group. '[The *Nikah*] is a binding contract between two people, it is not a religious ceremony. You know you go to the church, that's different, they have done the religious bit there . . . . You don't have to be in a mosque to have this done, do you? You can have two witnesses and you can sign the paper and that is it.'[133]

The statement made by participant 2:4 seemed to have undermined the previously held belief in the utility of the *Nikah* as a religious ceremony of marriage. Statements quickly followed in which there appeared a sudden disconnect between the contractual effect of the *Nikah*, and the positioning of the ceremony itself.

> 'I would say that it is a religious contract, that is correct but it is made into a ceremony by the environment and the circumstances in which it is conducted.'[134]
> 'It is a requirement of Islam but it is not a ceremony in itself.'[135]

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133 Participant 2:4, female, aged 45–54, educated to A-Levels. Failed to provide details of religious practice and statement of identity.
134 Participant 2:3.
135 Participant 2:6.

'I suppose that when you say you are having your Nikah done, it is considered
your religious wedding ceremony but I agree, what you are getting out of it is a
contract but that is how I see it anyway.'[136]

When asked who else agreed, participants 2:1 and 2:2 also agreed. However, gauging
from the body language and the apparent hesitation by the participants, and the lack
of convincing attestations, it was clear that the impact of participant 2:4's confident
assertion was to undermine everyone else's previously held beliefs in the *Nikah* being
synonymous with the religious marriage ceremony. This is demonstrative of the fact
that issues around normative religious practices are perhaps not critically appraised
by even the most educated of British Muslims, and certainly within this group, this
very discussion was breaking new ground.

    In conclusion to the discussion, participant 2:3 stated that the lack of recognition
of the 'contract' (*Nikah*) was evidence of the 'non-inclusiveness of the modern secu-
lar world'. This was an interesting contention, as on many levels, the advent of anti-
discrimination legislation in England and Wales negates such an assertion. And the
state centric mono-legal system is a historic fact, which has faced challenge in numer-
ous forms over the decades and centuries.

7. CONCLUSION

British Muslim communities are not single homogenous entities and no single narra-
tive can possibly reflect the multitude of voices, opinions and practices which are
commonplace from household to household, social group to social group and com-
munity to community. The focus of this study has been the discourses around family,
relationships, and marriage within Muslim communities. These narratives do not
occur in a vacuum and Muslim communities are not closed off from wider society,
and not necessarily insular. Where unregistered religious-only marriages are con-
cerned, the use of the theoretical framework of liminality in this article provides a
clear narrative of the process of cultural transition underway. This infers a cultural
change reflective of wider social norms of cohabitation in Europe, enabling close
family relationships outside of the state's family law arrangement. This cultural norm
is not evidenced in 'cultures of origin' where marriages and family relationships out-
side of the state's purview are atypical further evidencing the transition.

    This process of liminality is on-going, and unlikely to resolve in the coming years,
and may in fact remain in permanent flux. Previous Empirical research conducted
within Muslim communities demonstrates that one cannot underestimate the varying
impact of wider societal norms and practices on the practices and priorities in rela-
tionships for British Muslims. As expounded by van Gennep, 'the life of an individual
in any society is a series of passages from one age to another and from one occupa-
tion to another.'[137] This study has revealed the extent to which Muslim in England
and Wales are conducting their family relationships in a manner which reveals endur-
ing ties to cultures of origin while simultaneously transitioning to British cultural
norms. The use of focus groups in this study enabled a small number of these myriad

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136   Participant 2:5.
137   van Gennep (n 11) at 3.

of voices to intersect and provided valuable data on the emerging norms surrounding Muslim marriage practices and underlying motivations, justifications and conceptualisations.

This paper has engaged with modern traditions in Muslim marriage practices and has identified some key areas within the discourse. The decision on whether or not to register is largely determined by notions of adhering to legalities of the state, however, while all bar one participant was in a registered marriage, participants' statements reflected that the most important dimension of the marriage ceremony was deemed to be the *Nikah*. The registration was largely conducted as a 'tick box' exercise. Despite their own formal marriages, the majority were also staunchly resistant to the idea of compulsory registration of religious marriages, with the discourse couched in terms of choice and freedom, in parallel with the choices availed to wider society. Thus, they would no doubt oppose the Siddique Report's recommendation of compulsory registration. It is clear that the *Nikah* is a means for entering into both 'official' and non-official relationships as far as Muslim practice is concerned. As a result, any move towards legal recognition of religious marriages is also deeply problematic.

Appendix 1

Demographic profile for focus groups

	Group 1	Group 2
Gender	3 male, 5 female	2 male, 5 female
Age	25–34 (1)	25–34 (4)
	35–44 (2)	35–44 (2)
	45–54 (4)	45–54 (1)
	55+ (1)	
Lived in UK	From birth (4)	From birth (4)
	Between 21 and 45 years (4)	Between 13 and 24 years (3)
Nationality	British (8)	British (6)
		Danish (1)
Ethnic origin	Pakistani (1)	Indian (4)
	Bangladeshi (1)	Somali (1)
	Indian (5)	Pakistani (2)
	Indian/White (1)	
Highest educational qualification	Postgraduate degree (1)	Postgraduate degree (2)
	Degree or equivalent (4)	Degree or equivalent (3)
	A-Level or equivalent (2)	A-Level or equivalent (2)
	GCSEs (1)	
No. of years married	Currently: 20, 14, 29, 29, 21, 10, 5	Currently: 4 months, 2, 4, 4, 7, 30, 12,
	Previously: 15, 15	Previously: 22, 15
Nature of marriage ceremony	Both religious and civil (all)	Both religious and civil (6)
		Religious-only (1)
Time gap between civil and religious ceremonies	3 days, 1 year, 1 month, 1 month, 2 weeks, 4 months, x months, same day	1 day, 3 month (3), 6 months
Which ceremony was first	Religious (6)	Religious (6)
	Civil (1)	Civil (1)
Children	2 (2)	1 (1)
	3(2)	2 (2)
	4(3)	3(1)
	6(1)	4(1)

(Continued)

Continued

	Group 1	Group 2
Description of Religious practice: How would you describe your religious practice? Understand religious duties, fully practicing; understand religious duties, moderately practicing; understand religious duties, not practicing; do not understand all religious duties, but practice what I can; moderately practicing, where I can; and do not practice religion	Understand religious duties, fully practicing (1) Understand religious duties, moderately practicing (6)	Understand religious duties, fully practicing (4) Understand religious duties, moderately practicing (2)
Self-identification: Which statement best describes how you identify yourself?: British through and through; British Muslim; British-(ethnic origin, eg Asian)-Muslim; European Muslim; Muslim; A global citizen; Other_____	British Muslim (7) British (ethnic origin, eg Asian)-Muslim (1)	British Muslim (3) British (ethnic origin, eg Asian)-Muslim (1)