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When God and the Law Don't Square

By [ADAM LIPTAK](#)

A PRETTY good way to generate an outcry, as the archbishop of Canterbury learned in Britain recently, is to say that a Western legal system should make room for Shariah, or Islamic law. When the archbishop, spiritual leader of the world's 80 million Anglicans, commented in a radio interview that such an accommodation was "unavoidable," critics conjured images of stonings and maimings, overwhelming his more modest point.

The archbishop, the Most Rev. [Rowan Williams](#), did not propose importing Shariah into the criminal law and was referring mostly to divorces in which both sides have agreed to abide by the judgment of a religious tribunal. His proposal was groundbreaking only in extending to Islamic tribunals in Britain a role that Jewish and Christian ones have long played in the judicial systems of secular societies. Courts in the United States have endorsed all three kinds of tribunals.

In 2003, for instance, a Texas appeals court referred a divorce case to a local tribunal called the Texas Islamic Court. In 2005, the federal appeals court in New Orleans affirmed an award in an employment arbitration by the Institute for Christian Conciliation, which uses Biblical teachings to settle disputes. And state courts routinely enforce the decisions made by a Jewish court, known as a bet din, in commercial and family law cases.

The outcry in Britain was apparently something of a visceral reaction to aspects of Islamic law, though the archbishop himself condemned what he called the inhumanity of "extreme punishments" and some Islamic countries' "attitudes toward women."

The larger question, legal experts in the United States said, is whether government courts should ever defer to religious ones. The answer may depend on whether the people involved authentically consented to religious adjudication, whether they are allowed to change their minds and whether the decisions of those tribunals are offensive to fundamental conceptions of justice.

All of that, said John Witte Jr., a law professor at [Emory University](#), "is the big frontier question for religious liberty."

The archbishop speaks in sonorous circumlocutions and he was not a model of clarity when he was interviewed by BBC radio on Feb. 7. Even his followers had a hard time untangling just what he meant.

"I'm an Episcopalian," said Janice A. Schattman, the lawyer in the Texas case who persuaded the appeals court to defer to the Islamic one. "Rowan Williams, bless his heart, can be quite obscure."

But the archbishop's central point seemed to be that people should be able to agree to have family law cases resolved by religious courts if all concerned agree. By Monday the archbishop was backtracking, saying he had spoken clumsily with "a misleading choice of words."

Azizah Y. al-Hibri, the president of Karamah, an international lawyers' group based in Washington and made up of Muslim women, said she applauded the archbishop's initial position.

"Muslims, Christians and Jews should all deal with their own family law issues in their own arbitration councils," she said. "The government should stay out of the bedroom."

That notion has met resistance where Islam is involved. After the authorities in Ontario raised the possibility that arbitrators might use Shariah to settle family disputes, formal recognition of all religious arbitrations there, including existing Catholic and Jewish ones, was withdrawn.

"There will be one law for all Ontarians," Dalton McGuinty, the province's premier, said in 2005.

Almost no one suggests that criminal law should take into account the defendant's religion in meting out punishment. At the other extreme, few people object to allowing purely commercial disputes between sophisticated businesspeople to be adjudicated through private arbitrations. The hard questions, as the archbishop learned, arise in the area of family law, where the agreement to arbitrate may be uninformed or obtained by duress. State courts have occasionally refused to enforce separation agreements reached through bet din arbitrations on the ground that the woman involved had been pressured into participating.

Once consent is given, moreover, questions arise about whether and when it may be withdrawn. "People have a right in Western systems to change religions," said Douglas Laycock, a law professor at the [University of Michigan](#). "Can they opt out after the dispute arises or after the judgment is given?"

Most fundamentally, some judgments from religious tribunals may be at odds with constitutional protections, human rights and basic notions of fairness.

In an article to be published shortly in *The Washington and Lee Law Review*, Robin Fretwell Wilson, a law professor at Washington and Lee University, wrote that Muslim women who decide to seek a divorce can face harsh financial consequences under Islamic law. "Threatened with the prospect of certain poverty," she wrote, "some women will surely be forced to stay in an abusive relationship."

Professor Wilson said in an interview that government courts should refuse to enforce any ruling from a religious tribunal that leaves a woman worse off than she would have been in a conventional divorce.

"Society has a stake in the outcome," she said. "Some religions are tilted against women."

In the Texas case, however, it was a woman, Rola Qaddura, who sought arbitration in a dispute over a dowry and the distribution of assets after a divorce. The parties had signed an agreement to arbitrate their case "according to the Islamic rules of law by Texas Islamic Court" in Richardson.

The appeals court said the agreement was valid. Ms. Schattman, who represented Ms. Qaddura, said the appeals court's ruling was proper and unexceptional. "An agreement to arbitrate is an agreement to arbitrate," she said.

In the end, though, the parties could not agree on a panel of arbitrators and the effort collapsed, Ms. Schattman added, saying of the Islamic court: "It was kind of a new thing."

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