

# EXPLORING METHODS FOR THE INCORPORATION OF INDIGENOUS LAWS IN CANADA

Reflecting on International Attempts of Incorporating Non-Western Legal Traditions:  
The Middle East Example

**Presented by**  
Dana Shamlawi  
*JD Candidate, University of Alberta*

## MY BACKGROUND

Palestinian-  
Canadian refugee

Spent most of my  
life in Middle East

**Bachelor of Arts** in English Language and Literature and International Studies, with a minor in History (*American University of Kuwait*)

**Master of Arts** in International Relations, with a focus on Middle Eastern Relations and Political Speech Analysis (*Middlesex University, London*)

**JD Candidate**, with an interest in Criminal, Family and Indigenous/Aboriginal issues and legal education reform (*University of Alberta*)

## GOALS OF PRESENTATION

1. To consider comparable international experiences in the incorporation of non-Western legal traditions in the present state system;
2. To connect the colonial experience of the Middle East to the experience of Indigenous peoples in Canada;
3. To understand the reasons and outcomes of the failure of the incorporation of Islamic legal traditions in Western-influenced legal systems and how that can inform the Indigenous Canadian experience;
4. To support calls for a bottom-up approach to the integration of Indigenous laws in Canada.

# AGENDA

Main Proposition

Why Does This Discussion Matter?

Crash Course in Middle Eastern Political History

Requirements for Incorporation

Case Study: Domestic Violence in Islam

Practical Steps Towards Integration

Summary of Main Conclusion

Discussion Questions

## MAIN PROPOSITION

The issues which have arisen from the integration of Islamic laws within and by Muslim-majority states provides support for the position that Indigenous laws must be incorporated into Canada from the bottom-up, through and within the Canadian system, by Indigenous Canadian people who are afforded enough flexibility to allow for the uniqueness of Indigenous legal systems to flourish.

**WHY DOES THIS DISCUSSION  
MATTER?**

## REASONS FOR EXPLORING TOPIC

To protect the integrity of indigenous legal traditions

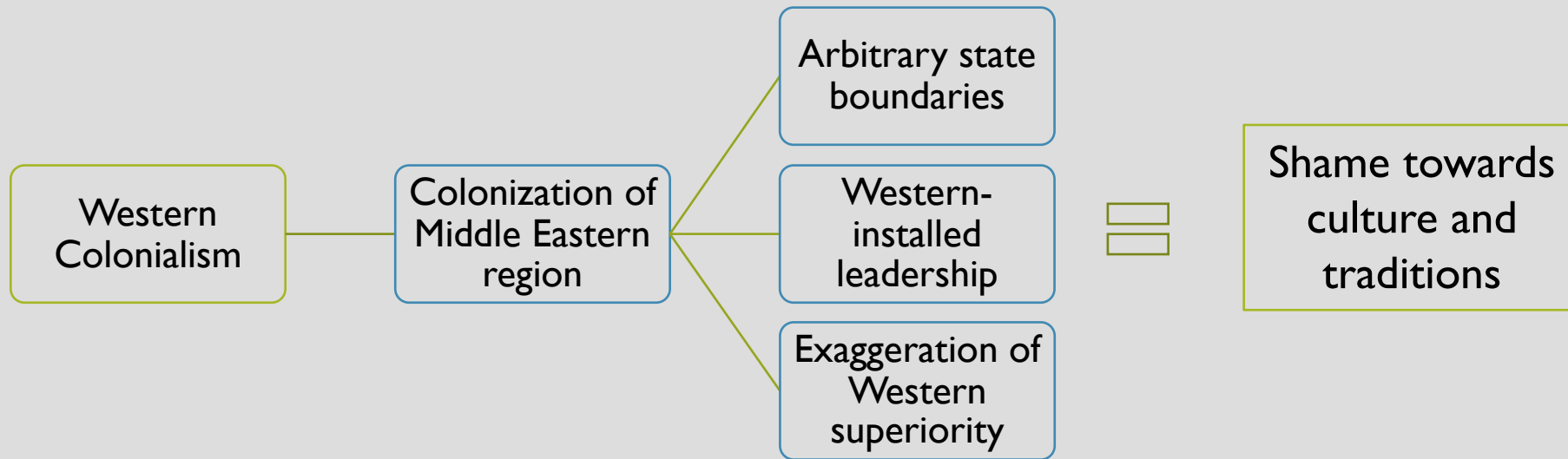
To work towards avoiding the temptations of extremism

To highlight transboundary colonial experiences, specifically pertaining to the relationship between “shame” and “otherness”

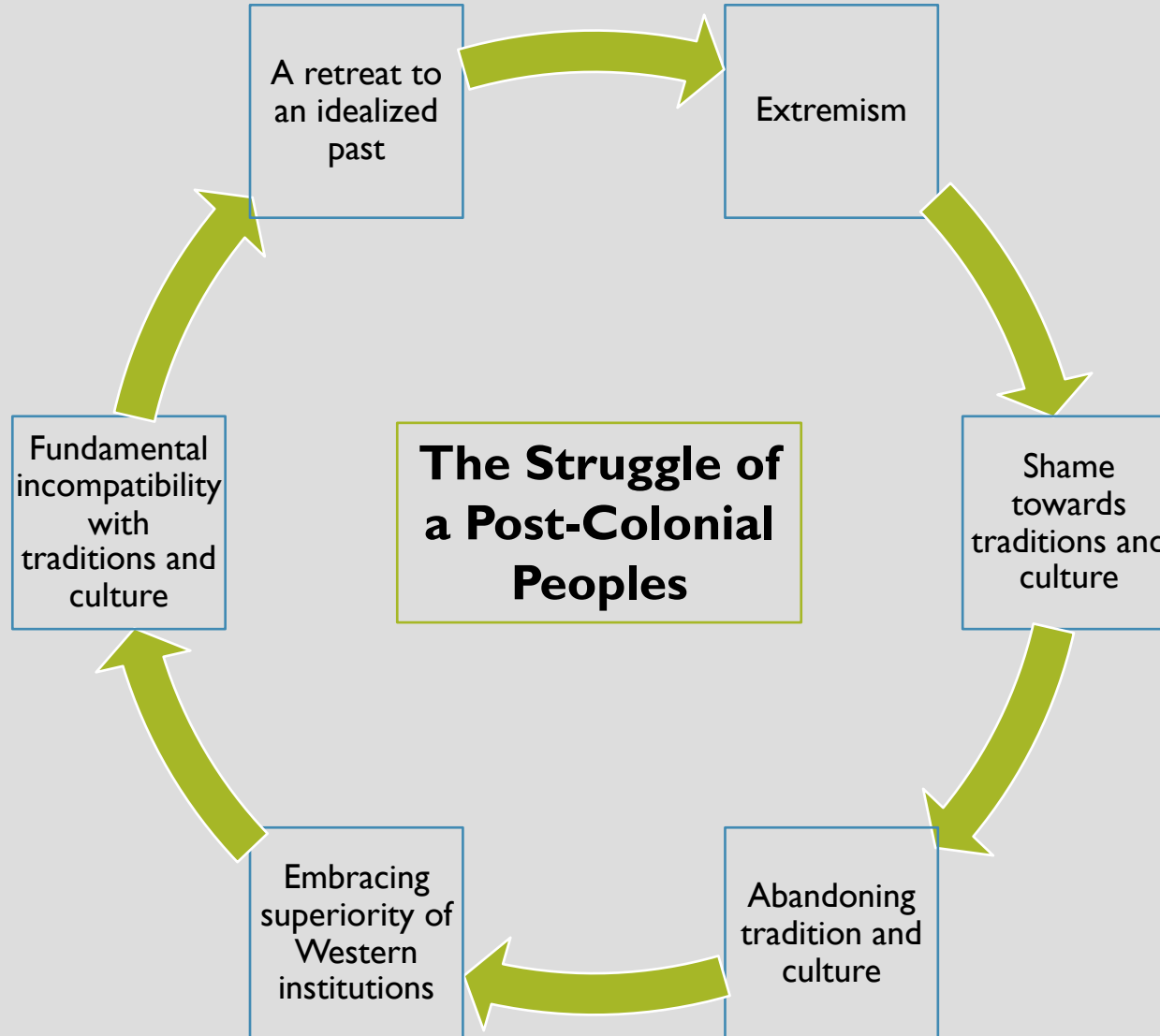
**CRASH COURSE IN MIDDLE  
EASTERN POLITICAL HISTORY**



# COLONIZATION



# POST-COLONIZATION



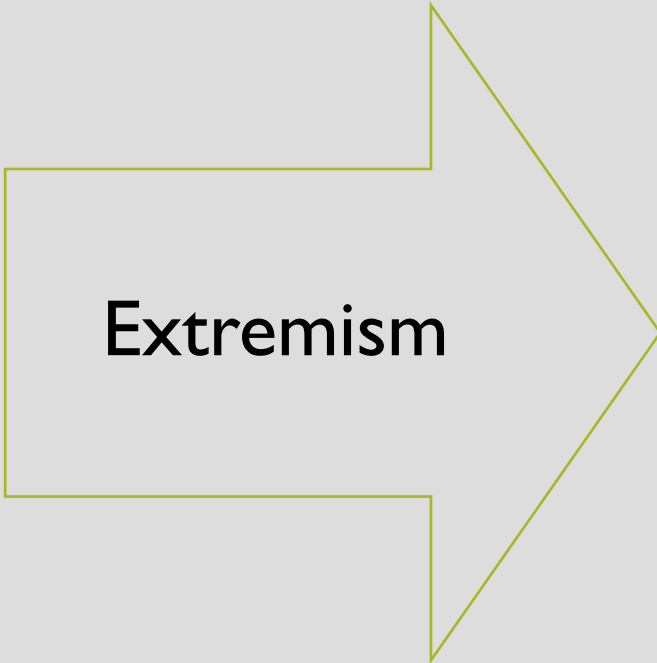
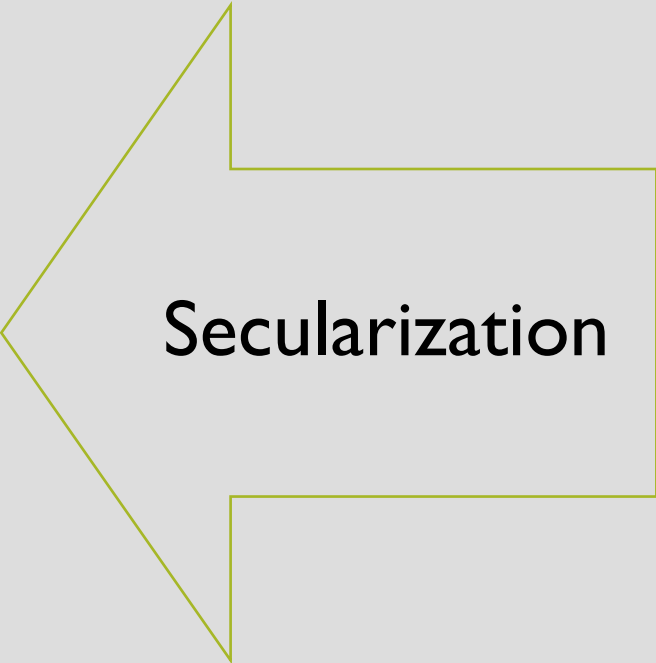
# PRESENT DAY ISSUES

Adapting democratic ideals

Incorporating of only compatible elements of tradition

Obtaining informed majority consensus

Bottom-up Approach to Integration of Islamic Legal Traditions



LESSONS FROM THE MIDDLE EAST:  
REQUIREMENTS FOR INCORPORATION

# WHAT SHOULD INCORPORATION NECESSITATE?

A recognition of the  
divergence of practice and its  
impact

An adaption of legal traditions  
to the nation-state model

An interpretation of sources in  
context

An abandonment of retreating  
to an idealized pre-colonial  
past

# CASE STUDY: DOMESTIC VIOLENCE IN ISLAM

## DIFFERENT INTERPRETATIONS

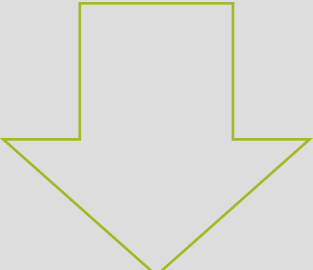
**Sahih International:** Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], **strike them.** But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.

**Mohsin Khan:** Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore the righteous women are devoutly obedient (to Allah and to their husbands), and guard in the husband's absence what Allah orders them to guard (e.g. their chastity, their husband's property, etc.). As to those women on whose part you see ill conduct, admonish them (first), (next), refuse to share their beds, (and last) **beat them (lightly, if it is useful),** but if they return to obedience, seek not against them means (of annoyance). Surely, Allah is Ever Most High, Most Great.

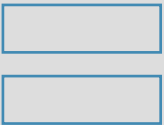
Non-negotiable



Divinity  
and the  
Sacred



Interpretation  
of legal  
traditions



LEGAL RULES  
SHOULD BE  
DISTINGUISHED  
FROM  
TRADITIONAL  
SOURCES

Inherently capable of  
evolution



# PRACTICAL STEPS TOWARDS INTEGRATION

## SOME EXAMPLES

Determine cost  
of integration

Integration of  
Gladue Factors at  
All Levels of  
Court

Education of Legal  
Community

## SUMMARY OF MAIN CONCLUSIONS

- The incorporation of Islamic legal traditions in the Middle East has experienced failures leading to social upheaval, extremism and individual resentment of traditions and culture;
- Canada can avoid the possibility of these mistakes in the integration of Indigenous legal traditions by, for example:
  - Recognizing and respecting the distinctiveness of Indigenous Canadian legal traditions,
  - Ensuring the legal community is educated enough to discuss these issues,
  - Empowering Indigenous Canadians at every level.

# DISCUSSION QUESTIONS

1. To what extent do post-colonial relations inherently lend themselves to extremism? What is the best way to prevent this?
2. Is there an irreconcilable disconnect between Western legal systems and indigenous legal traditions?
3. Is the incorporation of indigenous legal traditions within a Western system achievable – without complete distortion of the indigenous legal traditions?
4. How can the legal community become competent in Indigenous issues?

THANK YOU!