

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
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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

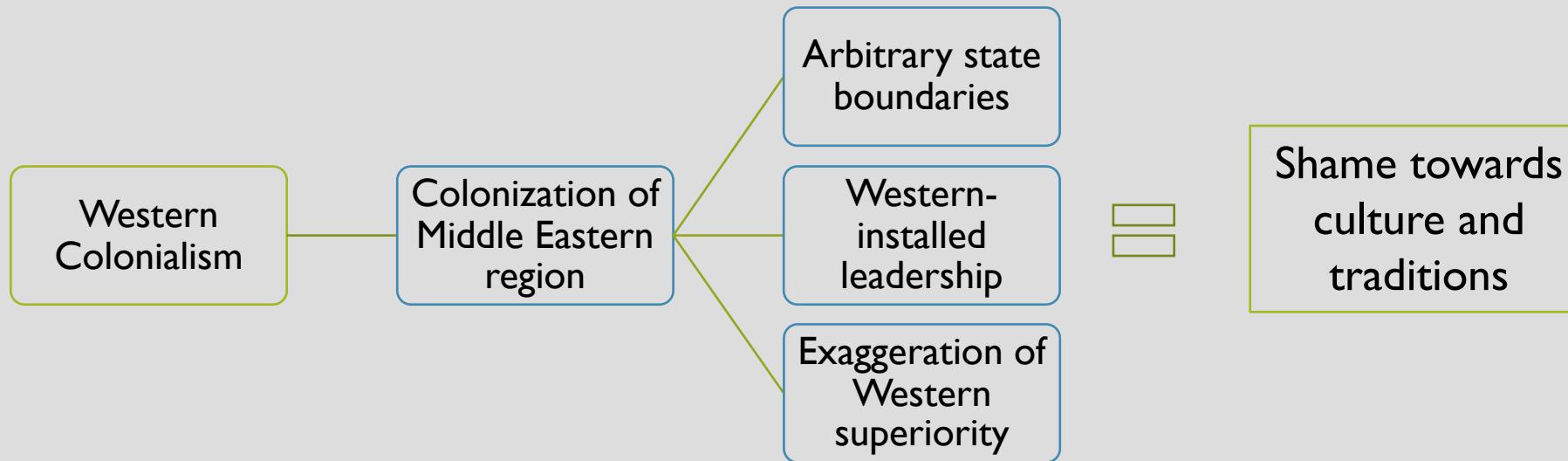
To protect the integrity of indigenous legal traditions

To work towards avoiding the temptations of extremism

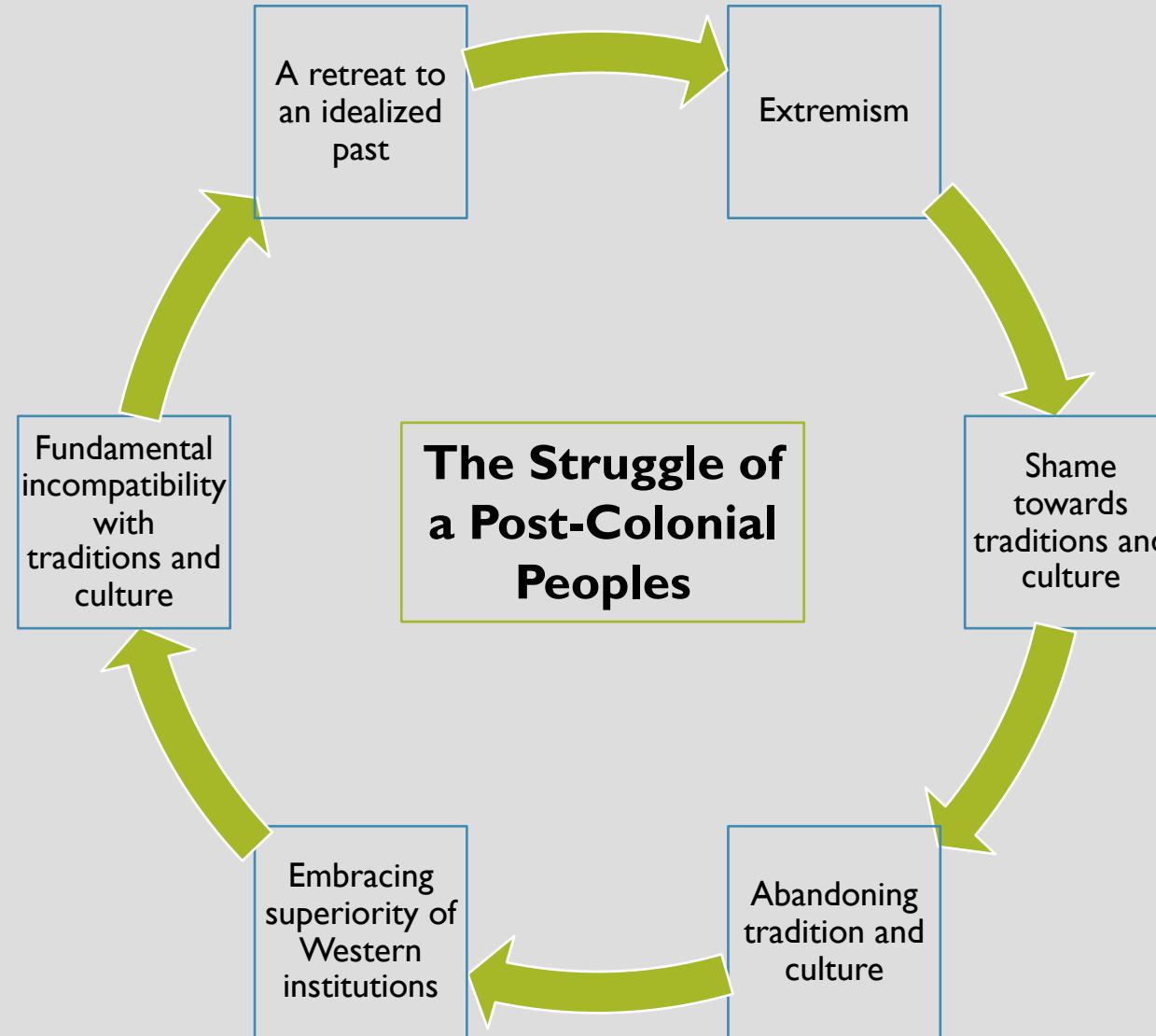
To highlight transboundary colonial experiences, specifically pertaining to the relationship between “shame” and “otherness”

CRASH COURSE IN MIDDLE EASTERN POLITICAL HISTORY

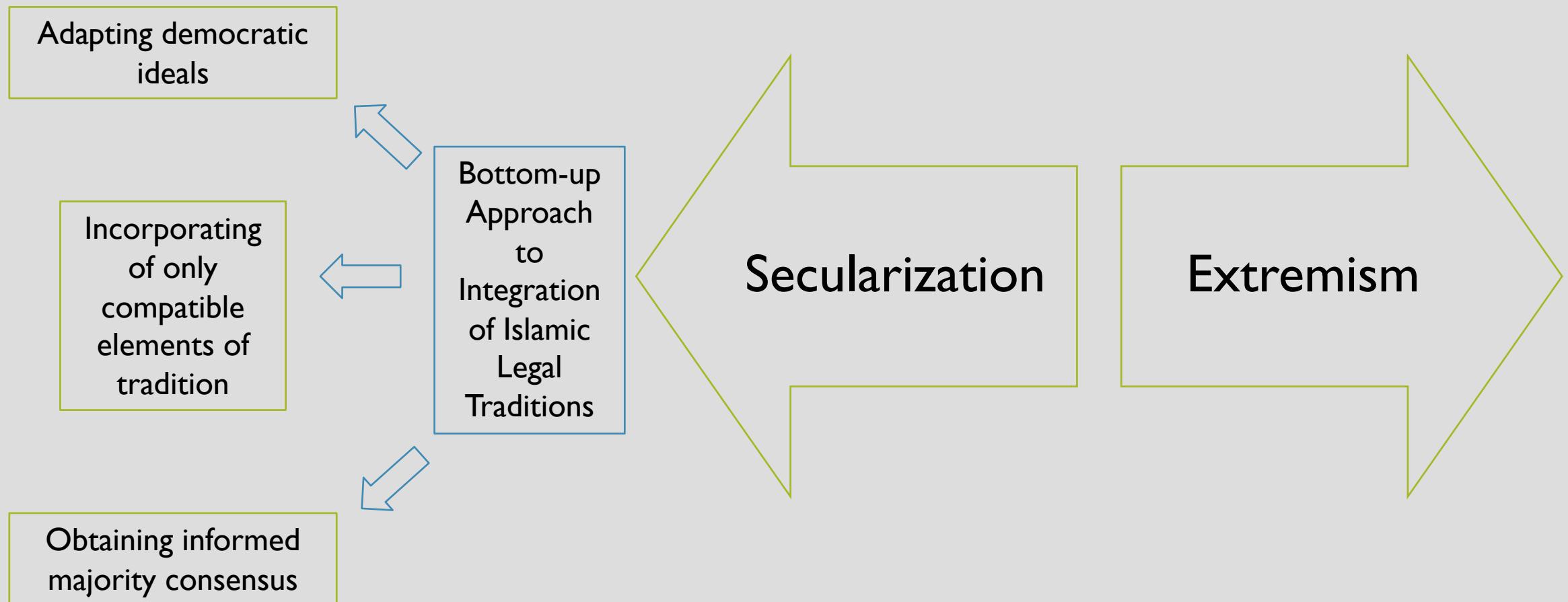
COLONIZATION



POST-COLONIZATION



PRESENT DAY ISSUES



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



**LEGAL RULES
SHOULD BE
DISTINGUISHED
FROM
TRADITIONAL
SOURCES**

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!