

Accommodating Muslims under Common Law. By Salim Farrar and Ghena Krayem. New York: Routledge, 2017. Pp. 206. £90.00 ISBN: 9780415710466.

Accommodating Muslims and Islamic law is currently an issue which ranks highly on the agenda of policy makers in the Common Law world. The UK is an apt illustration in this regard. The year 2016 witnessed the launch of the first ever public review of Shariah councils conducted by the UK government, in response to concerns raised by the general public about the increasing numbers of such councils functioning within local communities. The review would have featured much more prominently in public discourse had it not been overshadowed by the country's decision to leave the European Union. Indeed, when Theresa May announced towards the end of 2015 that the review would be taking place, her announcement made national headlines and reignited public debates about the future of Muslims and Islamic law in the UK which have been ongoing ever since the events of 9/11. This publication is thus a timely and valuable contribution to academic and policy discussions which are currently tackling the issue of accommodating Islamic practices within common law frameworks.

A number of important contributions have been made in the literature on the accommodation of Muslims in common law systems post-9/11, as the authors acknowledge in the introduction to their work. These contributions have predominantly adopted a socio-legal or law in context approach and have tended to focus on specific aspects of Islamic law or specific jurisdictions. This book makes a distinct contribution to the literature in two ways. The first is the broad, cross-jurisdictional approach to the topic taken by the authors, who address the issue of accommodating all aspects of Islamic law in the four most prominent common law jurisdictions in the 'Western' world: the UK,

Australia, Canada and the USA. The second is the primary focus of their study on a 'black-letter' analysis of the case-law in these jurisdictions and the role which the judiciary has played in relation to such accommodation. The authors note that Muslims in the jurisdictions under study rely more on the courts than on representatives in legislative assemblies to defend their rights, making the decisions of the courts a particularly important area of study. As legal academics with intimate knowledge of both English and Islamic law, both authors are well-suited for this task.

The book is arranged into five main chapters. The first two chapters contextualise the issue of accommodation by respectively analysing the way in which Muslims, and then Islamic law, have historically fared over the last century in their interaction with the multicultural setting of the modern Common Law world. The final three chapters then focus on the way in which judges in the four chosen jurisdictions have responded to demands for the accommodation of Islamic practices, with each chapter focusing on one particular branch of Islamic law which encompasses a portion of these practices. Each chapter refers to all four of the chosen jurisdictions and draws parallels where appropriate to enhance the analysis.

The authors begin the first chapter by affirming that the UK, Australia, Canada and the USA are all multicultural societies with diverse populations drawn from across the globe. Due to this diversity, the secular liberal legal systems which regulate these jurisdictions have been forced to address the issue of appropriately responding to the norms and practices of such diverse groups. After noting the recent backlash against multiculturalism particularly as it relates to Muslim minorities, the authors argue that

policies of multiculturalism can generate greater social cohesion since accommodation leads to a more inclusive and pluralistic public space. Relying heavily on the works of Kymlicka, Modood and Parekh, the authors also challenge the assumption that a secular liberal state must adopt a neutral stance in relation to minority communities, arguing instead that multicultural policies can only be effective if they acknowledge the religious identity and characteristics of such communities. Based on this argument, the authors contend that an intimate understanding of Muslim communities in the Common Law world and their particular demographics is key in assessing the best way in which to accommodate their practices. They illustrate in detail that Muslim communities in each of the four jurisdictions are not a homogenous grouping, but rather are composed of a diverse range of sub-communities from multifarious cultural, ethnic and socio-economic backgrounds. Despite this sophisticated picture, the greater portion of such communities is young and suffers from socio-economic disadvantage in comparison to the rest of society, which the authors note can have a negative impact on social cohesion.

In the second chapter, the authors shift their focus from the Muslim communities to the law which such communities seek to live by and for which they seek various forms of accommodation in the common law courts of their respective jurisdictions. They note that Islamic law plays a pivotal role in the social identity of such communities, even for members who would not self-identify as particularly religious. They next tackle the important question of interpreting Islamic law, and whether Islamic law has the flexibility to be interpreted so that it accords with the liberal principles and foundational values of Common Law legal systems. In this regard they note that the authority to interpret Islamic law was historically delegated by Islamic societies to a narrow elite of jurists who

had mastered Islamic law's legal sources. In the post-modern Common Law world, this authority has dissipated, leaving a gaping void for the nascent Muslim community to fill. In this context the authors classify the Muslim community into three different groups: assimilationists, separatists and integrationists. Assimilationists embrace a secular or ethnic identity and seek to adopt local customs and ways of life, reinterpreting the sources of Islamic law as historically or culturally contingent where necessary in order to do so. Separatists on the other hand forthrightly reject a secular identity, and seek to impose and implement their own existential and puritanical interpretation of the Shariah. The attempt by a small group of young Muslim men in 2011 to impose a 'Shariah zone' in three London boroughs is a prime example of this puritanical separatism. Integrationists finally seek to fully engage with civic and secular authority in the West whilst simultaneously preserving their religious identity. After a detailed analysis of these three groups in all four of the chosen jurisdictions, the authors contend that Islamic law is capable of being interpreted so as to allow Muslim communities to integrate fully within society whilst maintaining their Islamic identity. They note however that the major obstacle for integrationists is the entrenched public perception that Muslims seek to impose a puritanical version of Islamic law, a perception which is of course exacerbated by the admittedly small sub-group of Muslim separatists. The focus on Muslim responses to the issue of accommodation in this chapter forms a particularly valuable part of the book, as the literature related to the accommodation of Muslim practices usually focuses on government responses and rarely seeks to analyse the importance and role of the Muslim community in this regard.

The final three chapters serve the primary purpose of the book, namely assessing the role of the judiciary in responding to the needs of Muslim populations in the Common Law world who seek resolutions for conflicts that also comply with the dictates of Islamic law. Each chapter focuses on a particular type of conflict: chapter three focuses on conflicts that have involved family relationships, chapter four focuses on conflicts which have been related to crime, and chapter five finally assesses conflicts involving business transactions. In each chapter, the authors introduce each particular category of conflicts by outlining both the position of Islamic law and the Common Law on the issues involved, at times identifying parallels between both legal systems. These introductory passages both enhance and contextualise the more narrow legal analysis of the case-law related to the particular category of conflict under discussion that follows, resulting in a more comprehensive and enlightening overall analysis of the subject.

The authors highlight in chapter 3 the particular importance which Muslims attach to preserving their Islamic family practices, which explains the large number of cases in common-law courts related to family practices as diverse as forced marriage, dower disputes, child custody and limping marriages. After a detailed analysis of the case-law in all four jurisdictions, the authors conclude that the response of judges to the issue of accommodating Islamic family practices has been varied and lacked consistency. At times they have responded positively, for example by recognising Islamic marriages based on the Common Law presumption of marriage, even when the ceremony has not complied with statutory requirements. In the divorce context however, the judges were much less accommodating, refusing to recognise religious divorce and insisting that Muslim couples seek both a religious and a civil divorce if they so desire. A particularly problematic aspect

in judicial responses was in their interpretation of Islamic law. At times judges have attempted to burden themselves with the painstaking and precarious task of interpreting Islamic legal sources directly, while at other times have opted instead to rely on expert witnesses or simply prefer the opinion of one particular Islamic jurist over another. This has led to variant approaches in recognising Islamic principles, with some judges for example preferring to recognise the Islamic dower as a contract, while others have preferred to treat it as a pre-nuptial agreement. Whilst recognising the worthy efforts of judges in such complex cases, the authors suggest that a more refined and systematic approach is necessary, ideally buttressed by the consultation of Islamic scholars and community leaders.

In chapter four the authors examine the way in which Common Law judges have engaged with Muslims in the context of criminal justice. They note that judges in all four jurisdictions have facilitated Muslim participation as long as this has not undermined fundamental values. Muslim accused have thus been permitted to wear religious clothing in court, remain seated when others have been required to stand, seek protection from inflammatory comments of prosecutors and present religious evidence through Islamic scholars, academic experts and language interpreters. The only exception has been where accommodation interferes with the effectiveness of the trial process. The wearing of full face veils have therefore been refused during testimony. One criticism which the authors express is the criminalisation of rituals such as mortification and circumcision irrespective of consent, which they believe results in some situations in which Muslims are not accorded individual moral agency.

In the fifth and final chapter, the authors turn their focus to Muslim cases involving business transactions. They note that Islamic transactions, in contrast to other areas of Islamic law, have been more openly embraced by common law judges due to the ethical values underpinning it. In the Australian case of *Helou v Nguyen*¹ Lindsey J went out of his way to articulate the commonalities and historical meeting points between Islamic commercial law and the principles of the Common Law. The authors note that Common Law courts have allowed parties to choose the laws of Muslim states to resolve their commercial disputes, as long as the agreements have been drafted clearly. They have also applied common law contracts embedded with Islamic principles. Overall, the treatment of Islamic commercial disputes points to a particularly high degree of accommodation.

For readers looking for a detailed and critical analysis of the latest case-law related to Muslims and Islamic practices in the Common Law world, this publication is an ideal resource. Its greatest value lies in its focus on the role and importance of Muslims and Islamic law in the question of accommodation. The authors conclude that Muslims should not and cannot expect all of their religious practices to be endorsed or excused by the Common Law courts. They argue at the same time that Islamic law has sufficient depth and flexibility to allow Muslims who are willing to integrate within Common Law societies to preserve their faith.

¹ [2014] NSWSC 22.