



# Muslim Legal Pluralism in the West

Transnationalism, Political  
Participation, Citizenship  
and Shari'a

Ihsan Yilmaz  
Denitsa Pirinova Sokolova-Shipoli

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# CONTENTS

<b>1</b>	<b>Shari'a as a Source of Legal Pluralism in the Lives of Western Muslims</b>	<b>1</b>
	<i>Introduction</i>	1
	<i>Legal Modernity's Homogenisation Attempts Versus Legal Pluralism</i>	2
	<i>Shari'a, Secularism, and the West</i>	7
	<i>Layout of the Book</i>	12
	<i>References</i>	15
<b>2</b>	<b>Muslims, Sacred Texts, and Understanding Sharia in Contemporary Contexts</b>	<b>19</b>
	<i>Introduction</i>	19
	<i>Shari'a and Its Main Sources</i>	21
	<i>Ijtihad and Fiqh</i>	24
	<i>Islamic Schools of Law (Madhhabs)</i>	26
	<i>Diversity of Muslim Interpretations and Muslims'</i>	
	<i>Interaction with Islam</i>	26
	<i>Democracy and Islam</i>	30
	<i>State's Role and Shari'a</i>	33
	<i>Islam in the Western Context, Muslims, and Modernism</i>	35
	<i>Fiqh Al-Aqalliyyat: Islamic Jurisprudence of Minority Muslims</i>	39
	<i>Conclusion</i>	50
	<i>References</i>	51

<b>3</b>	<b>Muslims and Unofficial Islamic Law (Shari'a) Debates in the West</b>	<b>57</b>
	<i>Introduction</i>	57
	<i>United States of America</i>	62
	<i>Europe</i>	67
	<i>Great Britain</i>	71
	<i>Canada</i>	74
	<i>Australia</i>	83
	<i>Conclusion</i>	92
	<i>References</i>	94
<b>4</b>	<b>Unofficial Shari'a Courts in the West: Conflict or Coexistence?</b>	<b>105</b>
	<i>Introduction</i>	105
	<i>United States of America</i>	107
	<i>Europe</i>	109
	<i>Great Britain</i>	111
	<i>Canada</i>	118
	<i>Australia</i>	119
	<i>Conclusion</i>	121
	<i>References</i>	121
<b>5</b>	<b>Religious Scholars (<i>Ulama</i>) and Unofficial Islamic Law in the Western Cyberspace</b>	<b>127</b>
	<i>Introduction: Ulama as the Custodians of Islam</i>	127
	<i>Dar al-Cyber: Fatwa Websites and Online Authorities</i>	131
	<i>Web Forums</i>	138
	<i>Muslim Converts and Their Questions</i>	139
	<i>Conclusion</i>	141
	<i>References</i>	142
<b>6</b>	<b>Shari'a on Citizenship and Political Participation in a "Non-Muslim" Country</b>	<b>145</b>
	<i>Introduction</i>	145
	<i>Democracy</i>	146
	<i>Political Engagement and Participation</i>	151
	<i>Human Rights</i>	153
	<i>Citizenship</i>	154
	<i>Conclusion</i>	167
	<i>References</i>	168

<b>7</b>	<b>Shari'a on Multiple Belongings, Transnational Loyalties, and Calls for Jihad</b>	171
	<i>Introduction</i>	171
	<i>Transnational Multiple Loyalties and Belongings</i>	172
	<i>Duty of Muslims Towards Palestine</i>	179
	<i>Global Fatwas and Calls for Jihad</i>	182
	<i>Conclusion</i>	186
	<i>References</i>	187
<b>8</b>	<b>Shari'a, Muslims, and Legal Pluralism in the West</b>	191
	<i>Shari'a, Muslims, and Legal Pluralism in the West</i>	191
	<i>References</i>	195
	<b>Index</b>	199

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## CHAPTER 1

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# Shari'a as a Source of Legal Pluralism in the Lives of Western Muslims

## INTRODUCTION

This book primarily serves as an introductory text to the subject of Western Muslims' debates, discussions, and practices on the concept of Shari'a vis-à-vis real-life application of Shari'a-driven laws and practices, with a particular focus on the daily lives of Muslims, functioning as a comprehensive reader and handbook. By exploring the lived experiences of Muslims, the book aims to offer non-experts a comprehensive understanding of the meaning and relevance of Shari'a in Western contexts.

By describing the state of the concept of Shari'a for Muslims in Western countries, it aims to open the discussion even further, examine ways of how these can be combined, and also socialize the readers with everyday experiences to inform them of things that matter for Muslims, rather than discussions in the media and political campaigns. Through an exploration of the tangible manifestations of Shari'a within the everyday realities of Muslims, this book strives to present a panoramic and complex perspective. Its primary goal is to capture the wide array of opinions and interpretations that exist within the Muslim community regarding Shari'a, thereby challenging the one-dimensional narratives often perpetuated by mainstream media.

The book seeks to deepen the understanding of Shari'a as an informal guiding principle in the lives of Muslims, an aspect that is often overlooked or misunderstood in scholarly discourse. It aims to shed light on

various aspects of Shari'a, exploring how Muslims interpret and apply its principles in their lived experiences. This focus on the lived experiences of Muslims and their perspectives on Shari'a adds a novel dimension to existing scholarship, providing valuable insights into the complexities of religious practice and identity.

By including a diverse range of cases, we aim to provide a rich and nuanced understanding of how Shari'a functions in different cultural, social, and geographical contexts. This diversity not only enriches the literature but also allows for a more comprehensive analysis of the various factors influencing Muslims' perceptions and practices related to Shari'a. By focusing on aspects such as which aspects of Shari'a are considered binding or optional by Muslims, how they come to understand these principles, and the factors influencing their interpretations, the book aims to provide a concise but comprehensive account to help with informed debates. By engaging with diverse sources, including historical texts, legal documents, scholarly writings, and the lived experiences of Muslims, this work endeavours to provide an overview of the rich composition of perspectives that shape the discourse on Shari'a. Through its rigorous academic approach, the book seeks to contribute to scholarly understanding, public discourse, and informed policymaking on the role of Shari'a in Western societies.

Through a series of interconnected chapters, the book navigates key themes such as Shari'a as informal law, the experiences of Muslims in Western democracies, the role of religious scholars, the dynamics of Shari'a courts, debates on citizenship and political participation, and the complex concepts of multiple belongings and transnational loyalties. These thematic explorations collectively illuminate the complexities, challenges, and evolving dynamics of Shari'a's engagement within the Western context.

## LEGAL MODERNITY'S HOMOGENISATION ATTEMPTS VERSUS LEGAL PLURALISM

Legal modernity encompasses several defining characteristics. Firstly, it emphasizes the standardization of rules and their consistent application across various contexts, ensuring uniformity. Secondly, it is founded on transactions, with individuals' rights and obligations derived from freely negotiated agreements rather than fixed criteria such as personal or group

identity. Thirdly, legal decisions are characterized by universalism, maintaining uniformity and predictability once made. Additionally, modern legal systems are structured hierarchically, with authority flowing downward in a predictable manner. Bureaucratic procedures ensure impersonal and impartial operation, while rationality guides the formulation of understandable rules to achieve specific goals effectively. Professionalism is upheld through qualified full-time staff, and legal representation serves as a bridge between legal specialists and laypersons. Adaptability allows for the modification of rules and procedures to meet evolving needs, controlled by the state. Politically, modern law serves the interests of the state, holding a monopoly over dispute resolution. Finally, the judiciary operates separately from other governmental functions, ensuring the distinct delineation of legislative, judicial, and executive powers (Galanter 1966: 154–156).

In legal modernity, the doctrinal study of law, often referred to as black-letter law, formalism, or legal positivism, examines legal rules and cases within the framework of a defined universe (Fitzpatrick 1992: 3). According to this legal paradigm, law is viewed as a distinct, uniform, coherent, autonomous, exclusive, and systematically hierarchical arrangement of normative propositions. The concept of legal centralism is another hallmark of legal modernity. Legal centralism posits that state agencies occupy a central position in legal affairs, exercising hierarchical control over other normative systems, thereby often overlooking indigenous laws (Galanter 1985: 67). This perspective contends that the state should maintain a monopoly over legal matters, with law being synonymous with state law, uniform for all individuals, exclusive of other legal systems, and administered solely by state institutions (Griffiths 1986: 3).

However, despite the assertions of legal modernity, socio-legal studies have consistently revealed the existence of alternative normative frameworks within society, with resistance to official law being an ongoing concern (Moore 1978; Yilmaz 2003; 2016; 2019). While the state-centric understanding of law dominated in legal modernity, there is a recognition of the need for a more inclusive and globally acceptable approach that acknowledges the pluralities, mixed manifestations, and commonalities of law beyond the state (von Benda-Beckman and Turner 2018: 262).

In every community, various modes of normative orderings coexist alongside official law. Local customs, ethnic minority laws, and traditions are among the significant influences that shape and hinder the efficacy of law in modern societies (Nina and Schwikkard 1996: 69). This has

been more evident in the West where there is more diversity among the Western-born children of immigrant parents, who are part of the Western upbringing but also have a rich family background that they want to see as part of this upbringing.

This contributes to the proliferation of multiple legal authorities and interpretations, as well as the prioritization of local interests and concerns. In a pluralistic society, alongside political, cultural, religious, or structural pluralism, the concept of legal pluralism emerges, acknowledging the undeniable reality of normative diversity. As noted by Griffiths (1986: 38), “legal pluralism is inherent in social pluralism: the legal structure of society reflects its social organization.” In the understanding of legal pluralism, law is not confined to the formal legal system enacted by the nation-state. Socio-legal scholars and anthropologists recognize that cognitive and normative orders exist in various social fields, such as communities, associations, and transnational communities. These normative orders, which include local law, custom, and unofficially transplanted ethnic minority laws, coexist with formal state laws in both traditional and modern cosmopolitan societies. Legal pluralism is a concept that recognizes the coexistence of multiple legal systems or norms within a single society. In societies characterized by legal pluralism, individuals and communities often adhere to diverse sets of norms, rules, and legal frameworks, which may derive from various sources such as customary law, religious law, indigenous law, or state law. Importantly, these legal systems may operate concurrently, sometimes overlapping or conflicting with one another. One key aspect of legal pluralism is that these alternative legal orders are often practised and recognized by the people within the society, irrespective of whether they are officially sanctioned by the state, manifesting the diverse ways in which individuals and communities navigate and negotiate their obligations and rights within complex social contexts (Griffiths 1986; von Benda-Beckmann and Turner 2018). Unofficial laws persist or develop regardless of whether the state acknowledges them. In other words, as Griffiths (1986: 12) argues, “the empirical existence of a legal order does not depend on recognition or any other form of incorporation or validation by the state” (Griffiths 1986: 12).

The early twentieth-century investigations into legal pluralism in Asia, Africa, and the Pacific, primarily focus on what is termed “classical legal pluralism” (Merry 1988: 872). These initial studies often conflated the empirical reality of legal pluralism with the state’s reactions to it (McLachlan 1988: 57). Studies on a “new legal pluralism” have shifted

the focus from studying legal pluralism in traditional societies to understanding the pluralistic nature of law in capitalist, urban, industrial, and modern societies. New theories of legal pluralism now consider Western plural realities (Merry 1988: 869). Indeed, law in modern society is characterized by plurality rather than monolithic uniformity. In the new legal pluralism, the focus has shifted from merely examining the impact of law on society or vice versa to conceptualizing a complex and interactive relationship between official and unofficial systems of ordering (Merry 1988: 873).

Legal pluralism is the coexistence of various legal realms, intertwined and blended both in individuals' perceptions and actions (Santos 1987, 1995). Santos (1987: 278) posits that "different forms of law construct distinct legal frameworks around the same social phenomena. They employ different criteria to delineate the relevant aspects of activities to be regulated... thus generating diverse legal realities."

Griffiths (1986: 1–2, 8) describes legal pluralism as "the presence in a social field of more than one legal order," or as a "state of affairs, for any social field, in which behavior adhering to more than one legal order occurs," emphasizing that these orders do not belong to a single system (Griffiths 1986: 1–2, 8). Griffiths (1986: 5) also categorizes legal pluralism into two types: strong and weak. Merry (1988: 869) equates "strong" with "new" legal pluralism, which encompasses theories that acknowledge plural legal realities, including those in Western contexts, while "classical" legal pluralism aligns with "weak" (Merry 1988: 869).

Weak legal pluralism manifests in two forms. Vertical weak pluralism occurs when legal systems or cultures are hierarchically arranged, with one system holding higher status than another, such as the federated component states in the United States (Chiba 1989: 36). The other form, horizontal weak pluralism, entails subcultures or subsystems with equal status or legitimacy. Historical examples include ancient pre-modern legal systems in the Indian subcontinent (Menski 1993) and the *millet* system practised by the Ottomans, where non-Muslims governed themselves according to their religious laws under the leadership of their religious leaders, except in cases involving Muslims or where they agreed to be judged by Islamic law (Menski 1993).

In strong legal pluralism, not all law is state law or administered by state institutions, resulting in a lack of systematic or uniform legal structures. Legal orders coexist within a social setting without belonging to a single system, and their empirical existence does not hinge on

recognition by the state (Griffiths 1986: 5–17). Unofficial law interacts semi-autonomously with formal state law, creating different legal interpretations of the same social phenomena (Santos 1987: 287). Legal scales interact dynamically, leading to interlegality, where different legal spaces merge, intertwine, and influence both individual perceptions and actions (Santos 1987: 298). This results in a conception of interlaw and interlegality, underscoring the complex interplay among legal systems (Santos 1987: 298).

Individuals are increasingly influenced by competing ethnic, national, cultural, religious, and legal frameworks (McLellan and Richmond 1994: 669). In the legal context, such individuals are referred to as “*sujet de droits*” (see Vanderlinden 1989). Within the framework of internormative dialogue, individuals, as “*sujet de droits*,” continuously shape and are shaped by their legal environment (see Ballard 1994: 31). In the dynamic terrain of legal pluralism, adept legal navigators engage in a process akin to artistic creation, inventing, combining, mixing, and reconstructing laws to navigate the complexities of the post-modern socio-legal climate (Yilmaz 1999: 78).

Shari’a is considered the divine law in Islam, with its principles derived from the Qur’an and Sunna. It is not a simple set of rules in a single text, but rather a body of texts, including religious scriptures, hadith (prophetic traditions), and legal texts, that form the basis for Islamic legal thought and practice. Shari’a law encompasses various aspects of life and is not limited to what is stated in Muslim law books. It is a diffuse legal system lacking coherence in codes and enforcement, characterized by multiple authorities and sources of law (Gerber 1994), and in some cases parts of it, or better say interpretation of those parts, are selectively codified into the law of the land.

For many Muslims, Shari’a represents an order that governs all spheres of life, including social norms and etiquette (Hoffman 1993). In classical Islamic theory, law is seen as the revealed will of God, preceding and controlling the Muslim state, and acting as a unifying factor in Islamic civilization (Yilmaz 2003). Muslims often view Islamic law as governing family matters, such as marriage, divorce, inheritance, and property, more closely connected to religion than other legal issues (Yilmaz 2019; 2020). Therefore, if there is a conflict between Muslim law and secular laws of nation-states, Muslims tend to prioritize divine law over secular legislation (Yilmaz 2003).

Practising Muslims, both in Muslim-majority and non-Muslim-majority countries, often seek to align themselves with Shari'a rather than the specific laws of the countries they reside in, particularly regarding family-related matters (Nielsen 1987; Speelman 1995). This adherence to Shari'a creates a factual situation of legal pluralism, regardless of whether the state's legal system is secular, laicist, or Islamic. In some cases, informal Islamic laws interact with formal laws, and Muslims attempt to navigate the demands of both legal systems, leading to legal hybridity. This recognition of legal pluralism acknowledges the reality of "porous legality" or "legal porosity," where different legal spaces coexist and enter people's minds and actions (Santos 1987).

### SHARI'A, SECULARISM, AND THE WEST

It will be beneficial to have a bird's view on the scholarly terrain surrounding Shari'a in Western contexts, incorporating discussions of some significant scholarly works to enrich the understanding of the topic and foster deeper engagement with the subject matter. The works that will be discussed below have offered diverse perspectives on Shari'a, ranging from legal and political analyses to sociological and anthropological explorations. This book is situated in and contributes to this rich literature.

Talal Asad's work (Asad 1993, 2003) has significantly influenced the study of religion, secularism, and the politics of identity. One of his key contributions lies in his critique of secularism and his emphasis on understanding religion within its socio-political context. Asad challenges the Eurocentric understanding of secularism as a neutral framework that separates religion from the public sphere. Instead, he argues that secularism is a particular historical and cultural formation rooted in Western modernity, often serving to marginalize non-Western forms of religious expression. He highlights how secularism can be used as a tool of power to regulate and control religious practices, particularly in colonial and post-colonial contexts. He emphasizes the importance of recognizing the diversity and complexity of religious traditions, rejecting essentialist interpretations that reduce religion to a set of fixed beliefs or practices. He argues for a more nuanced understanding of religious phenomena, considering the social, historical, and cultural contexts in which they emerge and evolve. In the context of Shari'a and Muslim communities in Western societies, Asad's work offers insights into how the discourse around Shari'a is shaped by

broader political and cultural dynamics, challenging simplistic narratives that frame it as inherently oppressive or incompatible with modernity. In the light of Asad's work, studying Shari'a in Western contexts can take a more reflexive and context-sensitive approach, recognizing the complex interplay between religion, politics, and culture and exploring how Muslims negotiate their religious identities and practices within diverse social terrains, and how discourses of Shari'a intersect with broader debates on multiculturalism, citizenship, and human rights.

Similarly, Saba Mahmood's scholarship (Mahmood 2005, 2015) on the politics of religious piety and the agency of religious subjects offers a nuanced perspective on how individuals negotiate their religious identities within broader socio-political structures. Her concept of "religious agency" is particularly relevant for understanding how Muslims interpret and enact Shari'a in their everyday lives. Mahmood's framework emphasizes that religious agency is not solely a matter of individual choice or freedom but is deeply embedded within larger socio-political forces and power dynamics. She underscores the importance of comprehending how religious subjects negotiate their agency within constraints imposed by societal norms, state regulations, and prevailing discourses of power. In the context of Shari'a and Muslim communities in Western societies, Mahmood's perspective on religious agency offers valuable insights into how Muslims interpret and implement Shari'a in their daily lives. Rather than viewing Shari'a adherence as a monolithic or fixed phenomenon, Mahmood's approach enables a more nuanced understanding of the diverse ways in which individuals engage with and interpret religious norms. Mahmood's work challenges simplistic assumptions about religious practice and underscores the agency of religious subjects in shaping their own religious identities and practices. She illustrates that religious agency encompasses not only forms of resistance or opposition to dominant power structures, but also involves creative strategies of negotiation, adaptation, and reinterpretation.

Moreover, Joseph Massad's scholarly critiques of colonialism, nationalism, and Western interventions in the Middle East (Massad 2001, 2007) also offer invaluable insights into the historical and political contexts that have shaped Muslim experiences of Shari'a. Massad's analyses illuminate the ways in which colonial powers imposed their agendas on Muslim-majority regions, often disrupting traditional legal systems and imposing Western legal frameworks, highlighting how colonial interventions not

only altered the socio-political terrain but also influenced the interpretation and application of Shari'a within these contexts. His work is helpful in situating research on Shari'a within broader debates about power, resistance, the construction of Muslim identities, implementation of Shari'a, and how Muslims navigate these dynamics to assert their agency and identity and how Muslim individuals and communities negotiate their religious beliefs within the context of broader socio-political forces.

Bayat's scholarship (Bayat 2007, 2010) focuses on grassroots movements and social change in the Middle East, offering perspectives on how ordinary Muslims engage with Islam in their everyday lives. His analysis of social movements and post-Islamist trends provides a framework for understanding the diverse ways in which Muslims in Western contexts interpret and enact Shari'a, including through activism, community organizing, and political engagement. Haddad's work (2002) explores the experiences of Muslim communities in Western countries, tracing their evolution from immigrant "sojourners" to full-fledged citizens. She examines the challenges and opportunities faced by Muslims in navigating issues of identity, integration, and belonging within Western societies, including debates surrounding Shari'a, religious freedom, and citizenship rights, offering a nuanced understanding of the complexities of Muslim integration and citizenship in pluralistic contexts.

An-Na'im's (An-Na'im 1990, 2008) work addresses the complex relationship between Islam, secularism, and the state, which is highly relevant for understanding how Shari'a is negotiated and practised in Western societies. His exploration of civil liberties, human rights, and international law provides valuable insights into the challenges and possibilities of reconciling Islamic legal principles with Western legal frameworks.

Abou El Fadl's work (Abou El Fadl 2001, 2007) examines Islamic legal principles and their interpretations, providing insights into debates surrounding Shari'a and its application in contemporary contexts. His exploration of rebellion, violence, and extremism offers a critical perspective on the complexities of Shari'a law and its relevance for Muslim communities in Western societies. Mir-Hosseini's research (Mir-Hosseini 1999, 2016) examines the intersections of Islam, gender, and law, shedding light on how Shari'a is interpreted and applied in diverse cultural and social contexts. Her work on Muslim minorities and approaches to Islamic jurisprudence offers insights into the complexities of Shari'a's engagement within Western societies and its implications for issues such as gender equality, minority rights, and legal pluralism. Yilmaz (1999; 2016)

examines the dynamics of legal pluralism in Muslim-majority countries such as Turkey and Pakistan, as well as in Western contexts like England. He explores how various legal traditions, including Shari'a, coexist and interact within these societies, shedding light on the complexities of legal pluralism and its implications for governance, citizenship, and human rights.

Ihsan Yilmaz's work (Yilmaz 2000, 2001, 2002; 2023; 2024) on Muslim legal pluralism in England, USA and Australia and Muslim-minority laws is highly relevant for understanding the dynamics of Shari'a in Western contexts, particularly in the United Kingdom. Yilmaz's research sheds light on the complexities of legal pluralism and the challenges faced by Muslim communities in navigating their religious identities and practices within the framework of British law. His work addresses the challenges and complexities of Muslim legal pluralism in England, providing insights into the dynamics of incorporating Shari'a into Western legal systems. It explores the tensions between post-modern legality and traditional legal frameworks, shedding light on the socio-legal dynamics shaping Muslim communities' experiences with legal pluralism. He also analyses the debates and controversies surrounding the accommodation of Shari'a within Western legal systems, highlighting issues of differential legal treatment and the challenges of accommodating Islamic legal principles within Western legal systems. He examines the ways in which Muslim-minority laws are shaped by historical, cultural, and political factors, as well as the implications for issues such as citizenship, religious freedom, and social cohesion.

Berger (2018) analyses the challenges and opportunities of Shari'a's engagement within Western legal systems. He provides an overview of the debates surrounding Shari'a in Western countries, addressing issues such as religious accommodation, legal reform, and the rights of Muslim minorities. His analysis offers insights into the diverse ways in which Shari'a is interpreted and practised in Western societies, as well as the broader implications for multiculturalism, social cohesion, and legal pluralism. He shows how Western Muslims adopt and adapt Shari'a by manoeuvring between their specific needs in the Western context and the conditions set by that context. Büchler's (2011) work analyses the complexity of Shari'a's existence in the West and indicates areas in which conflicts may arise by analysing examples from legislation and court decisions in Germany, Switzerland, France, England, and Spain. Studying

the application of foreign Sharia laws in Western courts through international private law involves examining how Islamic legal principles intersect with and are reconciled within the framework of Western legal systems. Andrea Büchler's work, "Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws" (2011), offers a comprehensive exploration of legal pluralism in Europe, particularly focusing on the limits and challenges of harmonizing European family laws with Islamic legal norms. Büchler's research provides valuable insights into the complexities of accommodating diverse legal traditions within European legal frameworks. Similarly, Pauline M. Kruiniger's study, "Islamic divorces in Europe: Bridging the gap between European and Islamic legal orders" (2014), analyses the dynamics of Islamic divorce practices within the European context. Kruiniger's research sheds light on the complexities and challenges faced in bridging the gap between European legal systems and Islamic legal principles, particularly in the context of divorce proceedings.

Julie Macfarlane's work, "Islamic Divorce in North America: A Shari'a Path in a Secular Society" (2012), provides insights into how Islamic divorce practices intersect with secular legal frameworks in North America. Macfarlane's research explores the nuanced dynamics of navigating Shari'a principles within a secular legal context, offering important reflections on the complexities of religious arbitration in pluralistic societies. Asifa Quraishi and Najeeba Syeed-Miller's article, "No Altars: A Survey of Islamic Family Law in the United States" (2004), offers a comprehensive survey of Islamic family law practices within the US legal system. Their work provides valuable insights into the diverse ways in which Islamic legal norms are applied and navigated within the American legal context, highlighting the complexities of accommodating religious laws within secular legal frameworks. Iris D. A. Sportel's study, "Maybe I'm still his wife: Transnational divorce in Dutch-Moroccan and Dutch-Egyptian families" (2014), examines the complexities of transnational divorce cases involving Dutch citizens of Moroccan and Egyptian descent. Sportel's research offers important insights into the intersection of Islamic legal principles with Dutch legal norms, particularly in the context of cross-border family law disputes. Emily L. Thompson and Soniya F. Yunus's article, "Choice of Laws or Choice of Culture: How Western Nations Treat the Islamic Marriage Contract in Domestic Courts" (2007), investigates how Western nations address Islamic marriage contracts within their domestic legal systems. Their

research highlights the tensions between choice of law principles and cultural considerations, offering valuable reflections on the complexities of accommodating diverse cultural and religious practices within Western legal frameworks.

The domestic and autonomous practices of Sharia by Muslims in the West constitute an area of growing scholarly interest, albeit still relatively underexplored. Research in this field is gradually emerging but remains limited and dispersed across various domains. Among these domains, Islamic family law receives the most academic attention, particularly concerning its application and practices by Muslims in Western societies. Despite this focus, the exploration of Islamic family law remains relatively nascent, with significant gaps in understanding. For instance, studies such as Carrol (1997) shed light on the application of Sharia principles in the context of Islamic divorce among Muslim women in England, providing valuable insights into the legal experiences within this community. Similarly, Moors (2013) examines the dynamics of unregistered Islamic marriages in the Netherlands, highlighting the anxieties surrounding sexuality and Islam within this framework. Santelli and Collet (2012) contribute to the discourse by exploring the reinterpretation of Muslim marriage rites in post-migratory France, offering nuanced perspectives on the evolving cultural and legal terrain. Starssburger (2007) looks at the relationship ideals and decisions of young Muslims in Germany, offering valuable sociocultural insights into the intersection of tradition and modernity. Furthermore, Yilmaz (2002) addresses the challenge of legal pluralism and Muslim legal practices in England, providing critical reflections on the complexities of navigating multiple legal frameworks within Western contexts (Yilmaz 2023; 2024). These studies collectively underscore the need for further research and analysis to deepen our understanding of the domestic application of Sharia among Muslims in the West.

## LAYOUT OF THE BOOK

In this chapter, we introduced the essence of Shari'a as an informal legal framework, profoundly influencing the lives of Muslims residing in Western nations. We also introduced the notion of legal pluralism, where formal and informal legal systems intersect, presenting an intriguing dance between established legal structures and the informal application of Shari'a within minority Muslim communities. Through this examination,

we grasped the practical significance of Shari'a-driven norms and practices, and how they navigate the lives of Western Muslims with guidance from the ethos of Shari'a.

Chapter 2, explores Islamic law, known as Shari'a and its sources that govern various aspects of social, political, economic, and spiritual life, including marriage, inheritance, criminal justice, and religious obligations. Its development is guided by religious scholars and jurists (ulama), leading to diverse interpretations globally. This chapter offers an overview of Shari'a concepts and principles, highlighting its decentralized nature and the role of ulama. It explores its application in contexts like marriage and inheritance, and discusses navigating Shari'a governance in contemporary Muslim societies. Historical accommodation of pluralism and diversity in interpretations is examined, revealing insights into the challenges and opportunities of aligning Islamic principles with modern legal frameworks. The chapter sheds light on the evolving dynamics of Shari'a governance and the interplay between tradition and modernity in Muslim contexts.

Chapter 3, extends our journey across continents, exploring the rich and diverse experiences of Muslims within various Western nations. This chapter provides a panoramic window into the complex weave of informal Islamic law within the West. We'll traverse the historical terrains of Europe, including Great Britain, and explore the evolving role of minority fiqh in Western democracies. Through this lens, we will witness the dynamic interplay between tradition and the contemporary dynamics faced by Western Muslims. The exploration in the chapter broadens our understanding of how Shari'a-driven practices are intertwined with the daily life of Muslims in the West.

Chapter 4 elevates our exploration by offering an examination of the dynamic interaction between Shari'a and legal institutions within Western jurisdictions. Through case studies from different countries, this chapter illuminates the complexities that emerge at the crossroads of Shari'a and Western legal systems. We'll perceive how Islamic law's adaptive nature navigates cultural and legal contexts, unravelling a tale of coexistence, adaptation, and sometimes, conflict. The diverse narratives highlight Shari'a's malleability in response to varying cultural and legal settings, challenging monolithic perceptions.

Venturing further into the realm of Islamic scholarship, Chapter 5 casts a spotlight on the ulama, the intellectual pillars of the Islamic tradition. This chapter takes us on an insightful journey through virtual terrains

of fatwa websites, web forums, and the inquiries of Muslim converts. We examine the dynamic discourse crafted by religious scholars, their interpretations, and mediations of Shari'a-driven norms within Western societies. As we explore their role as custodians of Shari'a, we'll witness how they illuminate the path of Muslims navigating their complex lives while fostering a vibrant picture of legal discourse in a technologically advanced age.

In Chapter 6, our exploration navigates the complex terrain of civic engagement, political participation, and the evolving Muslim identity within Western societies. This chapter probes the dynamic intersection of faith, identity, and civic duty. By unravelling the diverse perspectives on citizenship, democracy, human rights, and political engagement, we gain insight into the complexities of Muslims shaping their societies. Herein lies an invitation to ponder the complex web of faith and civic duty woven within the diverse and pluralistic composition of Western communities.

Chapter 7 propels across geographical boundaries into the complex realm of transnational allegiances. Through an exploration of global narratives, we gain an understanding of the complex interplay between local identities and broader global concerns. This chapter invites us to explore the dynamic realm where Muslims navigate their identities within the complex composition of Western societies. As we examine their experiences, we'll perceive how these multiple allegiances shape their roles in both local communities and global narratives.

The conclusion in Chapter 8 weaves together the threads of exploration from each preceding chapter, fusing diverse perspectives, debates, and applications of Shari'a within Western contexts. In this synthesis, we draw from the debates in precious chapters, emphasizing the richness, complexity, and adaptability of Shari'a's role within the lives of Western Muslims. Challenging conventional narratives, the conclusion calls us to a contemplative exploration of the complex relationship between tradition, modernity, and cultural coexistence. This chapter waves all the previous ones in analysing one question: can there be legal pluralism in the Western context?

While in the first two chapters we introduce the concepts and give some insights of the situation of our actors, we preferred to leave them more descriptive. In Chapter 3 we go over some of the main discussions on the topic to broaden this discussion. Then the next three chapters, the second half of the book, address the situation, questions, and challenges between the informal Shari'a law and the formal laws in the West, fiqh

al-aqalliyyat, alternative Islamic rulings, and transnational belonging and loyalties. This structure serves the purpose of addressing the main problems on this subject: assessment of the situation in the ground rather than misinformation echoed by media and political campaigns; describing what these highly misused concepts really mean and what is their importance for the Western Muslims; and finally exploring the ways to move forward, as alternatives that can provide high value to the Muslim minorities in the West, and are of small or no cost to the Western governments, who sometimes have similar practices for other groups.

## REFERENCES

- About El Fadl, Khaled. 2001. *Rebellion and Violence in Islamic Law*. Cambridge: Cambridge University Press.
- About El Fadl, Khaled. 2007. *The Great Theft: Wrestling Islam from the Extremists*. New York: HarperOne.
- An-Na'im, Abdullahi Ahmed. 1990. *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. Syracuse: Syracuse University Press.
- An-Na'im, Abdullahi Ahmed. 2008. *Islam and the Secular State: Negotiating the Future of Shari'a*. Cambridge: Harvard University Press.
- Asad, Talal. 1993. *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam*. Baltimore: Johns Hopkins University Press.
- Asad, Talal. 2003. *Formations of the Secular: Christianity, Islam, Modernity*. Stanford: Stanford University Press.
- Bayat, Asef. 2007. *Making Islam Democratic: Social Movements and the Post-Islamist Turn*. Stanford: Stanford University Press.
- Bayat, Asef. 2010. *Life as Politics: How Ordinary People Change the Middle East*. Amsterdam: Stanford University Press.
- Berger, M. S. 2018. "Understanding Sharia in the West." *Journal of Law, Religion and State* 6 (2–3): 236–273.
- Büchler, Andrea. 2011. *Islamic Law in Europe?: Legal Pluralism and Its Limits in European Family Laws*. London: Routledge.
- Carroll, Lucy. 1997. "Application of the Law: Muslim Women and 'Islamic Divorce' in England." *Journal of Muslim Minority Affairs* 17: 97.
- Chiba, Masaji 1989. *Legal pluralism: Toward a general theory through Japanese legal culture*. Tokyo: Tokai UP.
- Fitzpatrick, Peter. 1992. *The mythology of modern law*. London. New York: Routledge.
- Galanter, Marc. 1966. *The modernization of law*. In: Myron Weiner (ed) *Modernization*. New York. London: Basic Books. 153–165.

- Galanter, Marc. 1985. *Indigenous law and official law in the contemporary United State*. In: G. R. Woodman and A. Allott (eds) *People's law and state law. The Bel/agio papers*. Dordrecht: Foris Publications. 67–70.
- Gerber, H. 1994. *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*. Albany: State University of New York Press.
- Griffiths, John. 1986. "What Is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18: 1–55.
- Haddad, Yvonne. 2002. *Muslims in the West: From Sojourners to Citizens*. Oxford: Oxford University Press.
- Hoffman, Murad. 1993. *Islam: The Alternative*. Reading: Garnet Publishing.
- Kruiniger, Pauline M. 2014. *Islamic Divorces in Europe: Bridging the Gap Between European and Islamic Legal Orders*.
- Macfarlane, Julie. 2012. *Islamic Divorce in North America: A Shari'a Path in a Secular Society*. Oxford: Oxford University Press.
- Mahmood, Saba. 2005. *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton: Princeton University Press.
- Mahmood, Saba. 2015. *Religious Difference in a Secular Age: A Minority Report*. Princeton: Princeton University Press.
- Massad, Joseph. 2001. *Colonial Effects: The Making of National Identity in Jordan*. New York: Columbia University Press.
- Massad, Joseph. 2007. *Desiring Arabs*. Chicago: University of Chicago Press.
- McLachlan, Campbell Alan. 1988. *State recognition of customary law in the South Pacific*. London: UCL (Unpublished PhD thesis).
- McLellan, Janet and Anthony H. Richmond 1994. "Multiculturalism in crisis: A postmodern perspective on Canada". In: V. 17 N. 4 *Ethnic and Racial Studies*. 662–683.
- Menski, Werner F. 1993. "Asians in Britain and the question of adaptation to a new legal order: Asian laws in Britain". In: Milton Israel and Narendra Wagle (eds) *Ethnicity, identity, migration: The South Asian context*. Toronto: University of Toronto. 238–268.
- Merry, Sally Engle. 1988. "Legal pluralism". In: V. 22 N. 5 *Law and Society Review*. 869–896.
- Mir-Hosseini, Ziba. 1999. *Islam and Gender: The Religious Debate in Contemporary Iran*. Princeton: Princeton University Press.
- Mir-Hosseini, Ziba. 2016. *Shari'a and Muslim Minorities: The Wasati and Salafi Approaches to Fiqh al-Aqalliyat al-Muslima*. Oxford: Oxford University Press.
- Moore, Sally Falk. 1978. *Law as process: An anthropological approach*. London et al: Routledge and Kegan Paul.
- Moors, Annelies. 2013. "Unregistered Islamic Marriages: Anxieties About Sexuality and Islam in the Netherlands." In *Applying Sharia in the West: Facts, Fears and the Future of Rules of Islam on Family Relations in the West*, edited by Maurits S. Berger, 141. Leiden: Leiden University Press.

- Nielsen, Jørgen S. 1987. *Muslims in Western Europe*. Edinburgh: Edinburgh UP.
- Nina, Daniel and Pamela Jane Schwikkard. 1996. "The 'soft vengeance' of the people: Popular justice, community justice and legal pluralism in South Africa". In: N. 36 *Journal of Legal Pluralism*. 69–87.
- Quraishi, Asifa, and Najeeba Syeed-Miller. 2004. "No Altars: A Survey of Islamic Family Law in the United States." In *Women's Rights & Islamic Family Law*, edited by Lynn Welchman, 179. Zed Books.
- Santelli, Emmanuelle, and Beate Collet. 2012. "Le mariage 'halal': Réinterprétation des rites du mariage musulman dans le contexte post-migratoire français." *Recherches familiales* 9 (1): 83–92.
- Santos, Boaventura de Sousa (1987). "Law: A map of misreading. Toward a postmodern conception of law". In: V. 14 N. 3 *Journal of Law and Society*. 279–302.
- Santos, Boaventura de Sousa (1995). "Three metaphors for a new conception of law. The frontier, the baroque, and the south". In: V. 29 N. 4 *Law and Society Review*. 569–584.
- Speelman, Gé 1995. "Muslim minorities and Shari'ah in Europe". In: Tarek Mitri (ed) *Religion, law and society: A Christian-Muslim discussion*. Geneva. Kampen: WCC Publications. Kok Pharos. 70–77.
- Sportel, Iris D. A. 2014. *Maybe I'm Still His Wife: Transnational Divorce in Dutch-Moroccan and Dutch-Egyptian Families*. Radboud University Nijmegen.
- Starssburger, Gaby. 2007. "Auf die Liebe kommt es an! – Beziehungsideale und – entscheidungen junger Muslime." In *Junge Muslime in Deutschland: Lebenslagen, Aufwuchsprozesse und Jugendkulturen*, edited by Hans-Jürgen von Wensierski and Claudia Lübcke, 195. Barbara Budrich.
- Thompson, Emily L., and Soniya F. Yunus. 2007. "Choice of Laws or Choice of Culture: How Western Nations Treat the Islamic Marriage Contract in Domestic Courts." *Wisconsin International Law Journal* 25: 361.
- Vanderlinden, Jacques 1989. "Return to legal pluralism: Twenty years later". In: N. 28 *Journal of Legal Pluralism*. 149–157.
- Von Benda-Beckmann, Keebet, and Bertram Turner. 2018. "Legal Pluralism, Social Theory, and the State." *The Journal of Legal Pluralism and Unofficial Law* 50: 255–274.
- Yilmaz, I. 1999. *Dynamic legal pluralism and the reconstruction of unofficial Muslim laws in England, Turkey and Pakistan*. Unpublished PhD thesis. London: School of Oriental and African Studies.
- Yilmaz, I. 2001. "Law as Chameleon: The Question of Incorporation of Muslim Personal Law into the English Law." *Journal of Muslim Minority Affairs* 21 (2) (May): 297–308.

- Yilmaz, I. 2000. "Muslim Law in Britain, Reflections in the Socio-Legal Sphere and Differential Legal Treatment." *Journal of Muslim Minority Affairs* 20 (2) (May): 353–360.
- Yilmaz, I. 2002. "The Challenge of Post-modern Legality and Muslim Legal Pluralism in England." *Journal of Ethnic and Migration Studies* 28 (2) (May): 343–354.
- Yilmaz, I. 2003. Non-Recognition of Post-Modern Turkish Socio-Legal Reality and Predicament of Women, British. *Journal of Middle Eastern Studies*, Vol. 30, No. 1, May 2003, pp. 25–41.
- Yilmaz, I. 2019. Nation Building, Islamic Law and Unofficial Legal Pluralism: the Cases of Turkey and Pakistan. In Norbert Oberauer, Yvonne Prief, Ulrike Qubaja (eds) *Legal Legal Pluralism in Muslim Contexts*, pp. 109–138. Leiden, The Netherlands: Brill.
- Yilmaz, I. 2020. Muslims, Sacred Texts, and Laws in the Modern World. In: Woodward M., Lukens-Bull R. (eds) *Handbook of Contemporary Islam and Muslim Lives*, 1–18. Cham: Springer.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Reprint. London and New York: Routledge.



# Muslims, Sacred Texts, and Understanding Sharia in Contemporary Contexts

## INTRODUCTION

Shari'a, the Islamic legal system, constitutes a framework encompassing legal regulations, ethical precepts, and spiritual guidelines, profoundly influencing the lives of Muslims. Unlike static legal codes, Shari'a exhibits adaptability, continuously evolving to address contemporary challenges while remaining rooted in traditional Islamic teachings. As devout followers of Islam, adherents are bound by a religious duty to adhere to Shari'a, even when residing in secular societies, a reality prompting many to navigate the intersections between religious law and modern legal systems (Yilmaz 2000, 2001, 2002a, b, 2003a, b, 2005, 2014a, 2016, 2019a, b).

In contemporary contexts, Muslims often engage in a process of reinterpretation, seeking to harmonize Shari'a with the legal norms prevalent in Western, secular societies. This endeavour involves adapting Islamic legal principles to align with modern developments and societal standards, allowing adherents to reconcile religious obligations with the realities of their legal environments.

Shari'a, much like secular legal systems, addresses a wide array of civil, social, political, and economic matters. These include familiar legal domains such as marriage, divorce, inheritance, criminal law, contractual agreements, commercial transactions, constitutional law, and international relations. However, Shari'a extends beyond conventional legal realms

to encompass matters of personal piety and devotion, including prayer, fasting, almsgiving, pilgrimage, and other spiritual practices, thus underscoring its comprehensive nature and profound impact on the lives of Muslims.

While Shari'a is traditionally associated with state enforcement and judicial oversight, its ultimate authority stems from the belief in divine sanctions in the afterlife, distinguishing it from Western secular legal systems. A fundamental aspect setting Islamic law apart is its origin: Shari'a was not codified by centralized state authority but rather evolved through the interpretations of religious scholars and jurists (ulama), resulting in a diverse array of legal doctrines (Peters and Bearman 2014: 7–8). Consequently, there exists no singular, universally codified version of Shari'a.

Central to comprehending Shari'a is acknowledging the significant role of human agency in its interpretation and application. Despite its distinctiveness from secular law, Shari'a shares the overarching goal of regulating societal conduct. Contrary to the notion that Shari'a's religious nature impedes legal progress, historical evidence suggests otherwise. Over the past two centuries, various Islamic societies have witnessed the adaptation and replacement of certain Shari'a principles with man-made regulations, reflecting the capacity for legal evolution within Islamic legal traditions (Bälz 2008: 121). This underscores Shari'a's dynamic nature and its potential for adaptation to contemporary societal needs and challenges.

Contrary to common assumptions portraying Shari'a law as rigid and outdated, a closer examination reveals a dynamic and evolving Islamic legal discourse. Contemporary discussions within Islamic jurisprudence encompass a wide array of topics, including Islamic constitutionalism, human rights, financial instruments such as hedge funds and Shari'a-compliant banking, as well as ethical considerations surrounding reproductive medical technologies and digital currencies. This demonstrates the adaptability of Islamic law to changing social and technological terrains, showcasing its continued relevance and vitality in modern times (Bälz 2008: 123, 124).

This chapter<sup>1</sup> explores the diverse interpretations of Shari'a among Muslims and examines the factors contributing to these variations. It highlights how Islamic jurisprudence has historically accommodated

<sup>1</sup> An earlier version of this chapter was published as Yilmaz (2020).

a broad spectrum of interpretations, reflecting the inherent pluralism within Muslim legal traditions. Furthermore, the chapter investigates Muslim responses to modernity, particularly their perspectives on living in Western, non-Muslim societies. Throughout our analysis, we will explore key issues shaping Muslim worldviews, including the compatibility of Islam with democracy, the dynamics of Shari'a-state relations, and Muslims' interactions with non-Muslims and Western nations. However, before exploring these discussions, we will provide a foundational understanding of Shari'a and Islam, elucidating the principles upon which Islamic law is built and briefly exploring its primary sources.

## SHARI'A AND ITS MAIN SOURCES

The term Shari'a, originating from Arabic, literally translates to "path to the watering place," symbolizing the metaphorical "straight path" that believers are urged to follow within Islam (Kamali 2008: 2). Embedded within the Qur'an and Sunna, Shari'a represents the divine law guiding Muslim conduct and governance.

Unlike a simplistic set of rules, Shari'a comprises a comprehensive body of texts, encompassing not only the Qur'an and hadith but also diverse legal genres, forming the authoritative foundation for Islamic legal thought and practice (Yilmaz 2016: 32; 2020). The Qur'an, considered the ultimate source of guidance, constitutes the entirety of the divine revelation to Prophet Muhammad over his twenty-three years of prophethood.

Islamic tradition holds that Islam is the restoration of the original monotheistic message, preceding alterations by Jews and Christians (Hughes 2018: 2). Central to this message is the belief in the oneness of God (Allah) and submission to His will, with Islam itself meaning submission to the Creator. The Qur'an serves as a comprehensive guide for human conduct, addressing morality, societal governance, dispute resolution, individual and communal responsibilities, historical narratives, and lessons from earlier prophets and civilizations.

While debates persist regarding the legal content and nature of the Qur'an, scholars recognize its significant role in shaping Islamic law. Despite only a fraction of its verses being strictly legal, the Qur'an provides extensive guidance on family law, inheritance law, criminal law, and societal administration (Coulson 1964: 12; Goitein 1960: 24). However, it is essential to acknowledge that the Qur'an is not merely

a legal code; it encompasses diverse themes, including faith essentials, historical narratives, and ethical directives, underpinning the moral fabric of Islam (Esposito 2001: 3).

In Islamic tradition, the Quran holds paramount importance as the primary source of guidance, with the Sunna following closely as the second material source of Shari'a, the Islamic law. The Sunna broadly encompasses the way of life and actions of the Prophet Muhammad, providing a practical model for believers to emulate in various situations (Yilmaz 2003b: 211). Essentially, the Sunna serves to elucidate and concretize the general principles and directives outlined in the Quran, enabling believers to understand and implement its teachings effectively (Dutton 2000: 163).

In a study done by Rane et al. in 2020, Qur'an was considered as the main source of Islamic teachings, but in contrast to Muslims in other nations, Australian Muslims are more receptive to different interpretations of Islam when it comes to how they understand the Quran. According to Rane et al. (2020), 73.0% of respondents said they thought there were multiple legitimate interpretations of Islam. This is the majority of respondents' opinion. This candour contrasts with the opinions of Muslims in many nations where Muslims predominate, where a sizeable percentage hold that there is just one true interpretation. The diversity found in Western Muslim populations as a result of immigration and exposure to Western education, which encourages critical thinking, are factors that contribute to this distinction.

A sizeable majority concur that the Quran ought to be read and understood in light of Islamic values and context. Furthermore, a large number of respondents agree that although certain verses from the Quran are unique to the period of Prophet Muhammad, others apply to all places and times. These results are consistent with research conducted among Muslims in the US, suggesting that conventional understandings need to be reinterpreted in light of contemporary circumstances (Rane et al. 2020).

The survey also reveals Muslim Australians' worries about challenges to their right to practise Islam freely in Australia. Although most people don't think their freedom is under danger, many do agree, pointing to major concerns including Islamophobia, political rhetoric, discrimination, and media bias (Rane et al. 2020). These worries are a reflection of larger social issues that Muslim communities in Western settings face.

However, there exists a minority perspective among Muslims that advocates for the exclusive reliance on the Quran as the sole source of Islamic law, rejecting the Sunna of the Prophet. This viewpoint posits that accepting the Sunna implies inadequacy or incompleteness in the Quran, an assertion deemed unacceptable by proponents of this perspective (Mansour, ND). Nonetheless, the prevailing consensus among Islamic scholars recognizes the Sunna as an indispensable secondary source of Shari'a, alongside two other sources: Ijma (consensus among scholars) and Ijtihad (personal reasoning).

Embedded within the Sunna are the Hadiths, which constitute records of the Prophet's words and actions. Notably, the Quran was revealed to Prophet Muhammad gradually over his prophetic career, with the Prophet faithfully transmitting its message to his followers, some of whom committed it to memory. It was only after the Prophet's demise that the Quran was compiled into written form, with its verses selected based on agreement among his companions (Yilmaz 2003b: 211).

In classical Islamic understanding, the Quran is intrinsically linked to the Prophet, who is regarded as the exemplar of divine revelation and the foremost interpreter of its teachings. Believed to have been inspired by divine revelation in all aspects of his life, the Prophet's behaviours and sayings are considered authoritative guides for Muslims (Yilmaz 2003b: 211). Quranic verses explicitly instruct Muslims to obey and follow the Prophet, further reinforcing the significance of the Sunna as a source of Shari'a, albeit subject to interpretation consistent with the Quran.

The collection of Hadiths commenced approximately a century after the Prophet's passing, with scholars like Muhammad al-Bukhari playing a pivotal role in compiling authentic narrations. Given the initially oral transmission of Hadiths, various conflicting reports emerged, prompting the development of Hadith science to authenticate narrations and distinguish genuine Hadiths from fabrications. This discipline remains central to Islamic studies, ensuring the preservation and accurate interpretation of the Prophet's teachings (Yilmaz 2003b: 211).

The additional sources considered integral to the formation of Shari'a include consensus (ijma) and analogical reasoning (qiyas), which play significant roles in Islamic jurisprudence. Ijma refers to the unanimous agreement of jurists within a specific era on a particular issue, serving as a crucial mechanism for establishing legal precedent (Yilmaz 2003b: 211). Analogical reasoning, on the other hand, involves applying the rulings derived from similar cases (illa', reason or cause) to new situations that

share analogous characteristics, thereby extending the applicability of legal principles (Yilmaz 2003b: 211).

Moreover, analogical reasoning can be more broadly understood as reasoning itself, incorporating considerations of equity, public interests, and customary practices. While some scholars may not explicitly recognize reasoning as a distinct source of Shari'a, it is widely accepted by many schools of Islamic jurisprudence for its role in facilitating nuanced interpretations and evolving legal responses to contemporary challenges (El Fadl 2007: 31–32).

Despite a consensus on the four primary sources of Islamic law, variations exist among jurists regarding their interpretation and application. For instance, interpretations of *ijma* diverge, with the Shafi'i school requiring unanimity among the entire Muslim community (*umma*), posing practical challenges due to the vastness and diversity of the Muslim population (Yilmaz 2003b: 211). In response to this challenge, influential scholars like al-Ghazzali proposed a pragmatic approach, restricting unanimity to matters of fundamental importance while allowing for flexibility in lesser issues, with agreement among scholars (*Ulama*) deemed sufficient (Yilmaz 2003b: 211).

Similarly, there are differing perspectives on the nature of *ijma*, with some scholars advocating for consensus among jurists rather than the broader community of believers. These nuanced interpretations reflect the dynamic nature of Islamic legal discourse and the ongoing scholarly debate aimed at reconciling tradition with contemporary realities (El Fadl 2007: 31).

## IJTIHAD AND FIQH

While Shari'a is often characterized as divine law, it's important to acknowledge the significant role of human agency in its interpretation and application. The Quran and Sunna serve as the fixed sources of Islamic law, yet their understanding and implementation are shaped by human intellect and scholarly endeavour, known as *ijtihad*, which forms the basis of Islamic jurisprudence or *fiqh* (Al-Fadl 2007: 30).

A distinction must be made between Shari'a and *fiqh* to avoid confusion. Shari'a encompasses the entirety of God's commandments, covering matters of belief, conduct, and ethics. On the other hand, *fiqh* represents the human attempt to understand and interpret Shari'a, focusing specifically on legal rulings and practical applications (Karcic 2001: 208).

As scholars engage in the ongoing process of interpreting Shari'a, fiqh remains inherently flexible and subject to change based on varying circumstances (Mohamed Abdalla 2012: 661).

The dynamic nature of fiqh is evident in the diverse interpretations offered by different jurists throughout history. For instance, debates among jurists have resulted in varying rulings on issues such as the eligibility of women to serve as judges or lead prayers (Al-Fadl 2007: 33–34). This variability underscores the human element inherent in Islamic law and highlights the complexity of navigating religious doctrine within evolving social contexts.

Ijtihād, which literally translates to “striving” or “exerting,” represents the effort made by Islamic jurists to understand and apply Islamic law within specific contexts (Esposito 1980: 240). It is a dynamic process aimed at discovering God’s law through the mastery and application of legal theory (*usūl al-fiqh*) (Hallaq 1984: 3). This ongoing interpretation and application of Shari'a is essential, particularly when faced with new situations or problems that are not explicitly addressed in the Quran or Sunna.

In instances where explicit guidance is lacking or unclear, jurists engage in *ijtihād* to interpret the law based on existing principles and precedents (Yılmaz 2014b: 181). However, it’s important to note that *ijtihād* is not considered a source of law per se, but rather a methodological process to derive legal rulings from the Quran and Sunna and apply them to specific cases (Abdalla 2012: 661). It is case-specific and not permissible in matters where there is already an explicit rule in the Quranic text.

Islamic jurists utilize various methods when deducing legal rulings, including *ijma* (consensus), *qiyas* (analogical reasoning), *istihsan* (juristic discretion), *istislah* or *masalaha mursala* (consideration of public interest and welfare), *sadd al-dharai* (blocking the means to wrongdoing), *istishab* (presumption of continuity), and *urf* (customary practice) (Abdalla 2012: 661). Through these methods, jurists seek to ensure the relevance and applicability of Islamic law to changing circumstances.

Over time, certain *ijtihad*s gain acceptance among fiqh scholars, contributing to the emergence of distinct legal schools (*madhhabs*) within Islamic jurisprudence. Consensus among scholars (*ijma*) plays a crucial role in shaping these legal traditions and establishing a relatively fixed body of laws (Esposito 2001: 9). However, it’s important to recognize that not all *ijtihad*s endure, and the process of *ijtihād* remains dynamic, reflecting the evolving nature of Islamic legal thought and practice.

## ISLAMIC SCHOOLS OF LAW (MADHHABS)

During the formative period of *fiqh*, legal developments were primarily shaped by the *madhhab* traditions, where jurists operated within the interpretive frameworks established by the founders of these schools (Yilmaz 2005). These traditions not only provided a framework for legal interpretation but also fostered a sophisticated legal edifice characterized by coherence and continuity (Moosa 2009: 164).

Initially, the term *madhhab* simply referred to the opinions of a jurist, but over time it evolved to encompass the entire body of jurisprudence associated with a leading *mujtahid*, or authority in Islamic law, and the doctrine adopted by the founder and their followers (Hallaq 2001: 155). Eventually, *madhhab* came to signify a legal school to which individual jurists belonged.

In Sunni Islam, *fiqh* is divided into four major legal schools: Hanafi, Shafi'i, Maliki, and Hanbali. These schools are considered equally valid and utilize similar sources and methodological tools to derive legal rulings. However, differences in rulings among these schools may appear contradictory due to varying conditions and methodological considerations (An-Na'im 2008: 327).

The intellectual context and historical circumstances in which each *madhhab* emerged have influenced their interpretation of Shari'a. For instance, the Maliki and Hanafi schools often give more weight to pre-existing customary practices, reflecting a stronger influence of social and economic experience, while the Shafi'i and Hanbali schools require legal rulings to have a direct textual basis in the Quran and Sunna (An-Na'im 2008: 327). These differences underscore the dynamic nature of Islamic legal thought and the adaptability of *fiqh* to diverse contexts.

## DIVERSITY OF MUSLIM INTERPRETATIONS AND MUSLIMS' INTERACTION WITH ISLAM

The diversity seen in the contemporary Muslim world stems from Islam's initial message, which evolved in response to a variety of cultural, social, legal, religious, and intellectual needs. Contrary to the misconception that Islam was forcibly spread, conversion to Islam was a gradual process, and Islam did not obliterate local beliefs and customs upon its expansion. Instead, it assimilated many of these customs and beliefs, adapting them

within a Muslim framework. Communities that embraced Islam incorporated and adjusted various local cultural, social, and religious elements, constructing identities based on their interpretations of the Islamic tradition. Despite their differences, each identity asserted its legitimacy by claiming adherence to the teachings of the Prophet (Hughes 2018: 1–8).

Islamic law, or Shari'a, has historically accommodated and incorporated local cultural nuances, as long as they aligned with Islam's core theological principles and objectives for an ethical society (Khan 2017: 11). This dynamic interaction between Islam and local cultures has led to diverse interpretations of Islam worldwide, giving rise to different manifestations of the faith (Yilmaz 2003b: 210; Yilmaz 2015; 2023; 2024).

Within Muslim-majority countries and communities globally, there exist moderate and radical interpretations or expressions of Islam and Islamic law, mirroring similar diversity found in Christianity and Judaism (Elliott 2011). However, colonialism disrupted indigenous Islamic legal systems and hindered their development, leading to a decline in the traditional legal paradigm of Shari'a (Rehman and Breau 2007: 14).

Since the nineteenth century, the authority to legislate Islamic law has shifted from religious scholars (ulama) to state institutions in many Islamic countries (Peters and Bearman 2014: 8). This transition towards state-centric legislation has been perceived as eroding the diversity and adaptability of Shari'a, which previously allowed it to respond to changing circumstances. Moreover, the influence of Western modernity and the displacement of traditional Muslim educational systems have further impeded the development of Shari'a (Moosa 2009: 164).

Shari'a today is not just a legal framework but also a cultural phenomenon, often understood and interpreted through the lens of individuals' cultural, sociological, and customary backgrounds (Peters and Bearman 2014: 9). Indeed, Shari'a has always been intertwined with cultural contexts, as it has been interpreted through local customs and beliefs. Therefore, as modernity has drastically transformed the cumulative cultural, social, and economic systems of Muslim societies, Shari'a has inevitably been affected as well (Moosa 2009: 164). An-Naim (2008: 321) stresses that any analysis of Shari'a and its role must consider the radical transformation of economies, political regimes, social institutions, and legal systems in Islamic societies.

Differences in the perception of Shari'a can be attributed to diverse cultural backgrounds, socio-political conditions, economic structures, and historical contexts of Muslim communities. Pakistan serves as a pertinent

example, where varying interpretations of Islam have exerted significant influence on Shari'a at different times (Yilmaz 2014b 2016 2019a, b). At times, patriarchal, Islamist, Salafist, and even repressive interpretations have dominated the state sphere, while at other times, reformist or modernist interpretations have shaped legal discourse (Yilmaz 2014b).

In Indonesia, Noor (2008) underscores the role of human actors and their secular motives in shaping discussions around Islam and Shari'a. He argues that even legal processes ostensibly based on Islamic principles are primarily driven by the demands of the political economy rather than religious values or ethics. Noor observes that reformists in Indonesia, mainly urban citizens from emerging commercial classes, advocate for political and economic reforms grounded in Islamic ideals of equity and social justice. Conversely, the conservative camp, which opposes religious and political reforms, consists largely of rural-based agricultural aristocracy and feudal classes resistant to change (Noor 2008: 68–70).

To contrast perspectives on Shari'a, it is instructive to consider Bosnia and Herzegovina alongside countries like Pakistan and Indonesia. In the latter examples, there has been a strong inclination among many Muslims towards the state's implementation of Shari'a and the intertwining of religion with politics. However, in Bosnia and Herzegovina, the official Islamic authority, represented by the Islamic Community, takes a markedly different stance. Here, Shari'a is viewed not as a set of laws imposed by the state but rather as a religio-ethical framework guiding individual behaviour.

Unlike in Pakistan and Indonesia, where there has been a historical desire for the state to enforce Shari'a, the Islamic Community of Bosnia and Herzegovina emphasizes a more decentralized approach. They assert that Shari'a should be enforced by individuals themselves, based on their personal conscience and societal norms, rather than by state authorities. In this view, the application of Shari'a is seen as a communal responsibility, with the state playing a minimal role, if any, in its enforcement.

This distinction underscores the diversity of interpretations and practices within the Muslim world regarding the role of Shari'a in governance and personal conduct. While some societies advocate for a more formalized and state-driven implementation of Shari'a, others, like Bosnia and Herzegovina, prioritize individual and communal autonomy in adhering to Islamic principles (Karcic 2001: 220–221).

In contrast to the Islamist movement advocating for a return to a perceived pristine form of Shari'a, modernist thinkers seek to reconcile Islamic law with contemporary realities. This ideological shift gained momentum in the wake of the decline of Muslim political influence and the ascendancy of Western hegemony. Faced with the challenges posed by modernity, some Muslim intellectuals called for a revitalization of Islamic legal discourse, known as *tajdid*, aimed at renewing and reinterpreting traditional jurisprudential principles.

Central to the modernist agenda was the restoration of *ijtihad*, the right to independent legal reasoning, which had been largely dormant in many Muslim societies. By reclaiming this intellectual tradition, modernists sought to adapt Shari'a to the exigencies of the modern world while remaining faithful to its core principles. This entailed a nuanced approach to legal interpretation, one that could address contemporary issues without compromising the integrity of Islamic heritage.

During the late nineteenth and early twentieth centuries, these efforts culminated in significant attempts to reinterpret Islam in light of evolving societal norms and technological advancements. Particularly after the decline of Muslim power and the advance of the West, some Muslim advocates called for the renewal of Islamic legal thought (*tajdid*) and discussed a return to the right to exercise *ijtihad* to enable reinterpretation and restore Islamic heritage. Most of these late nineteenth- and early twentieth-century responses resulted in significant attempts to reinterpret Islam to meet the changing conditions of the life of Muslims (Yilmaz 2003b: 213–214). Modernist thinkers engaged in rigorous scholarship and debate, exploring how Islamic legal principles could be applied in diverse contexts to meet the needs of Muslim communities. In doing so, they aimed to bridge the gap between tradition and modernity, fostering a dynamic and adaptable understanding of Shari'a suitable for the challenges of the contemporary era (Yilmaz 2003b: 213–214).

Modernists within Islam represent a diverse spectrum of thought, but their overarching aim is to reconcile Islamic principles with contemporary realities. They advocate for a reinterpretation of Shari'a to ensure its compatibility with modern values, social norms, and technological advancements. This approach acknowledges the need for evolution within Islamic jurisprudence to address the complexities of the modern world. In the face of globalization, technological advancements, and cultural shifts, modernist thinkers argue that Islam must adapt to remain relevant

and beneficial to society. They emphasize the importance of contextualizing religious teachings within contemporary contexts while upholding the core principles of Islam. This includes reevaluating traditional interpretations of Shari'a in light of new ethical dilemmas, social dynamics, and legal frameworks. Furthermore, modernists advocate for the empowerment of individuals to engage in independent reasoning (ijtihad) and critical thinking to address contemporary challenges. They reject rigid adherence to outdated interpretations of Islamic law and encourage a dynamic approach that fosters intellectual engagement and innovation.

Prominent figures in the modernist movement include Iranian Abdolkarim Soroush (1945–), Egyptian Muhammed Abduh (1849–1905), and Indian Muhammad Iqbal (1877–1938), among others, whose contributions have significantly shaped contemporary Islamic thought (Hughes 2018: 15). Modernists represent a diverse spectrum of thinkers, united in their belief that Islam and modernity are not only compatible but can also complement each other.

Advocates of ijtihad, a key aspect of modernist discourse, focus on delineating the enduring and adaptable aspects of Islamic law, as well as its underlying objectives (maqasid), which play a crucial role in legislation. They also look at various modes of ijtihad and seek to develop concepts and institutions that may have been overlooked in traditional Islamic jurisprudence, such as constitutional law, citizenship rights, human rights, representative governance, and the legislative process (Nyazee 1994: 293–301).

Furthermore, modernist thinkers are engaged in laying the groundwork and outlining the necessary steps for implementing a renewed system of Islamic law that reflects contemporary realities. However, despite these efforts, the construction of a comprehensive framework for modernized Islamic jurisprudence remains a work in progress, with much work still needed to refine and actualize this vision.

## DEMOCRACY AND ISLAM

The contention surrounding the compatibility of Islam with democracy is significant, resonating among both Muslim and non-Muslim communities. A notable segment of individuals, spanning various backgrounds, assert that democratic principles and human rights are incongruent with Islamic beliefs and values. Democracy, as conceived in the Western context

with its emphasis on individual rights, has sparked debate among Muslims and non-Muslims alike, who argue that it contradicts Islamic teachings.

This ongoing discourse extends beyond mere consideration of replicating Western-style democracy in Muslim-majority nations. Moderate and puritan Muslim leaders, scholars, and experts engage in critical examination, questioning whether residing in a democratic Western society aligns with Islamic theology. Central to their deliberations is the inquiry into whether Muslims, in such settings, should be entitled to collective rights, including the autonomy to select their own legal framework. At the heart of these discussions lies a theological quandary: Can Muslims abide by man-made laws, or must they adhere strictly to divine laws? (Al-Fadl 2007: 180–182).

The consensus among most Muslims is that ultimate sovereignty rests with God. However, divergent views emerge regarding the extent of sovereignty granted by God to humans for the management of their own affairs. While God retains ultimate authority to judge and dispense rewards or punishments, particularly in the Hereafter, the governance of human laws, administration, and interpersonal relations is believed to be delegated to humans. Moderate voices contend that humans possess sovereignty to enact laws and legislation governing human affairs, as these matters fall within the domain of human responsibility. They argue that while God retains authority over matters pertaining to divine judgment, humans are entrusted with the governance of earthly affairs and societal relations. Critics of this perspective may argue that such a viewpoint veers too close to secularism, advocating for a separation of religious principles from the realm of human governance. They contend that assigning sovereignty to humans in legislative matters risks diluting the primacy of divine guidance in shaping societal norms and laws (Al-Fadl 2007: 194).

Moderate Muslim scholars firmly advocate for the compatibility of democracy and human rights with Islamic principles, rejecting assertions that non-Western societies, including Muslim-majority ones, cannot thrive in democratic systems. They argue against the notion that democracy is inherently incompatible with Islam, emphasizing that both democratic governance and human rights are rooted in Islamic theology and jurisprudence. Central to their argument is the Quranic principle that oppression is a grave transgression against both humanity and the divine. They cite Quranic verses that condemn oppression as corruption and an offense against the Almighty, underscoring the inherent dignity endowed upon all human beings (Al-Fadl 2007: 183; Quran 17:70). Additionally,

moderate scholars highlight Quranic passages that admonish Muslims for acquiescing to despotism, asserting that such submission to tyranny is unjust and self-destructive (Al-Fadl 2007: 184; Quran 4:97).

The Prophet of Islam played a pivotal role in shaping early Islamic governance through the drafting of the Constitution of Medina, often regarded as a precursor to modern constitutionalism. After assuming leadership in the city, the Prophet formulated this document to delineate the rights, duties, and obligations of all inhabitants, irrespective of their religious or tribal backgrounds. The Constitution of Medina outlines a framework for governance that transcends religious and tribal affiliations, affirming the equal rights and responsibilities of all members of the community, both Muslims and non-Muslims. This foundational document has been cited to support the concept of constitutional government in Islam, emphasizing principles of inclusivity, equity, and justice within the Islamic state (Al-Fadl 2007: 191).

Scholars such as Hughes regard the Constitution of Medina as a foundational text for the ummah, or the Muslim community, underscoring its significance in shaping the collective identity and rights of all residents of the city. According to Hughes, adherence to the rules and obligations outlined in the constitution granted individuals equal status within the ummah, regardless of their religious or tribal backgrounds (Hughes 2018: 4).

Puritanical perspectives within Islam view democracy as a Western construct incompatible with Islamic principles, advocating instead for the revival of the caliphate as the only legitimate form of governance in Islam. Rejecting any innovation, puritans emphasize the re-establishment of the caliphate as the ideal model of governance, despite historical variations in its implementation. While puritans acknowledge the concept of shura, or consultation, as a fundamental aspect of Islamic governance, they often idealize it without specifying its institutional framework or operational mechanisms. In their view, the caliph, as the singular ruler, is entrusted with implementing divine law with justice and benevolence. Although consultation with a shura body is endorsed, the caliph retains ultimate authority without checks or accountability, issuing final decisions deemed correct and binding (Al-Fadl 2007: 197–198). Moreover, puritans advocate for the enforcement of religious practices, such as prayer, fasting, mosque attendance, and the wearing of veils for women, considering them essential components of divine law. They argue that adherence to these practices should be compelled by the state to ensure compliance

with Islamic principles of justice and righteousness (Al-Fadl 2007: 198). From the puritanical perspective, existing states are deemed illegitimate due to their adoption of Western legal systems and governance structures, necessitating their overthrow. They assert that true Islamic governance can only be realized through the establishment of a caliphate that implements divine law in its entirety, rejecting the legitimacy of contemporary state systems influenced by Western ideologies (Al-Fadl 2007: 199).

As Nelson (2011) aptly argues, the compatibility between Islam and the democratic ethos is not fixed or predetermined; rather, it fluctuates based on the historical and cultural context in which Muslims navigate their interpretation and application of Shari'a. Although monarchies are prevalent in many Muslim-majority countries today, it's crucial to acknowledge that monarchy itself is not inherently Islamic, nor does it receive explicit endorsement from the Quran or the Prophet Muhammad. Monarchy emerged as the dominant form of governance during the expansion of Islam beyond the Arabian Peninsula and was adopted by successive Muslim empires, including the Umayyads (661–750) (Rane 2018: 5).

Furthermore, the institution of the caliphate, often idealized by puritanical movements within Islam, is not an intrinsic component of the religion but rather a human innovation. Neither the Quran nor the Prophet Muhammad prescribed a specific form of government for Islam, leaving the structure of governance open to interpretation and adaptation (Rane 2018: 15). This underscores the fluidity and contextual nature of Islamic political thought, allowing for diverse interpretations and applications of governance principles within the Muslim world.

## STATE'S ROLE AND SHARI'A

The Islamist perspective commonly asserts that the establishment of an Islamic state is indispensable for the proper application of Islamic law, known as Shari'a. However, this viewpoint is not universally accepted among Islamic scholars, many of whom offer critiques or alternative interpretations.

Shari'a encompasses a wide range of rules and principles that govern both societal structures and individual behaviour. From this standpoint, adherents of Islam are obligated to adhere to Quranic injunctions that regulate personal conduct, even in the absence of a centralized authority overseeing compliance. Khan (2017) introduces the distinction between

law and ethics within the framework of Shari'a. He argues that ethical imperatives guide believers in navigating their daily lives, irrespective of whether a state governs according to Islamic law. Khan further suggests that while the establishment of a Muslim state in Medina facilitated the implementation of Islam through governmental mechanisms, it was not a prerequisite for fulfilling the fundamental objectives of Shari'a, such as safeguarding life, intellect, and human dignity (Maqasid al-Shariah). From this perspective, a significant portion of Islamic law pertains to personal matters and individual responsibilities (Khan 2017: 3).

Khan further underscores that the implementation of Islamic law does not solely rely on state intervention, highlighting that Muslims inherently regulate their religious observance through self-governance (Khan 2017: 4). This assertion finds historical resonance in the early days of Islam, particularly during the period of persecution in Mecca, where Muslims adhered to Quranic teachings and the guidance of the Prophet as a means of self-regulation (Khan 2017: 11).

Central to the framework of Shari'a is the recognition that individuals bear primary responsibility for upholding its norms. Referred to as 'ayn duties, these responsibilities extend to oneself, one's family, and broader society. Within Muslim society, certain duties outlined by Shari'a, such as performing funeral prayers, constructing mosques, and engaging in specialized studies, are primarily the responsibility of the community rather than the state. The state, as the final addressee of Shari'a, assumes a role in the application of its principles through the domains of jurisprudence, the judiciary, and executive administration (idarah) (Karcic 2001: 210).

During the classical period of Islam, Shari'a was primarily understood as the collection of opinions formulated by Muslim jurists. It was the jurists, not the state, who had the authority to produce laws, with state regulations governing matters of governance, fiscal affairs, and criminal law where Shari'a was either unclear or silent. These regulations, such as the qanuns of the Ottoman Empire, were required to be compatible with Shari'a principles (Peters and Bearman 2014: 8).

Shari'a developed as what can be termed a "jurist's law," where foundational jurists delineated norms and institutions based on their interpretation of the Quran and Sunna, rather than relying on judicial precedents as seen in later developments of English common law (An-Na'im 2008: 325). This underscores that the formation of Islamic law was

primarily a civil activity, with Islamic jurists and scholars serving as custodians of Shari'a. Shari'a, in turn, served as a unifying symbol for Muslims worldwide, transcending the conflicts and divisions among various Islamic empires ruled by emirs, sultans, and caliphs.

Despite the political and military conflicts between these empires, Shari'a remained a unifying force, and Islamic jurists and scholars were respected as guardians of its integrity. However, over time, the influence and prestige of these scholars diminished, as they became increasingly entangled in petty political disputes (Al-Fadl 2007: 34–35) and were marginalised and/or co-opted by the modern-nation states (Yilmaz 2021; 2022).

An-Naim highlights a crucial distinction between the historical evolution of Islamic law and its adoption by modern states. While Islamic law, or Shari'a, has historically been diverse and subject to interpretation in the quest to align with divine will, its adoption by states has often led to the imposition of rigid and inflexible rules.

An-Naim argues that no country truly employs Shari'a as its legal system, even nations like Saudi Arabia and Iran, which identify as Muslim states. He goes further to assert that the concept of an "Islamic state" is logically flawed, as the imposition of Shari'a through state power transforms it from a component of the Islamic normative system to a mere expression of political will (An-Naim 2008: 321–322).

This perspective challenges the notion of Shari'a as a monolithic legal system and emphasizes the complex relationship between religion, politics, and law in modern Muslim-majority nations. It suggests that the enforcement of Shari'a by states may not always reflect the true spirit or intent of Islamic jurisprudence, but rather serve political agendas and power dynamics.

## ISLAM IN THE WESTERN CONTEXT, MUSLIMS, AND MODERNISM

Since the time of the Prophet's passing, Muslim scholars have engaged in ongoing debates regarding the renewal (tajdid) of Shari'a and the reinterpretation of Islam. These discussions have addressed complex issues such as the permissibility for Muslims to reside in non-Muslim societies and the ethical responsibilities they owe to both Islamic law and the host non-Muslim polity. These deliberations have been anything but rigidly dogmatic.

From as early as the eighth century, scholars grappled with questions concerning the status of Muslims living outside the dar al-Islam (lands under Muslim control) and their relationship with the dar al-harb (territory of war or non-Muslim polity). The existence of Muslim minorities voluntarily residing beyond the dar al-Islam challenged the binary view that divided the world strictly into dar al-Islam or dar al-harb. In response, Islamic jurisprudence developed various concepts and mechanisms such as duress (*ikrah*), necessity (*darura*), and public welfare (*maslaha*), which allowed for flexibility and compromise.

As a result, nuanced concepts like dar al-ahd (country of treaty or covenant), dar al-aman (country of security), dar as-sulh (country of peace), and dar al-darura (country of necessity) emerged. These concepts recognize that Muslims can peacefully coexist and practise their religion in non-Muslim lands, albeit potentially facing challenges. These discussions have been informed by the principles of Islamic law and ethics, aiming to navigate the complexities of Muslim life in diverse socio-political contexts (Al-Fadl 1994; Masud 1989; Yilmaz 2003b: 234).

As Muslims increasingly migrated to Western countries, the question of their status in non-Muslim polities became a matter requiring *ijtihad*, or independent legal reasoning. With the need for clarity on how to navigate life in Western societies and fulfil religious duties in non-Muslim environments, Islamic jurists began to advocate for a reformist approach. Some jurists who were familiar with Western lifestyles and secular legal systems embarked on establishing what came to be known as minority *fiqh*, a branch of Islamic jurisprudence tailored to the needs of Muslims living as religious minorities in the West.

Within minority *fiqh*, two main theological positions have emerged: the *wasati* and *salafi* perspectives. The *wasati* approach advocates for the active participation of Muslims in Western political and social spheres, promoting integration and engagement with broader society. In contrast, the *salafi* perspective espouses rigid, strict, and puritanical interpretations of minority *fiqh*, leading to a stance of isolationism and disengagement from the wider societal context in the West.

These differing theological positions within minority *fiqh* reflect broader debates within the Muslim community regarding the appropriate response to living as a religious minority in Western societies. While the *wasati* approach seeks integration and active participation, the *salafi* perspective emphasizes adherence to strict religious principles and

a degree of separation from mainstream society (Duderija 2018; Shavit 2012).

In response to the challenges faced by Muslim minorities living in the West, particularly regarding financial and political matters, scholars like Yusuf al-Qardawi and Taha Jabir al-Alwani emerged as proponents of a reformist approach known as *fiqh al-aqalliyat*. This new legal doctrine aims to address conflicts and reconcile the values of the host society with Islamic jurisprudence. Its overarching goal is to reinterpret Islamic concepts, such as *dar al-Islam*, within the context of Western societies.

The emergence of *fiqh al-aqalliyat* was spurred by the increasing number of Muslims born in the West, as well as converts to Islam, who sought guidance on navigating their religious obligations in a non-Muslim environment. Scholars of *fiqh al-aqalliyat* recognize the need to provide practical solutions to enable Muslims to thrive without encountering conflicts between Shari'a principles and Western lifestyles.

Among the most pressing issues faced by Muslim minorities in non-Muslim countries are related to finance and politics. These include the validation of practices like "riba-based mortgages" (mortgages with interest) and the participation of Muslims in secular political processes. These issues have sparked extensive debates among Islamic scholars, with varying interpretations and opposition from different quarters.

The application for reforms of Islamic laws by scholars who have lived in Western societies reflects a dynamic response to the challenges and opportunities presented by diverse cultural and social contexts. One such reformist idea is rooted in the concept of *maqasid al-Shariah*, or the objectives of Islamic law. This reformist approach, coupled with the notion of American Muslim exceptionalism, aims to advance a new vision of Islam that not only revitalizes Muslim societies but also acknowledges the unique position of American Muslims in constructing a highly educated, advanced, and prosperous Muslim community (Khan 2015: 35).

This example highlights the emergence of reformist ideas within Western societies, where Muslim communities and scholars perceive themselves differently from Muslim minorities in other Western countries. Through frameworks like minority *fiqh* (*fiqh al-aqalliyat*), Muslims navigate the complexities of identity within secular and modern environments, effectively responding to shifting social and cultural dynamics (Yilmaz 2005: 191).

Young Muslims, in particular, are actively engaging with Islamic legal traditions at the level of *madhhabs* to address everyday dilemmas. They

adopt an eclectic and pragmatic approach, drawing upon various Sunni madhhabs to find practical solutions to immediate challenges. In doing so, they assume the role of micro-mujtahids, or self-declared authorities, capable of making swift decisions in response to minor yet pressing issues. While some rely solely on established madhhabs for guidance, others assert their ability to derive interpretations directly from the Quran and Sunna, reflecting a diverse spectrum of theological engagement and individual agency within Muslim communities (Yilmaz 2005: 198–199).

The issue of Muslim migration to countries governed by non-Muslim polities and acquiring citizenship in those countries is a topic of significant contention within Islamic scholarship, particularly between proponents of the wasati and salafi lines. While both sides acknowledge that Muslims have the right to migrate, their perspectives on citizenship diverge.

Opponents of citizenship in non-Muslim countries often cite historical precedents from the time of the Prophet Muhammad to support their stance. They argue that true adherence to Islamic principles necessitates residing only in territories governed by Shari'a, known as dar al-Islam, while considering all other regions as dar al-Harb, or the territory of war (Al-Fadl 1994: 141–142).

These opponents raise several key objections to citizenship in non-Muslim countries. Firstly, they express concerns about the potential dilution of Islamic values and the preservation of religious identity, particularly among future generations. Additionally, they question the loyalty of Muslims to a state that may engage in hostilities against Islamic nations. Finally, they emphasize the theological debate surrounding dar al-Harb and dar al-Islam as a foundational aspect of their argument.

In contrast, proponents of citizenship argue from different angles. They highlight the practical necessity of residence in non-Muslim countries for various reasons, including economic opportunities and familial ties. Additionally, they emphasize the concept of da'wa, or the duty to propagate Islam, which they argue can be fulfilled more effectively through engagement and integration within diverse societies. Furthermore, supporters of citizenship stress the importance of demonstrating loyalty to one's nation of residence, emphasizing the potential for Muslims to contribute positively to their adopted countries (Al-Fadl 1994: 141–142).

The puritanical Salafi perspective, encapsulated in the concept of “al-wala' wa'l-bara [loyalty and disavowal],” underscores the importance of

unwavering allegiance to God and fellow Muslims while rejecting all associations with non-Islamic beliefs and practices (Wagemakers 2008; Shavit 2012). This ideology emphasizes the necessity of maintaining a distinct Muslim identity separate from non-Muslims, eschewing any semblance of imitation or collaboration with them (Wagemakers 2008; Shavit 2012). Salafis perceive two primary threats to the integrity of Islam. Firstly, they caution against adopting the customs or innovations of non-Muslims, viewing such assimilation as a dilution of Islamic purity. Secondly, they advocate for strict avoidance of any diplomatic or cooperative relations with non-Muslim entities, considering such interactions as compromising the sovereignty and values of Islam (Wagemakers 2008). Some Salafi scholars go further to argue that even residing in non-Muslim lands can jeopardize one's loyalty to God, especially if it involves seeking assistance from non-Muslims. Such actions, they argue, indicate a prioritization of worldly alliances over spiritual allegiance (Wagemakers 2008).

However, scholars like Tariq Ramadan present a contrasting perspective, asserting that loyalty to a secular legal system does not contradict Islamic principles. Ramadan contends that the pursuit of human rights, equality, and social justice is intrinsic to Islam, aligning it with the values of Western legal systems (Ramadan 2015). He argues for an inclusive approach that embraces shared public spaces, advocating for Muslims to engage actively in civic life within Western societies (Ramadan 1999).

According to Ramadan, Muslims should transition from a purely personal spirituality to active engagement in civic and political realms, fostering positive interactions with non-Muslims and contributing to the common good within Western democracies (Ramadan 2015). This perspective encourages Muslims to embrace their citizenship responsibilities while upholding their religious identity, promoting a harmonious coexistence with diverse communities.

## FIQH AL-AQALLIYYAT: ISLAMIC JURISPRUDENCE OF MINORITY MUSLIMS

Since the death of the Prophet of Islam, there have been ongoing debates among Muslim scholars regarding the need for the renewal of Islamic law, reforms, and reinterpretation of Islam. Scholars such as Yusuf al-Qaradawi and Taha Jabir al-Alwani, known as the founding fathers of *fiqh al-aqalliyyat* (jurisprudence of minorities or minority law), have issued fatwas to address the challenges faced by Muslim minorities living in

the West (Hussain 2016: 365). The debate surrounding Muslims living in non-Muslim countries revolves around proponents and opponents of institutional *fiqh al-aqalliyat*.

The idea of Muslims establishing permanent residence in Western liberal democracies began developing slowly in the latter half of the twentieth century. At first, Western Muslims were somewhat isolated and lacked formal institutions but they gradually became more integrated into society and established their own institutions (Duderija and Rane 2019). At the beginning, Muslims in Western countries were not deeply engaged in the socio-political dynamics of their host nations because many arrived with the intention of studying or working temporarily, assuming they would eventually return to their countries of origin. However, as Muslims began to perceive their host country as a potential long-term home, their attitudes and level of engagement in socio-political matters started to shift. The need for systematic theoretical justifications, particularly in terms of Islamic law, to explain and support Muslims' continuous presence in Western democracies increased notably in the final decade of the twentieth century (Duderija and Rane 2019). Hassan (2013b) argues that this quest for a normative explanation and justification of Muslims' integration was motivated not only by practical reasons but also by internal motivations. They wanted to figure out how to follow Islamic teachings while living in societies with very different laws, cultures, and ways of doing things compared to where they originally come from.

As the number of Muslims born in the West and converts to Islam increases, Muslim jurists feel a pressing need to address the questions and concerns of these communities (El Fadl 1994: 141; Cesari 2004: 9–18). *Fiqh al-aqalliyat* is a legal theory that aims to resolve conflicts and reconcile the values of the host society within the framework of Islamic jurisprudence. It seeks to reshape and reinterpret Islamic concepts, such as *dar al-Islam*, in the context of Muslim-minority communities living in non-Muslim countries (Fishman 2006: 1–2).

Initially, the responses to issues faced by Western Muslims as a religious minority in Western liberal democracies were not organized or structured. They were based on temporary rulings, known as *fatwas*, which were issued when needed, from scholars in Muslim-majority countries. These rulings addressed various aspects of daily life for individual male Muslim immigrants, such as food consumption, daily rituals, and interactions with non-Muslims. However, as Western Muslims' minority status became more permanent, both Western and non-Western religious

leaders started to question if these temporary fatwas were still relevant and considered developing a new Islamic legal framework specifically tailored to the Western Muslim minority (Hassan 2013a).

The field of research focusing on the development of “Fiqh for minorities” (fiqh al-aqalliyat) garners significant attention, particularly in understanding the adaptation of Islamic jurisprudence to the unique circumstances of Muslim minorities in non-Muslim majority countries. Taha J. Alwani’s work (Alwani 2000) lays the groundwork by exploring the theoretical framework and principles underlying fiqh al-aqalliyat, offering insights into how traditional Islamic jurisprudence can be tailored to meet the needs of minority Muslim communities. Initially, the responses to issues faced by Western Muslims as a religious minority in Western liberal democracies were not organized or structured. They were based on temporary rulings, known as fatwas, which were issued when needed, from scholars in Muslim-majority countries. These rulings addressed various aspects of daily life for individual male Muslim immigrants, such as food consumption, daily rituals, and interactions with non-Muslims. However, as Western Muslims’ minority status became more permanent, both Western and non-Western religious leaders started to question if these temporary fatwas were still relevant and considered developing a new Islamic legal framework specifically tailored to the Western Muslim minority (Hassan 2013a).

Alexandre Caeiro’s study (Caeiro 2011) provides practical insights into the application of fiqh al-aqalliyat in Europe, emphasizing the role of fatwas in guiding the religious practices of Muslims in Western societies. Dilwar Hussain’s research (Hussain 2004) explores the intersection of fiqh al-aqalliyat and political engagement among Muslims in Britain, shedding light on how Islamic jurisprudence adapts to the changing socio-political terrain of Europe. Shammai Fishman’s publication (Fishman 2006) looks at the legal theory underpinning fiqh al-aqalliyat, elucidating its principles and methodologies for interpreting Islamic law in minority contexts. Tareq Oubrou’s work (Oubrou 2000) provides a theoretical introduction to the concept of minority fiqh, offering a framework for understanding its theological and legal implications. Youssef Qaradawi’s contributions and Said F. Hassan’s article (Qaradawi, n.d.; Hassan 2013a) further enrich the discourse by examining the practical applications and theoretical foundations of fiqh al-aqalliyat. Hassan (2013b: 13) argues that minority fiqh has four main purposes. First, it adapts Islamic laws to fit the specific contexts they’re in, which

means these laws can change and evolve over time. Second, it shows how Islamic principles can work alongside the liberal values of Western societies. Third, it demonstrates that some Islamic principles don't clash entirely with Western values. Lastly, it helps Muslims create an identity that balances their Islamic beliefs with the laws and culture of the places they live in. Together, these studies contribute to ongoing discussions on *fiqh al-aqalliyat*, highlighting its significance in addressing the religious, social, and legal challenges faced by Muslim minorities in Western societies. However, the usual *wasati* approach and the *salafi* and traditionalist approaches differ in *fiqh al-aqalliyat* as well.

The *Wasati* approach to minority *fiqh* is a part of a broader methodology that started in the 1990s in places where Muslims are the majority. This approach focuses on Islamic ethics and law and highlights several key ideas. These include *maqasid al sharia*, which is about achieving specific goals within Islamic law, aiming for a beneficial and practical application of Sharia. Another concept is *maslaha*, focusing on maximizing social benefit and minimizing harm through Islamic law. This idea is closely linked, focusing on maximizing social benefit and minimizing harm through Islamic law. *Talfiq* is about combining rules from different schools of Islamic law instead of sticking to just one, while *ijtihad* involves coming up with new interpretations of Islamic law sources, rather than just following the old ones. *Tajdid* emphasizes the need for renewal and innovation in these interpretations. Understanding these concepts helps grasp how the “*wasati*” approach deals with legal issues for minorities and adapts Islamic law to modern settings, especially in minority Muslim communities (Auda 2007; Duderija 2014; Duderija and Rane 2019).

The *Salafi* approach to minority *fiqh* doesn't involve a specifically developed methodology tailored to the context of Western Muslim minorities. This is intentional and stems from the *Salafis'* belief that their methodological commitments are universally applicable, regardless of the circumstances Muslims find themselves in. Unlike the *Wasati* approach, *Salafis* reject the need for methodological adjustments, particularly concerning the extensive use of *maslaha* by *Wasati* scholars, which *Salafis* see as permitting what is prohibited (Duderija and Rane 2019). Shavit (2015) describes their position the following way: *Salafis* do not believe that Muslim minorities should be given special allowances due to their unique challenges. This belief originates from the *Salafi* view that Allah's laws are universal and should be strictly adhered to without interpretation, showcasing Islam's balanced nature. *Salafis* view the significant challenges faced

by Muslim minorities as opportunities to demonstrate unwavering devotion. Therefore, they don't emphasize specific methodologies for Muslim minorities. While Wasati foundational texts on minority fiqh highlight the potential use of maslaha and cross-madhab analysis to make decisions aligned with specific goals, Salafis aim to uphold existing fatwas in non-Muslim territories as the ultimate authority.

The traditionalists, represented by scholars linked with Al-Azhar's fatwa committees and Egyptian muftis, approach minority fiqh with an emphasis on treating Muslim minorities as exceptional cases. They advocate for using licence-based (*rukhsah*) rulings from classical Islamic jurisprudence to address the unique circumstances of Western Muslims, while also acknowledging the political context they operate in. Unlike the *wasatis*, the traditionalists do not support the creation of a new branch of *fiqh* but prefer to uphold traditional juridical positions while accommodating the realities faced by Western Muslims (Duderija and Rane 2019: 220).

Before moving on to the discussions regarding fiqh al-aqalliyat, it is essential to differentiate between fiqh and Shari'ah, as they are distinct concepts within Islamic jurisprudence. Shari'ah, according to Oxford Islamic Studies, represents "God's eternal and immutable will for humanity" as outlined in the Quran and Prophet Muhammad's teachings (Sunnah), constituting ideal Islamic law (OUP, Shari'ah). On the other hand, fiqh refers to the "Roots of law" and encompasses the principles and methodologies used to derive practical legal rules from foundational Islamic sources (OUP, fiqh). In essence, Shari'ah serves as the divine law based on the Quran and Sunnah, while fiqh extends from Shari'ah, providing interpretations and legal rulings applicable to contemporary contexts while remaining bound to the Quran and Sunnah (Sokolova-Shipoli 2020).

Muslim minorities in non-Muslim countries face various challenges in the financial and political realms, prompting scholars of fiqh al-aqalliyat to create a space where Muslims can live without conflicts between Shari'ah and Western life. These issues range from debates surrounding "riba-based mortgages" to participation in secular politics, and they are subject to differing interpretations and opposition by Islamic scholars (Hussain 2016: 377; Gulam 2013).

The migration of Muslims to the West and the increasing number of Muslims living in Western countries have presented challenges in the integration of Muslim communities, particularly in reconciling Islamic rules

with the Western secular system and cultural characteristics. This has led to the emergence of Islamic scholars who have lived in the West and advocate for the reform of Islamic laws. Concepts like “*maqasid al-Shari’ah*” (objectives of Islamic law) and American Muslim exceptionalism have been introduced to promote a new vision of Islam that combines reform and the construction of an educated, advanced, and wealthy Muslim society (Khan 2015: 35).

Similar to other religions, Islam addresses various social issues and concerns related to Muslims and non-Muslims within society. Topics such as statehood, politics, sociology, economics, international relations, integration, and belonging have been extensively discussed within Islamic scholarship since Islam’s global spread. Additionally, ongoing debates within Islamic scholarship revolve around the renewal of Islamic law, the role of Muslim reformists, and the reinterpretation of Islam to address contemporary challenges faced by Muslims worldwide. One key area of discussion has been the Muslims living as minorities in non-Muslim lands. This includes reinterpreting Islamic concepts such as *dār al-Islām* (the abode of Islam) and *dār al-harb* (the abode of war), as well as *dar al-Kufr*, where Islamic law is not the governing system (Yilmaz 2005, 2020). Muslim scholars throughout history have grappled with questions regarding Muslims living as minorities in non-Muslim lands and the application of Islamic law in such contexts. These ongoing debates and discussions reflect Islam’s dynamic nature and its adaptability to address contemporary societal issues effectively (Sokolova-Shipoli 2020). Western Muslims, living in non-Muslim countries, encounter unique challenges related to integrating into society while preserving their religious identity and navigating their relationship with the host state. This is where the concept of *fiqh al-aqalliyat* becomes significant. It aims to address conflicts and reconcile values of the host society within the framework of Islamic jurisprudence.

In the United States, institutions and organizations such as the International Institute of Islamic Thought (IIIT), the Association of Muslim Social Sciences (AMSS), and the Institute for Social Policy and Understanding (ISPU) are concerned with the image of Muslims, particularly in the Western world. They advocate for reform and aim to revive the Muslim identity while preserving religious identity in Western countries (Khan 2015: 32). This has led to increased political activism and engagement among American Muslims, with the goal of countering negative perceptions associated with the Muslim identity. Additionally, some

progressive Muslims promote the concept of “Islam bi la Hudud” (Islam without borders), which rejects narrow and exclusive mindsets and siege mentalities (Safi 2003: 331).

In the secular vs Islamic law discussion, it is often argued that Islamic law is based solely on the command of divine sovereignty. While this argument holds some truth, it overlooks the role of human agency in the formation of Islamic law. Islamic law, like secular law, encompasses various aspects of social, political, and economic interactions, including marriage, divorce, inheritance, criminal offences, contracts, commercial transactions, constitutional law, and international law. In essence, Islamic law covers many of the same areas as secular law. However, Islamic law also addresses matters concerning individuals’ relationships with God, such as prayer, fasting, almsgiving, pilgrimage, and other religious obligations. According to Islamic jurisprudence, both categories of law share the same objectives: the welfare of people, justice, and the promotion of what is good while forbidding what is evil (El Fadl 2007: 30–31).

Furthermore, Islamic law is developed through the interpretation of jurists in accordance with a set of rules. The sources of Islamic law are well-defined: the Qur’an, the Sunnah (the practices and teachings of the Prophet Muhammad), the consensus of jurists, and reason. Reason, in particular, is considered a valid foundation for law by many schools of Islamic jurisprudence, as it is based on principles of equity, public interest, and customs. The utilization of reason by Muslim jurists has led to multiple interpretations and rulings on various issues, each claiming validity (El Fadl 2007: 31–32).

During the classical age of Islam, the body of opinions produced by Muslim jurists was known as Shari’a. It was the jurists, not the state, who generated the laws. Although the jurists developed regulations for better governance, these regulations were not considered part of Shari’a itself. Instead, Shari’a served as a symbol of unity and commonality among Muslims worldwide. Despite the existence of different territories, military conflicts, and rulers such as emirs, sultans, or caliphs who engaged in wars against one another for political reasons, Shari’a remained above those conflicts, representing a unifying force. Islamic jurists and scholars held the responsibility of safeguarding Shari’a’s integrity. However, over time, scholars and jurists lost their power and prestige, becoming entangled in the political and military conflicts they were once above (El Fadl 2007: 34–35).

The complex methods of producing and implementing laws make it difficult to define what Shari'a is, especially in the context of today's understanding of laws. But El Fadl explains this best with his personal encounter:

(My) personal library on Islamic law, continues about fifty thousand titles, the vast majority of which were written before the sixteenth century and as early as ninth century. Each book is unique and special in terms of the ideas and doctrines presented. Legally speaking, the diversity reflected in these books could make a world of difference in terms of results: some jurists, for instance, barred women from serving as judges while others allowed it; many jurists banned women from leading prayer while few permitted it. Unfortunately, many of these texts are not published and remain in manuscript form. Nevertheless, all these books together, those I have acquired and those I dream of acquiring, the published and unpublished, collectively represent what we call the Shari'a. (El Fadl 2007: 33–34)

The concept of *fiqh al-aqalliyat* emerged in the academic discourse during the 1990s and was pioneered by scholars like al-Alwani and al-Qardawi. They advocated for a specialized legal framework for Muslim minorities living in non-Muslim countries, aiming to harmonize Islamic principles with life in non-Muslim societies (Fishman 2006: 1–2). This framework is designed to assist Muslims in adhering to their religious beliefs while also facilitating their integration into their host societies, aligning with teachings from the prophetic traditions.

However, despite the apparent rationale behind this approach, there exist diverse opinions regarding the necessity, implementation, and scope of such a *fiqh*. This diversity of views complicates the fundamental question surrounding *fiqh al-aqalliyat*: whether such a legal framework should exist and how effectively it can address the concerns of Muslims regarding their sense of belonging and integration in Western societies, such as the United States (Sokolova-Shipoli 2020).

Although the *fiqh al-aqalliyat* theory provides a general framework, it emphasizes resolving conflicts faced by Muslims by considering the traditions, culture, and values of specific Western states (Fishman 2006: 1). Debates surrounding certain issues persist across Muslim communities in the West. Questions such as whether Muslims can be citizens, participate in political life, or join the military in non-Muslim-majority countries remain topics of significant discussion and confusion among

Muslims, non-Muslims, and governments alike. The responses to these questions significantly influence how Muslims perceive their belonging and integration into Western societies (Sokolova-Shipoli 2020).

It's important to note that Islam encompasses various schools of jurisprudence, and while differences exist, a unified theory or *fiqh* on these matters could assist Muslims from diverse backgrounds in adhering to Islamic principles while living in Western countries (Esposito and Mogahed 2007). Ultimately, fostering a sense of belonging, safety, and connection within Muslim communities is crucial for successful integration, whether at the individual, local, national, or global level. Creating an environment where Muslims feel a strong sense of belonging is foundational to their integration and long-term engagement within Western societies (Sokolova-Shipoli 2020).

The literature on *fiqh al-aqalliyat* underscores the significance of the background of scholars issuing fatwas or Islamic decrees, especially concerning the challenges faced by Muslim communities in different contexts (Taha 2012: 3). There are varying opinions on the extent to which Islamic law should be applied for Muslims to be considered legal residents in a non-Muslim country, with some arguing for a case-by-case assessment based on individual or community-based religious practices (El Fadl 2000: 57). Therefore, there is a need for a minority *fiqh* that can serve as a basic guideline for Muslims navigating integration into Western societies, providing a roadmap tailored to their unique circumstances (Sokolova-Shipoli 2020).

Living in a non-Muslim country entails mutual obligations between the state and Muslim residents, where Muslims are expected to respect and adhere to the laws of the non-Islamic state they reside in. This acceptance of the state's authority is evident in various aspects of daily life, such as seeking employment or obtaining a visa (Ramadan 1999: 164). Muslims are bound by the European social contract, which represents their implementation of *Shari'ah* in Europe and entails abiding by the constitutional and legal framework of their country of residence (March 2007: 410; Ramadan 1999: 172). Ramadan emphasizes the importance of honest citizenship and loyalty to one's country as part of fulfilling one's faith and conscience while residing in Europe (Ramadan 1999: 172).

Scholars originating from Muslim-majority countries and "Western-Muslim" scholars often provide different legal opinions, interpretations, and solutions to challenges faced by Muslims. Tariq Ramadan, representing Western-Muslim scholars, prefers terms like "Western Muslims"

or “citizens” over “minorities” (Taha 2012: 7; March 2009: 399). Conversely, some scholars from Muslim-majority states like Al-Qardawi view Muslim minorities’ issues as temporary, advocating for Muslims to reside in Muslim-majority nations (Taha 2012: 7).

Additional concepts related to *fiqh al-aqalliyat* include *fiqh al-mahjar* (jurisprudence of migration) or *fiqh al-muhājir* (jurisprudence of emigrants), which focus on the Prophet’s migration from Mecca. While migration is significant in Islamic history and other Abrahamic faiths, scholars debate whether the Prophet’s migration and modern-day Muslim migrations to the West are comparable. Some prefer these concepts to guide Muslims in the West, yet the reasons for migration today vary from seeking a better life to being born in the West (Sokolova-Shipoli 2020).

Other concepts such as *fiqh al-mughtaribīn* (jurisprudence of expatriates) and *fiqh al-ta’ayyush* (jurisprudence of living together) are also discussed but are beyond the scope of this discussion. These various perspectives and concepts reflect the diverse approaches within Islamic scholarship regarding the challenges and opportunities faced by Muslims living in Western societies (Sokolova-Shipoli 2020).

On the issue of *fiqh al-aqalliyat*, the research conducted by Sokolova-Shipoli (2020) and Selby and Sayeed (2023) highlight important insights into the dynamics of Islamic jurisprudence, particularly in the context of minority Muslim communities in the West. Selby and Sayeed (2023: 14) inquired about two aspects related to living in a religious-minority context and whether this context explicitly influenced participants’ interpretations of Islam online: (1) “If you seek out Islamic jurisprudence (*fiqh*) online, do you believe it should be interpreted for a Muslim minority context?”; (2) “Or, do you see the interpretation of religious texts, such as the Qur’an, hadith, and legal fatwas, as unchanging, irrespective of place, time, or context?”.

Regarding the first question, around 70% of respondents indicated that some leniency should be granted for a minority context, such as in Canada. However, concerning the second question about the continuity or evolution of Islam over time, only 17.5% of participants agreed. Among those who responded negatively, 65.7% emphasized the immutability of the Qur’an. A small portion 13.5% and 16.4%, respectively, offered mixed responses to the two questions. This apparent paradox highlights a tension between a desire for interpretations sensitive to minority contexts and a reluctance to perceive religious texts as adaptable. Deanna, a 34-year-old female convert from Regina, articulated this tension eloquently in

her interview, characterizing her response as “weird”: “It’s kind of a weird answer that I’m going to give you. ‘Cause on one hand, I do believe that the Qur’an is for all times, all places, all contexts, all these things. But I think that it can be interpreted in a way that is fitting with your situation.” Deanna’s perspective underscores a paradox: embracing the interpretive flexibility required for issues concerning minority jurisprudence without necessarily endorsing the notion that the interpretation of religious texts can be altered. Most participants recognized the significance of interpreting traditions within the Canadian context. Iqbal, a 23-year-old male third-generation Canadian residing in Vancouver, emphasized the importance of context: “For me it’s like context is a very, very big deal...so with fiqh too you have to have someone here living it, understanding it. You can’t tell me some dude in, I don’t know, Bangladesh is telling me how to live my life in Canada and he’s never been here before. He has no idea what the dynamic is. So, that’s the way I feel about fiqh” (Selby and Sayeed 2023: 14).

For Sokolova-Shipoli’s (2020) PhD thesis research, twenty-two out of twenty-three of the Muslim American respondents in the study, were unfamiliar with the concept of fiqh al-aqalliyat. This lack of awareness led us to speculate about a gap in the transmission of Islamic legal rulings from scholars and jurists to the wider community. The research revealed that the legal opinions proposed by scholars often remain confined to academic circles, failing to reach the general populace. Several factors contribute to this disconnect, with the primary issue being the limited public outreach efforts of prominent scholars like al-Qardawi. Scholars such as al-Qardawi and al-Alwani introduced the concept of fiqh al-aqalliyat to assist Muslims living in Western societies in adhering to Islamic principles. However, this branch of jurisprudence is still in a nascent stage and requires further development beyond its current state resembling a fatwa. Despite the potential benefits of fiqh al-aqalliyat, its accessibility is hindered by linguistic barriers, as resources like the European Council for Fatwas and Research website, where such ideas are published, are predominantly in Arabic. This linguistic barrier alienates Western-born Muslims who do not speak Arabic, as evidenced by the fact that thirteen out of the interviewed participants were unaware of fiqh al-aqalliyat. Those who were aware either guessed incorrectly about its meaning or associated it with jurisprudence related to non-Muslim minorities in Muslim-majority countries (Sokolova-Shipoli 2020: 202). Interestingly, our research uncovered that many individuals, despite

their ignorance of *fiqh al-aqalliyat*, had independently arrived at similar conclusions. They expressed a desire for a localized form of Islam in the United States, with scholars and legal authorities rooted in the American context rather than relying on foreign scholars or decrees. This sentiment was captured by one participant's statement: "we need American Islam." This organic development of localized Islamic practices and beliefs, albeit unintentional, helped individuals justify their sense of belonging and identity within the American Muslim community. In essence, our findings suggest the existence of two distinct forms of *fiqh al-aqalliyat*: one crafted by scholars but not disseminated widely, and another emergent form generated by community members as they navigate their daily experiences practising Islam as "micro-mujtahids" and "surfers on the inter-madhab net" (Yilmaz 2005) in the United States. This grass-roots approach to Islamic jurisprudence, driven by personal experiences and interpretations of Islamic sources, represents a novel type of *fiqh al-aqalliyat* that resonates deeply with the lived realities of American Muslims (Sokolova-Shipoli 2020: 202–203).

## CONCLUSION

Sharia, often translated as "Islamic law," is a comprehensive ethical and legal framework derived from the Quran and the Sunnah (teachings and practices of the Prophet Muhammad). It encompasses principles guiding personal conduct, societal norms, and governance, making it a system with diverse interpretations and applications.

The primary sources of Sharia include the Quran, believed to be the literal word of God, and the Sunnah, which comprises the Prophet Muhammad's actions, sayings, and tacit approvals. Additionally, Sharia draws upon scholarly consensus (*ijma*) and analogical reasoning (*qiyas*) to address new and evolving circumstances.

Islamic scholars, including jurists (*fuqaha*) and theologians (*ulema*), play a central role in interpreting and applying Sharia. Their expertise in Islamic jurisprudence (*fiqh*) enables them to derive legal rulings and provide guidance on matters ranging from ritual worship to financial transactions and governance.

One of the defining characteristics of Sharia is its diversity, manifested in various schools of thought (*madhhabs*) and interpretative methodologies. Different regions and historical contexts have given rise to distinct

legal traditions, resulting in a rich tapestry of legal doctrines and practices within the broader framework of Sharia.

The chapter explored contrasting perspectives on Sharia governance, illustrating how its interpretation and implementation vary across Muslim-majority countries. While some advocate for state-led Islamization efforts and the enforcement of Sharia as state law, others, like the Islamic Community in Bosnia and Herzegovina, view Sharia as a personal ethical code rather than legislation enforced by state authorities.

Furthermore, the discourse surrounding Sharia governance reflects ongoing debates within Muslim communities regarding its compatibility with modern governance systems, such as democracy. While puritanical Salafi views emphasize loyalty to Islamic principles and reject interaction with non-Muslims, scholars like Tariq Ramadan advocate for an inclusive approach that reconciles Islamic values with civic responsibilities in Western societies.

In conclusion, the study of Sharia in contemporary contexts underscores its dynamic nature and adaptability to diverse social, cultural, and political terrains. As Muslims navigate their religious and civic identities in an increasingly interconnected world, the discourse on Sharia governance remains both complex and essential, reflecting ongoing efforts to reconcile tradition with modernity and preserve Islamic values in changing times.

## REFERENCES

- Abdalla, M. 2012. "Sacred Law in a Secular Land: To What Extent Should Shari'a Law Be followed in Australia?" *Griffith Law Review* 21 (3): 657–679.
- Abou El Fadl, K. 1994. *Speaking in God's Name: Islamic Law, Authority, and Women*. Oneworld Publications.
- Abou El Fadl, Khalid. 2007. *Rebellion and Violence in Islamic Law*. Cambridge University Press.
- Al-Fadl, K. A. 1994. "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries." *Islamic Law and Society* 1: 141–187.
- Al-Fadl, K. A. 2007. *The Great Theft: Wrestling Islam from the Extremists*. New York: HarperOne.
- Al-Qaradawi, Y. 2001. *Fi fiqh al-aqalliyat al-muslima*. Cairo: Dar al-Shuruq.
- Alwani, Taha J. 2000. *Towards a fiqh for Minorities*. London: International Institute for Islamic Thought.

- An-Naim, A. A. 2008. "Shari'a in the Secular State: A Paradox of Separation and Conflation." In *The Law Applied: Contextualizing the Islamic Shari'a*, edited by P. Bearman, W. Heinrichs, and B. G. Weiss, 321–341. London and New York: I.B. Tauris.
- Auda, Jasser. 2007. *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. Herndon: International Institute of Islamic Thought.
- Bälz, K. 2008. "Sharia Versus Secular Law." In *Islam and the Rule of Law: Between Sharia and Secularization*, edited by B. Krawietz and H. Reifeld, 121–127. Sankt Augustin: Konrad-Adenauer-Stiftung.
- Caeiro, Alexandre. 2011. *Fatwas for European Muslims: The Minority Fiqh Project and the Integration of Islam in Europe*.
- Cesari, J. 2004. *When Islam and Democracy Meet: Muslims in Europe and in the United States*. Palgrave Macmillan.
- Coulson, N. J. 1964. *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Duderija, A. (Ed.). 2014. *Maqasid al-Shari'a and Contemporary Reformist Muslim Thought: An Examination*. Palgrave Macmillan.
- Duderija, A. 2018. "Islam and the West: How Muslims Are Constructing a New Identity." *ABC Religion & Ethics*, August 26. <http://www.abc.net.au/religion/islam-and-the-west-how-muslims-are-constructing-a-new-identity/10214294>. Accessed 28 September.
- Duderija, Adis, and Halim Rane. 2019. *Islam and the Muslims in the West*. Cham: Palgrave Macmillan.
- Dutton, Y. 2000. *The Origins of Islamic Law: The Qur'an, the Muwatta and Medinan 'Amal*. New Delhi: Lawman (India) Private Limited.
- Elliott, A. 2011. "The Man Behind the Anti-Shari'a Movement." *The New York Times*, July 30. Accessed 16 July 2018.
- Esposito, J. L. 1980. "Perspectives on Islamic Law Reform: The Case of Pakistan." *New York University Journal of International Law and Politics* 13 (2): 217–248.
- Esposito, J. L. 2001. *Women in Muslim Family Law*. 2nd edition (Contemporary Issues in the Middle East). New York: Syracuse University Press.
- Esposito, John L., & Mogahed, D. 2007. *Who Speaks for Islam? What a Billion Muslims Really Think*. Gallup Press.
- Fishman, Shammai. 2006. *Fiqh al-Aqalliyat: A Legal Theory for Muslim Minorities*. Center on Islam, Democracy, and the Future of the Muslim World.
- Gulam, H. 2013. The Application of Shariah (Islamic Law) in Some Different Countries and Its Implications. *Journal Syaria*, 24(2). <https://doi.org/10.22452/js.vol24no2.7>.
- Goitein, S. D. 1960. "The Birth-Hour of Muslim Law?" *The Muslim World* 50: 23–29.

- Hallaq, W. B. 1984. "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16 (1): 3–41.
- Hallaq, W. B. 2001. *Authority, Continuity and Change in Islamic Law*. Cambridge: Cambridge University Press.
- Hassan, Said F. 2013a. "Fiqh al-Aqalliyāt: Negotiating Discourse of Tradition, Modernity and Reform." *Faculty of Languages and Translation's Journal* 5: 219.
- Hassan, Said Fares. 2013b. *Fiqh Al-Aqalliyat: History, Development, Progress*. New York: Palgrave.
- Hughes, A. W. 2018. "Islam and Its History." In *Handbook of Contemporary Islam and Muslim Lives*, edited by M. Woodward and R. Lukens-Bull, 1–16. Cham: Springer.
- Hussain, S. 2016. "Ribā-Based Mortgages in Dār al-Harb: An Issue of Modernist Application of Fiqh al-Aqalliyāt for Muslim Minorities." *Journal of Muslim Minority Affairs* 36 (3): 364–382.
- Hussain, Dilwar. 2004. "Muslim Political Participation in Britain and the 'Europeanisation' of Fiqh." *Die Welt des Islams* 3: 376.
- Kamali, M. H. 2008. *Shari'ah Law: An Introduction*. Oxford: One world Publications.
- Karcic, F. 2001. "Applying the Sharī'ah in Modern Societies: Main Developments and Issues." In *Islamic Studies*, Vol. 40, No. 2. Islamabad: Islamic Research Institute, International Islamic University.
- Khan, M. A. M. 2015. "Political Muslims in America: From Islamism to Exceptionalism." *Middle East Policy* 22 (1): 32–40.
- Khan, S. A. 2017. "Islamic Law in an Age of Globalization: The Challenge of Anchoring Religion and Law Within Shifting Boundaries." Pepperdine University Annual Conference. <https://law.pepperdine.edu/nootbaar-institute/annual-conference/content/saeedkhan.pdf>.
- Mansour, A. S. n.d. "The Quran: Sufficient as a Source of Islamic Legislation." [http://www.ahl-alquran.com/arabic/book\\_main.php?main\\_id=92](http://www.ahl-alquran.com/arabic/book_main.php?main_id=92).
- March, A. 2007. *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*. Oxford University Press.
- March, Andrew. 2009. "Sources of Moral Obligation to Non-Muslims in the Jurisprudence of Muslim Minorities (Fiqh al-aqalliyāt) Discourse." *Islamic Law and Society* 16 (1): 34–94.
- Masud, M.K. 1989. "Being Muslim in a Non-Muslim Polity: Three Alternate Models." *Journal of Muslim Minority Affairs* 10 (1): 118–128.
- Moosa, E. 2009. "Colonialism and Islamic Law." In *Islam and Modernity Key Issues and Debates: Key Issues and Debates*, edited by M. K. Masud, A. Salvatore, and M. van Bruinessen, 158–181. Edinburgh: Edinburgh University Press.

- Nelson, M. J. 2011. *In the Shadow of Shari'ah: Islam, Islamic Law, and Democracy in Pakistan*. New York: Columbia University Press.
- Noor, A. F. 2008. "Where Is the "Islam" in the "Islamic State"?" In *Islam and the Rule of Law: Between Sharia and Secularization*, edited by B. Krawietz and H. Reifeld, 65–71. Sankt Augustin: Konrad-Adenauer-Stiftung.
- Nyazee, I. A. K. 1994. *Theories of Islamic Law: The Methodology of Ijtihad*. Islamabad: The International Institute of Islamic Thought and Islamic Research Institute.
- Oubrou, Tareq. 2000. "Introduction théorique à la chari'a de Minorité." *Oumma*. <http://oumma.com/Introduction-theorique-a-la-chari>.
- Peters, R., and P. J. Bearman. 2014. "Introduction: Nature of Sharia." In *The Ashgate Research Companion to Islamic Law*, edited by R. Peters and P. J. Bearman, 1–13. Surrey: Ashgate Publishing Ltd.
- Qaradawi, Youssef. n.d. *Fiqh of Muslim Minorities*. New Vision.
- Ramadan, T. 1999. *To Be a European Muslim, A Study of Islamic Sources in the European Context*. Leicester: The Islamic Foundation.
- Ramadan, T. 2015. "The Paris Attackers Hijacked Islam but There Is No War Between Islam and the West." *The Guardian*: 127–146.
- Rane, H. 2018. "Democracy and Muslims." In *Handbook of Contemporary Islam and Muslim Lives*, edited by M. Woodward and R. Lukens-Bull. Cham: Springer.
- Rane, Halim, Adis Duderija, Riyad H. Rahimullah, Paul Mitchell, Jessica Mamone, and Shane Satterley. 2020. "Islam in Australia: A National Survey of Muslim Australian Citizens and Permanent Residents" *Religions* 11 (8): Article No. 419. <https://doi.org/10.3390/rel11080419>.
- Rehman, J., and S. Breau. 2007. "Introductory Reflections." In *Religion, Human Rights and International Law*, edited by J. Rehman and S. Breau. Leiden: Martinus Nijhoff Publishers.
- Safi, Omid (Ed.). 2003. *Progressive Muslims: On Justice, Gender, and Pluralism*. Oneworld Publications.
- Selby, J., & Sayeed, A. 2023. *Beyond Religious Freedom: The New Global Politics of Religion*. University of Chicago Press.
- Shavit, U. 2012. "The Wasati and Salafi Approaches to the Religious Law of Muslim Minorities." *Islamic Law and Society* 19 (4): 416–457.
- Shavit, Uriya. 2015. *Shari'a and Muslim Minorities; the wasati and salafi Approaches to Minority fiqh al-Muslima*. New York: Oxford University Press.
- Sokolova-Shipoli, Denitsa P. 2020. *Fiqh al-aqalliyat in the Sense of Belonging for Muslim Minorities in Contemporary America. Unpublished PhD Thesis*. Deakin University, Melbourne, Australia.
- Wagemakers, J. 2008. "Framing the "Threat to Islam": Al-wala' wa al-bara' in Salafi Discourse." *Arab Studies Quarterly* 30 (4): 1–22.

- Yilmaz, I. 2000. "Muslim Law in Britain, Reflections in the Socio-Legal Sphere and Differential Legal Treatment." *Journal of Muslim Minority Affairs* 20 (2): 353–360.
- Yilmaz, I. 2001. "Law as Chameleon: The Question of Incorporation of Muslim Personal Law into the English Law." *Journal of Muslim Minority Affairs* 21 (2): 297–308.
- Yilmaz, I. 2002a. "The Challenge of Post-Modern Legality and Muslim Legal Pluralism in England." *Journal of Ethnic and Migration Studies* 28 (2): 343–354.
- Yilmaz, I. 2002b. "Secular Law and the Emergence of Unofficial Turkish Islamic Law." *The Middle East Journal* 56 (1): 113–131.
- Yilmaz, I. 2003a. "Non-Recognition of Post-Modern Turkish Socio-Legal Reality and Predicament of Women." *British Journal of Middle Eastern Studies* 30 (1): 25–41.
- Yilmaz, I. 2003b. "Ijtihad and Tajdid by Conduct: The Gülen Movement." In *Turkish Islam and the Secular State: The Gülen Movement*, edited by M. H. Yavuz and J. L. Esposito, 208–237. New York and Syracuse: Syracuse University Press.
- Yilmaz, I. 2005. "Inter-Madhhab Surfing, Neo-Ijtihad, and Faith-Based Movement Leaders." In *The Islamic School of Law: Evolution*, edited by P. Bearman, R. Peters, and F. E. Vogel, 191–206. Cambridge, MA: Devolution and Progress, Harvard University Press.
- Yilmaz, I. 2014a. "Islamic Family Law in Secular Turkish Courts." In *Adjudicating Family Law in Muslim Courts: Cases from the Contemporary Muslim World*, edited by E. Guinchi, 148–159. London: Routledge.
- Yilmaz, I. 2014b. "Pakistan Federal Shariat Court's Collective Ijtihād on Gender Equality, Women's Rights and the Right to Family Life." *Islam and Christian-Muslim Relations* 25 (2): 181–192.
- Yilmaz, I. 2015. "Semi-Official Turkish Muslim Legal Pluralism: Encounters Between Secular Official Law and Unofficial Shari'a." In *The Sociology of Shari'a: Case Studies from Around the World, Boundaries of Religious Freedom: Regulating Religion*, edited by A. Possamai, B. S. Turner, and J. T. Richardson, 51–65. New York: Springer.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. London and New York: Routledge.
- Yilmaz, I. 2019. "Nation Building, Islamic Law and Unofficial Legal Pluralism: the Cases of Turkey and Pakistan." In *Legal Legal Pluralism in Muslim Contexts*, edited by N. Oberauer, Y. Prief, and U. Qubaja, 109–138. Leiden: Brill.

- Yilmaz, I., and J. Barry. 2019. "Instrumentalising Islam in a 'Secular' State: Turkey's Diyanet and Interfaith Dialogue." *Journal of Balkan and Near Eastern Studies* 21 (6): 1–16.
- Yilmaz, I. 2020. Muslims, Sacred Texts, and Laws in the Modern World. In *Woodward M., Lukens-Bull R. (eds) Handbook of Contemporary Islam and Muslim Lives*, 1–18. Cham: Springer.
- Yilmaz, I. 2021. *Creating the Desired Citizens: State, Islam and Ideology in Turkey*. Cambridge and New York: Cambridge University Press.
- Yilmaz, I. 2022. *Authoritarianism, Informal Law, and Legal Hybridity: The Islamisation of the State in Turkey*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.

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# Muslims and Unofficial Islamic Law (Shari'a) Debates in the West

## INTRODUCTION

The integration of different social, religious, and ethnic groups is a pertinent issue for most Western countries, especially when it comes to minority and diaspora communities with strong local and transnational ties (Abdel-Fattah 2017; Lentin and Titley 2012). In the case of Muslim populations, Western societies have attempted to either assimilate or integrate them through more accommodative multicultural policies that allow the preservation of their religious and cultural practices. However, a certain dichotomy exists within Western democracies, where some forms of Muslim practice, such as the construction of mosques, institutions, and schools, have been embraced, while other practices have been staunchly rejected or perceived as threats to Anglo-American or European culture (Abdel-Fattah 2017; Lentin and Titley 2012; Yilmaz 2000; 2001).

In the past thirty years, increased support for multiculturalism and pluralism in Western democracies, along with economic globalization and shifting global politics, has led to Western Muslims becoming more integrated into Western societies. They are no longer seen as practising Islam as immigrants but as an established part of contemporary Western societies. Muslim immigrants who originated from predominantly Muslim nations had their Islamic identity deeply intertwined with their cultural and ethnic backgrounds. Yet, upon relocating to Western countries, they had to adjust to being part of a minority group. This shift required them

to navigate a cultural terrain where they were surrounded by the dominant Western culture, which could at times be imposing and forceful (Malik 2004; Duderija and Rane 2019).

The status of multiculturalism in Western liberal democracies has been a subject of debate, with varying perspectives on its effectiveness. Legal pluralism is often seen as intertwined with broader discussions on multiculturalism, which addresses the coexistence of diverse cultural and ethnic groups within a society (Yilmaz 2002). While some scholars have declared multiculturalism as dead, others have speculated on its retreat or the emergence of a backlash against it as a political project in modern Western liberal democracies (Joppke 2004; Modood 2008; Vertovec and Wessendorf 2010). These debates reflect evolving attitudes towards cultural diversity and the accommodation of different norms and practices within legal frameworks. In the context of legal pluralism, the debate over multiculturalism highlights the tensions between the recognition of diverse legal systems and the pursuit of a unified legal order within a state as required by legal modernity.

The newer generation of Muslims born and raised in Western societies did not inherit clear and well-defined Islamic cultural values from their parents. As a result, they cannot simply copy their parents' religious identity but must create their own, which involves rethinking Islam in their new cultural surroundings (Cesari 2003; Pepicelli 2017). Eid (2002: 45–46) argues that these second-generation Muslims are giving Islam new meanings and roles to fit as an ethnic identity, aiming to reshape the pre-existing ethno-religious identity from their immigrant community. This means that many Western-born Muslims actively choose how they express their religious identity, rather than just following what they inherited culturally (Duderija and Rane 2019). Peek (2005: 215–242) calls this kind of Muslim identity a “chosen identity.”

Western Muslim converts play a crucial role in shaping a distinctly Western form of Islam for several reasons. Firstly, their upbringing in Western culture means that their Islamic identity and understanding of Islam are influenced by this context, making their version of Islam inherently Western. Secondly, they act as cultural mediators between Western Muslims of immigrant backgrounds and non-Muslim Westerners, helping both groups accept the concept of a Western Islam. Additionally, their appearance challenges traditional stereotypes of what a Muslim should look like, as they often dress in Western clothing and may not fit the typical non-white, non-Caucasian image associated with Muslims. Thirdly,

their presence demonstrates that Muslims can be citizens of the West, as they themselves are. Fourthly, they contribute to the development of Western Islam by critiquing traditional cultural or ethnic Islam, sometimes alongside Western-born Muslims of immigrant backgrounds. Lastly, Western converts bring social expertise and networks to the process of institutionalizing Islam in the West, aiding in its acceptance and integration into Western society (Ameli 2002; Roald 2004: 289–305; Duderija and Rane 2019).

The institutionalization of Islam in the Western context plays a significant role in shaping what we understand as Western Islam. Over the past few decades, Western Muslims, realizing their permanent status in the West, have increasingly sought recognition through political means. An important example of this institutionalization is the Muslims of Europe Charter, developed by the Federation of Islamic Organizations in Europe (FIOE) and endorsed by over 400 Muslim organizations from 28 European countries in 2008. This charter emphasizes that Islam and Muslim communities are integral parts of Europe and should be acknowledged as such. It also highlights how the true essence of Islam aligns with contemporary European values of human rights and justice. Furthermore, the charter advocates for the positive integration of European Muslims into their societies, encouraging their active participation as citizens (Duderija and Rane 2019: 233).

The retreat or backlash against multiculturalism signals a reassertion of the primacy of state law and a reluctance to accommodate alternative legal norms, including those arising from cultural or religious traditions. This shift can have implications for how legal pluralism is perceived and managed within societies, as well as for the rights and identities of minority groups. Despite these debates, legal pluralism persists as an empirical reality in many societies, where individuals and communities continue to adhere to diverse normative systems alongside state law (Yilmaz 1999; 2016; 2019a; 2021; 2022).

Muslims, as diverse populations immigrating to the West from non-liberal cultural and political frameworks, have often been constructed as presenting a central challenge to liberal multiculturalism and its agenda of social cohesion. This perceived challenge to social cohesion is based on reductive understandings of Muslims' alternate normative codes and assumptions about the depth of their differences. The reductionist portrayal of Muslim populations can be described as a form of cultural racism within the context of Islamophobia. However, this is not limited

to Muslims, as other religious and minority groups in the West have also been subject to stereotyping, racial profiling, and discrimination.

Nonetheless, Muslims, with their diverse backgrounds, frequently find their religious identity at the forefront of debates regarding the limits of multiculturalism. This is particularly emphasized in the media and policy circles, where Muslim allegiances to Shari'a or Islamic law are highlighted. These discussions are more relevant to this work than other discussions around Islam and Muslims. Often, Shari'a is depicted as a brutal and archaic legal system that seeks to punish anyone who does not adhere to Islam. This portrayal is fuelled by short media clips that preview Shari'a as a threatening force, often based on the actions of extremist groups like al-Qaeda and ISIS—widely recognized as terrorist organizations—wrongly presenting them as representative of what Shari'a or the Islamic legal system would be like in Western societies (Dagistanli et al. 2018: 1).

Suspicious and fears of Muslims have increased in response to growing numbers of migrants and refugees fleeing war-torn countries, particularly after events like September 11 and the Arab Spring Revolutions. The heightened political and security surveillance following September 11, as highlighted by Modood (2013) and others (Lentin and Titley 2012), placed Muslims at the centre of debates concerning multiculturalism and whether it was retreating, in crisis, or dead. Unsubstantiated claims that the majority of Western Muslims favour Shari'a over national laws further complicate the matter. Moreover, discussions around Shari'a are often poorly defined and understood, particularly among the general public. As Possamai et al. (2017: 1) emphasize, these debates are frequently conducted by non-Muslims and primarily directed at non-Muslims, resulting in a rhetorical and often highly uninformed discourse.

The application of Shari'a-related practices in Western democracies is not uniform and varies across different countries and contexts. Peter Cumper (2013) categorizes the approaches to Shari'a law in Western multicultural contexts into three models:

1. The “uniformist” model: This model is generally hostile to multiculturalism and rejects any accommodation of Shari'a. It advocates for the exclusive application of civil law without any parallel jurisdiction for Shari'a in any area.
2. The “parallel” model: This model, based on “strong” multiculturalism, allows for the coexistence of Shari'a and civil law under a system of parallel jurisdiction in certain areas, particularly personal

and family law. In this model, individuals have the option to resolve certain legal matters according to Shari'a principles through religious arbitration.

3. The "limited accommodation" model: Rooted in a "weak" form of multiculturalism, this model grants a limited role for Shari'a in specific areas, such as religious arbitration. It recognizes the religious values and practices of minority communities, including Muslims, in resolving civil disputes.

While some Western countries accommodate the needs of their Muslim citizens through Shari'a-compliant banking, this may be driven more by economic considerations, such as attracting Arab investments, rather than multiculturalism per se.

In certain countries, a more organic and communal-based acceptance of Islamic law can be observed. For instance, in Britain, Muslims have navigated the English legal system to meet their needs, often referred to as "English Muslim law" or "angrezi Shari'at" (Pearl and Menski 1998: 59). This includes the establishment of Shari'a legal councils that provide alternative legal options for Muslims in matters of marriage, divorce, and inheritance. These councils do not possess legal authority and typically operate within a hybrid framework, incorporating elements of both official state laws and unofficial Muslim laws (Yilmaz 2005: 59).

The secular legal systems in Western countries, such as the United States, Canada, Australia, England, and other European nations, are based on positivist principles that separate the state from religious influences, including Islam. These countries hold a dominant position, considering Islamic legal systems and values as incompatible with Western systems (Pearl and Menski 1998). Despite the opposition to Shari'a implementation by Western states, Muslim-minority populations living in these countries are largely able to maintain their religious practices without significant interference (Yilmaz 2003; Blackstone 2005).

The strongest opposition to Shari'a implementation comes from far-right conservative parties and politicians, particularly in the United States, United Kingdom, and Australia (Turner and Richardson 2013; Geiger 2023) which are the countries that we focus on this work, but the list is not limited to them. Prominent politicians on the far-right end of the political spectrum have expressed concerns about Shari'a in the media. For example, Senator Bernardi in Australia referred to the "Shari'a creep" as a threat to liberal values in the country, similar to Newt Gingrich in the

United States (Shane 2011). In Switzerland, far-right parties like the Swiss People Party organized a referendum to ban minarets as a preventative measure against further Shari'a laws with perceived harsh punishments, violation of human liberties, and oppressive enforcement (Lentin and Titley 2012: 128–129). The result of the referendum demonstrated significant support for the ban among the Swiss population (Possamai et al. 2017: 6). Similar cases have come up in Netherlands, Italy, Norway, France, and other countries, which would be outside of the scope of this work, but certainly a good topic of further research.

With the rise in attacks by jihadist militants, anti-Islamic sentiments held by some politicians have become more noticeable in the West. In Australia, Senator Jacqui Lambie of the Palmer United Party associated Shari'a laws with terrorism and suggested that those in favour of Shari'a should leave the country (Bourke 2014). This statement implies that loyalty to the state in Australia is shown not only by condemning terrorism but also by rejecting Shari'a law (Malik 2014). Many proponents of Shari'a law do not advocate for its complete implementation, but rather support specific aspects, such as Islamic Family Law (Krayem 2011). This suggests that Muslim minority groups, while remaining loyal to local laws, may benefit from the option of operating within both legal systems (Black 2008; Possamai et al. 2016, 2017).

These dynamics reflect the complex interactions between political ideologies, public opinion, and perceptions of Islam within Western societies. The opposition to Shari'a implementation is often driven by concerns about potential conflicts with secular legal systems and the perceived threat to Western values, while Muslim communities strive to maintain their religious practices within the legal frameworks of their host countries.

## UNITED STATES OF AMERICA

The Muslim community in America is very diverse ethnically, culturally, as well as according to the schools of thought or madhhabs. Because of the early ideas of freedom of belief, nearly all the Islamic schools of thought, doctrines, and ideas have found America to be a fertile ground for their development. America has served as a sanctuary for many persecuted Muslim scholars, authors, even princes, and political figures who have used this opportunity to spread their ideas and what they understood from Islam (McCloud 2003: 159; Younis 2009).

The presence of Muslims in America can be traced back to the entourage of Christopher Columbus in 1492, where it is believed that there were Muslim crew members on the ship with Columbus. It is also acknowledged that Muslim slaves were brought from Africa as part of the Atlantic Slave Trade (Curtis 2009: 4). Today, Muslims make up the fourth-largest religious group in America after Christians, Jews, and Buddhists (Pew Research Center 2015). But it is estimated that by 2050 the number of Muslims in America will triple from that of 2010, from 3 to 10 million, making Muslims the third-largest group in America (Pew Research Center 2015). Nevertheless, one should be careful with these estimates since there is no question of religious affiliation in America's population census. At the same time, there is no official figure of Muslim converts in America, while many Muslims are either too scared or unwilling to share their religious identity out of fear and retribution (McCloud 2003: 159; Cesari 2004: 10; Bowen 2015: 231). The largest community of Muslims in America are South Asian Muslims, followed by Arabs, then European Muslim immigrants from Turkey and the Balkans, and African-American Muslims (McCloud 2003: 159–160).

In the late nineteenth century, new Muslim immigrants arrived in America. This wave is usually considered the first wave of immigrants. The second and third waves of Muslim immigrants emerged during the World War I, while the fourth wave arrived after the World War II (Cesari 2004: 16). The first three waves of Muslim immigrants came from the Arab world and South Asia with a desire to establish a better life for themselves and their families. This contrasts with the fourth wave of immigrants who largely arrived as refugees that were politically prosecuted in their own countries and found America as a place to escape. They did not think of America as their permanent home; they wanted to make some quick money, wait for things to calm down in their countries of origin, and then go back home. Unlike the first three waves of immigrants, the fourth wave of immigrants came from well-educated and affluent backgrounds. This wave included immigrants from the Arab world and South Asia but also Turks, Balkan Muslims, and Muslims from Central Asia (Haddad and Lummis 1987; Smith 1999; Gutbi 1991: 11–12). Despite successive waves of immigration, Muslims were not yet visible in the United States. They were not organized and not integrated.

With the new American immigration law in 1964, Muslims started to migrate in larger numbers to the United States. This is sometimes called the fifth wave of Muslim immigration (Cesari 2004: 16–17; McCloud

2003: 165). The fifth wave includes people who migrated to open businesses, skilled workers, and students. Students are particularly important as many of them stayed in America to work as lawyers, engineers, doctors, etc. Slowly, a more elite class of Muslims emerged in America, and this brought more integration, more organization, and more visibility among Muslims. These immigrants came to settle in the US and established their integrated, sometimes assimilated, life in America. They also established mosques, ethnic and religious centres, as well as schools. The fourth and fifth cohorts were more effective in the way they assembled organizations, conducted business, and carried out cultural and lobbying activities (Cesari 2004: 17; McCloud 2003: 162). These immigrants were usually persecuted scholars, businessmen, skilled workers who had difficulty finding jobs, or students. They were well-educated and cared for the education of their families, communities, refugees, rights, welfare, and human rights. The largest Muslim organizations were founded after this time. The Muslim Students Association (MSA) was founded in 1963, which has its presence in many American colleges; the Islamic Society of North America (ISNA) and the Islamic Circle of North America (ICNA) are both considered the two largest Muslim organizations in the US and were founded in 1968 (Leonard 2003: 23). Turkish, Saudi, and Gulf money was always present in the construction of these institutions, but Muslim Americans are growing aware of the strings attached to these funds over time, so today they tend to be self-funded as not to be controlled by overseas institutions (Curtis 2010). However, there is still considerable funding from the religious institutions of these states that fund some of these institutions.

The third considerable group of American Muslims are converts. When we speak of converts, we usually think of White Americans who chose Islam as their religion. However, the largest numbers of American converts are, in fact, African Americans. Conversion rates for African Americans were high in prison but also occurred regularly through social networks and meeting other African American Muslims or other converts (McCloud 2003: 161; Curtis 2009: 43; Cesari 2004: 11).

A significant group of American Muslim converts are women. Early female conversions were usually the result of being married to Muslim men (Bowen 2009: 45; Anway 2000: 145–147). However, over time, more women converted to Islam not because of marriage but because they became more engaged with Islam through college friends, Muslim

neighbours, travels to Muslim-majority countries, or through independent research about Islam (Anway 2000: 146–147; Kose 2010: 112). With the increased visibility of Islam and Muslims in America, people were more exposed to Islam and its rituals, leading them to learn about Islam and be inspired to convert through interactions with Muslims (Anway 2000: 146–147).

Regarding the Muslim groups in America, as mentioned earlier, Muslim Americans belong to a wide range of Muslim groups and schools of thought. They are divided based on their ethnic origin, leaders, or other denominations, finding America to be a sanctuary for their beliefs, even though some of them may face persecution in their home countries. The Ahmadiyya Muslim Community is believed to be the oldest Muslim community in the US. They appealed to different racial and ethnic groups and utilized the impact of racial discrimination to attract new followers (Turner 2003: 262). African Americans founded many organizations that experienced considerable growth, such as the Nation of Islam (NOI), while others, like the Moorish Science Temple, the Five Percenters, and the United Nations of Islam, have become nearly extinct over time (Paghdwala 2007).

The Nation of Islam (NOI) emerged as a response to the socio-economic and political marginalization of African-American people, utilizing Islam as a framework. While the movement addressed racial discrimination in America and the challenges faced by African Americans, its teachings focused more on empowerment and the specific struggles of African Americans and other marginalized minorities. The movement also emphasized the idea that many African slaves brought to the US were Muslims, presenting NOI as a means of reconnecting them with their roots (Walker 2005: 123). Prominent figures within the NOI include Malcolm X, a key spokesperson and charismatic leader, and Muhammad Ali. The movement underwent significant reforms under the leadership of Elijah Muhammad, but the most transformative changes occurred when his son Warith Deen Mohammed, a trained theologian, assumed leadership and encouraged the congregation to adopt Sunni Islam (Nuruddin 2000: 217, 220; Esposito 2008; Turner 2003: 225–227; Cashill 2006; Lomax 1963: 149–152; Cornwell 2008).

The political views of American Muslims are as diverse as their Islamic school of thought or their background. However, American response to the 9/11 terrorist attacks, invading Iraq and Afghanistan as well as putting a target on the backs of American Muslims, has shaped their

political views more than anything in the country. Today, the rise of Islamophobia is another element that highly affects the political views of American Muslims.

As far as the implementation of Shari'a is concerned, many American states have banned such an implementation despite that there was no request by any Muslims organization or community to implement Shari'a in any state. American Muslims, unlike their British counterparts, do not count the implementation of Shari'a as an element of their integration in the American society. Their relationship with the Shari'a remains limited within the family matters, and personal matters such as dietary restrictions, daily prayers, and other rituals.

In the United States, the recognition of religiously based marital laws is limited, despite the diverse composition of the population (Blackstone 2005). However, certain religious groups, such as Jews and Muslims, have found ways to balance secular and religious laws through extra mechanisms, as the courts recognize the importance of these laws for citizens with minority backgrounds (Etsin 2004). For example, in New York, the legal system extended secular laws to accommodate Jewish divorce law to meet the needs of the Jewish community (McKinney 1999; Wegner 1982). Similarly, the Muslim community in America could adopt an extended legal system that balances both secular and Islamic laws, similar to the situation in England (Quraishi and Syeed-Miller 2004).

Muslim American families often have private agreements related to marriage and divorce, and in cases of failure to resolve disputes, they can also seek recourse in American courts (Macfarlane 2012). Unlike Canada and England, the United States does not practise arbitration dispute resolution, but it may allow both sides to participate in the resolution of disputes (Quraishi and Syeed-Miller 2004). However, implementing a similar path in America, as in the UK, is problematic due to the plurality of legal systems in the United States. The heterogeneity of Shari'a laws across different states poses a challenge, as laws implemented in one state may differ from those in another (Zaman 2008: 187).

In some cases, American courts may accept decisions previously adjudicated in the country of origin, as long as they do not violate the principles and values of the American legal system. There have been several cases accepted by American courts thus far. Research findings indicate that American Muslims are able to balance their religious obligations and civil responsibilities effectively (Macfarlane 2012). Recommendations include advocating for better services to accommodate the needs of all citizens,

fostering mutual understanding between Shari'a jurists and courts. This entails Islamic jurists gaining a better understanding of secular laws and the legal system, while courts become more aware of the religious needs of Muslims. The study on Shari'a and how Muslims perceive its jurisdiction reveals that the majority of Muslims favour Shari'a family law matters, viewing the marital process as a religious obligation and thus desiring its incorporation within the framework of Shari'a. Ninety-five percent of those interviewed agreed that they should obtain both religious and civil marriage or divorce, despite the lack of recognition for Shari'a laws in the United States (Macfarlane 2012: 9). There is an ongoing hope that the United States becomes a "dar al-Islam" for American Muslims, while Sheikh Taha distinguished the difference between Muslim-majority country and Muslim-minority country by saying,

While Muslims in Muslim countries are obliged to uphold the Islamic law of their state, Muslim minorities in the United States are not required either by Islamic law or rationally to uphold Islamic symbols of faith in a secular state, except to the extent permissible within that state. (Ramadan 2005: 163)

Indeed, the perception and understanding of Shari'a laws vary significantly, and it is often influenced by political agendas and biases. Islamophobic discourses, including the anti-Shari'a legislations proposed in the United States, have contributed to a prejudiced conceptualization of Shari'a laws. This biased view tends to associate Shari'a with practices such as honour killings, discrimination against women, and harsh punishments.

However, Shari'a, as understood by Islamic scholars like El Fadl, encompasses values that oppose human suffering, injustice, indignity, and despotism. There is a wide range of interpretations and perspectives within the Islamic legal tradition, and some scholars emphasize the ethical and humanitarian aspects of Shari'a.

## EUROPE

Muslims constitute a population of over ten million people in Western Europe, and the increasing numbers of European-born and overseas Muslims have prompted European countries to adopt policies aimed at integrating this growing religious group (Fetzer and Soper 2005). Muslims have had a long-established presence in parts of Europe even

before the emergence of the modern nation-state and citizenship. They played significant roles in countries such as Albania, Bulgaria, Greece, and Yugoslavia, and during the Muslim rule of Andalusia (modern-day Spain) and Sicily, they settled and governed vast European territories. Andalusia, in particular, became a centre of civilization where innovation, science, and philosophy flourished between 711 and 1492.

However, the largest influx of Muslim immigrants into Europe occurred in the 1950s and 1960s (Klausen 2007:5; Fetzer and Soper 2005: 2). These Muslims generally migrated as part of the labour force from former colonies of Western European countries (Klausen 2007: 5; Fetzer and Soper 2005: 2). Over time, Muslims acquired citizenship, and their children were born in Western Europe. The integration and rights of Muslims, as well as other minority groups, needed to extend beyond political and economic rights to include cultural and religious rights that are applicable to all citizens, not just immigrants (Fetzer and Soper 2005: 3). However, European countries initially neglected serious consideration of the long-term integration of Muslims and Islam in Europe. Their governments assumed that they would eventually return to their home countries. Yet, it became apparent that staying in Europe was a safer option, leading to the sponsorship of their families who also faced persecution back home (Ramadan 2004: 68). It was only after the Iranian Revolution in 1979 that Europeans started to pay more attention to Islam and Muslims. The Iranian Revolution was a significant event that shaped Western views of Islam, mostly in a negative way, and it was followed by political events in Algeria, Afghanistan, 9/11, Iraq, and subsequent events up to the present day.

The challenge of integration for European countries revolves around the dilemma between integration and assimilation. To resist assimilation, Muslims formed ethnic and religious groups, including ghettos in the suburbs of European cities (Yilmaz 2002: 345; Yilmaz 2019b). This resistance was partly a response to the assimilative aspirations of the legal system. For Muslims, Islamic law is not only a set of regulations for religious practice but also a “way of life” that encompasses spiritual and day-to-day social aspects, as well as modes of thinking and expression. Religion serves as a unifying and dominant factor for European Muslims (Yilmaz 2002: 346). Therefore, there is a need for a new approach to Muslims in Europe (Klausen 2007: 5), an approach that considers Muslims’ understanding and loyalty to their religion and religious rulings. This approach should aim to accommodate religious practices and beliefs,

making efforts to prevent discrimination based on their beliefs and practices (Cesari 1997; Morsy 1992; Nielsen 1999: 36–46; Ozdemir 1999: 244–259; Fetzer and Soper 2005: 3).

The relationship between the church and state in European countries like Great Britain, France, and Germany plays a significant role in shaping the approach towards Islam and Muslims (Fetzer and Soper 2005: 13). In Germany and France, where there is a separation of state and church, the state offers only individual rights to religious minorities, not communal rights (Fetzer and Soper 2005: 16–17). On the other hand, in Great Britain, the tradition of common law supports “religious pluralism” and grants communal rights to religious communities (Fetzer and Soper 2005: 16–17). Consequently, the rights of Muslims in Britain are recognized both at an individual and communal level. Similar to the United States, the origin of Muslim groups is an important factor in the integration process.

The majority of Muslims in France come from North Africa, where secular law is firmly established, while in Sweden, Denmark, and the Netherlands, Muslims come from diverse backgrounds and are not represented by a dominant ethnic group (Klausen 2007). Therefore, integrating these groups requires different approaches and an understanding of their customs, needs, and demands, as they are not homogeneous.

In the case of Britain, Muslims have requested the recognition of Islamic courts and the establishment of Islamic schools, which are seen as communal rights. On the other hand, Muslims in France have not made similar requests. Instead, French Muslims have been actively involved in establishing Islamic schools, institutions, and mosques, as well as providing new services to their members such as halal foods, medical advice, and financial instruments that avoid interest payments. However, Muslims have faced accusations of not integrating into French society due to their perceived “communalist” attitudes. Bowen highlights the double standard in French authorities’ criticism of Muslim “collectivism” while other religious groups, such as Jews and Catholics, utilize religious institutions to become part of the broader social-political terrain.

For French Muslims, as well as many Muslims in the Western world, the Palestinian-Israeli issue holds great importance. A 2005 poll conducted among Muslim high school students in France revealed that French foreign policy towards Palestine was a determining factor for their integration (Laurence and Vaisse 2006: 207–208). In contrast, for British Muslims, the use of religious courts and the establishment of Islamic

schools were identified as the main issues. However, these sentiments change with the latest political situations. When Western countries decide to bomb or invade a Middle Eastern country, the subjects of importance for Muslims may change. Whenever there is a political campaign or whenever there are elections, as Islamophobia arises, the fight against Islamophobia becomes one of the main issues. However, the bombing of Gaza by Israel in 2023 and 2024 has become one of the biggest matters of concern for Muslims all around the Western countries. Although that would be a topic of a completely different work, it suffices to say that the Israeli-Palestinian conflict will continue to be an important topic for Muslims in the West, together with Islamophobia, integration, belonging, and among those topics Shari'a too.

These differences highlight the complexity of integrating Muslims into Western European societies and the need for nuanced approaches that consider their diverse backgrounds, needs, and concerns. The relationship between the state and religion, as well as the socio-political context, greatly influence the integration policies and challenges faced by Muslims in different European countries.

Public opinion and political stances on the implementation of religious-based tribunals can vary significantly across different countries and contexts. In the Netherlands, there is currently no alternative for religious marriage that is officially recognized by the state. Instead, religious celebrations are considered unofficial. This is in contrast to the past situation when some migrants from countries governed by Shari'a law advocated for the recognition of these laws. Presently, Dutch citizens who were once migrants are expected to adhere to the secular legal system, which opposes policies such as polygamy and other aspects of Shari'a law that are perceived to disadvantage women according to the secular system (Berger 2006: 182).

Research conducted in the Netherlands highlighted that Dutch Muslims were not well-informed about the procedures and fundamentals of family laws. Additionally, the requirement to terminate marriages through national consulates posed obstacles for individuals who wished to travel to their countries of origin (Dessing 2002: 31). Ultimately, in the Netherlands, there is no alternative to the recognition of religious-based marriages and divorces, and the Dutch law remains the sole legally valid system (Berger 2006).

## GREAT BRITAIN

Britain has emerged as one of the major centres of Muslim migration and settlement in Europe and the West. With its historical imperial past, Britain has attracted a significant Muslim population from various regions. Initially, British Muslims migrated from former British colonies such as India, Pakistan, and Bangladesh. However, subsequent waves of Muslim migration brought individuals from Turkey, Somalia, the Middle East, and the Balkans. As citizens, British Muslims possess substantial economic and political potential within the country.

In the 1960s and 1970s, the United Kingdom became a destination for Muslims seeking a better life and protection of their religious rights (Bradney 1993). As the Muslim population increased, there was a parallel increase in the establishment of Muslim institutions to meet their needs (Ahsan 1995). The Union of Muslim Organizations (UMO) served as the representative face of the Muslim community. In 1975, the UMO proposed the recognition of Shari'a Family Law, but the proposal was rejected, unlike the private tribunals in Canada. The rejection was mainly due to the heterogeneous demographic of Muslim communities, which have different interpretations of Shari'a law, making it unclear which version should be implemented (Poulter 1990).

Similar to other European countries, Muslims migrated to Britain as part of the post-World War II labour force, often as single men. Initially, British Muslims were able to reunite with their family members, but in 1962, the Commonwealth Immigrants Act imposed restrictions on family reunions for immigrants (Klausen 2007: 29). Nonetheless, Britain was relatively less unfamiliar to Muslims compared to other European countries due to its historical control over Muslim lands and its relatively more pluralist legal and political system (Fetzer and Soper 2005: 20–30).

The historical legacy of British colonialism has given the United Kingdom a distinctive advantage in comprehending and accepting (to some degree) Islam and its Muslim population. Within the colonial era, Muslims assumed administrative roles within the British colonial administration, facilitating a seamless integration of Muslim immigrants into the societal fabric of the UK, particularly within the political sphere. This integration transpired effortlessly and organically for both parties involved. Consequently, the political influence of Muslims within the UK has undergone transformation and expansion (Jan 2023: 3).

The distinctive trajectory of immigration and citizenship in Britain is directly linked to its imperialist and colonialist history. The influx of Muslim immigrants to Britain commenced around 1700 but gained pronounced momentum in the years subsequent to World War II and the dissolution of colonial authority (Ansari 2018). Originating predominantly from rural regions and Muslim-majority nations, these immigrants later extended to include individuals from former British colonies across Africa, Asia, and the Caribbean. Their primary purpose was to serve as labourers in Britain's port cities (Abbas 2007).

In the 1920s, almost half of the world's Muslim population lived in British colonies. These individuals considered themselves loyal British citizens and were proud to express their allegiance. During World War II, for example, over 400,000 Muslim soldiers, making up about 40% of the British Army, fought for Britain (Sheikh 2018).

Later, Muslims had full political rights in Britain, while the Western European countries did not allow immigrants, not just Muslims, to participate in political activities (Danso 2000; Bashford and McAdam 2014). This made a big difference in the integration of Muslims in Britain and other European countries.

In contrast, the historical absence of entrenched ties between Muslim immigrants and the United States, coupled with the absence of preferential attention from the government, has contributed to a situation where their political influence remains comparatively modest. The differential historical trajectories of Muslim immigration and integration in the UK, the US, and elsewhere has contributed to shaping the different levels of political power, belonging, and integration of Muslim communities in these respective countries.

However, in 2003, Great Britain decided to join the United States in its invasion of Iraq. This decision, like the United States, provoked dissatisfaction among British Muslims, who began questioning the country's policies towards Muslims both domestically and abroad. The July 7, 2005 terrorist attacks in London, often referred to as the British 9/11, further heightened concerns and fears. The fact that the perpetrators of the attacks were British Muslims raised apprehensions about this trend continuing. These concerns were not limited to non-Muslim politicians but were also felt within the Muslim community itself. The event compelled British decision-makers to reevaluate their policies towards Muslims, both at home and abroad.

British government's response was criticized for its failure to take more substantial steps to integrate the Muslim population and address their concerns. Efforts to help Muslims feel more "British" and at "home" and to ensure a comfortable life for them in Great Britain fell short. Additionally, the government struggled to provide convincing justifications that the War on Terror was not directed against Islam or Muslims. These issues highlighted the need for a more comprehensive approach to address the integration and concerns of British Muslims.

Surveys conducted among British Muslims revealed their dissatisfaction with British policies and a sense of detachment from Great Britain (Hennessy and Kite 2006). These surveys also highlighted the criticism of how Islam was portrayed in the British media. Many Muslim respondents believed that the acceptance of Islamic law and the establishment of Islamic schools were necessary for their integration into British society. Sir Iqbal Sacranie, the Secretary General of the Muslim Council in British Society, confirmed the widespread opposition among British Muslims to the "war on terror" (Hennessy and Kite 2006). Sadiq Khan, a Labour MP, described the situation as alarming, emphasizing that a large number of Muslims felt disengaged and alienated from mainstream British society. He stressed the need to intensify efforts to include Muslims in the broader community (Hennessy and Kite 2006). Muslim minorities in the UK had long struggled with the development of an "extra-legal system" known as *angrezi Shari'a'h* (Pearl and Menski 1998) or English Muslim law, with the *Beit Din* serving as an example (Yilmaz 2003: 118). Matrimonial issues were the primary cases brought before the Council (Blackstone 2005). The 1980s saw the establishment of the most reputable Shari'a councils in Wales and England. Anecdotal data suggests that there has been a surge in the number of Shari'a councils in Wales and England (Siddiqui 2018: 10; Torrance 2019: 2).

These discussions on Islamic law, or Shari'a, are situated within the broader context of debates in Britain and other Western countries. Often, Shari'a has been portrayed as a non-conforming model of Muslim discourse that is seen as incompatible and foreign to the British way of life. Such portrayals have contributed to the complexities of the discussions surrounding the integration of Islamic practices into the legal and social framework of Western societies.

The Government has consistently refuted the notion of Shari'a law, particularly Shari'a councils, holding any legal authority in the UK. Chris Grayling, then Secretary of State for Justice, reiterated this stance in

January 2016, emphasizing the singular legal system applicable to all citizens, irrespective of background. Grayling underscored the exclusive legal binding nature of court rulings, expressing concerns about Shari'a councils potentially establishing legal precedents (UK Parliament 2016).

The integration of Islamic law (Shari'a) into the English legal system in 2014 introduced the possibility of recognizing wills according to Shari'a law in British courts. However, this integration raised concerns about inheritance rights, particularly for women, children born out of wedlock, or those married in non-Islamic ceremonies, potentially leading to unequal treatment in inheritance matters (Jan 2023: 5; Siddiqui 2018).

## CANADA

Extensive research on the history of Muslim presence in Canada has predominantly relied on statistical data compiled by Daood Hamdani (2015), with limited archival-based academic exploration published thus far (Selby 2023). The origins of Muslims in Canada trace back to 1854, marked by the birth of the first recorded Muslim, whose parents, James and Agnes Love, hailed from Scotland (Elghawaby and Munir 2017). Evidence suggests that Black Muslims may have settled in Atlantic Canada prior to communities in Alberta, potentially including individuals who arrived as slaves, although scholarly investigation into this aspect remains scarce (Jackson-Best 2019).

The initial influx of Muslims into Canada occurred between the 1850s and 1870s. Notably, the first Muslims in Canada were James and Agnes Love, Scottish immigrants who arrived in 1854, and their son, James Love Junior, marked the first native-born Canadian Muslim (*The Hamilton Spectator* 2018; Zine 2012: 4; Kazemipur 2014). The Muslim community during this period was modest, with slow growth. By the early 1900s, the Muslim population in Canada reached 1,500, predominantly comprised of Turkish and Syrian immigrants. Settlements were primarily in the Canadian prairies, notably Saskatchewan, where Muslims engaged in various occupations such as farming, fur trading, and railway work. The construction of Canada's first mosque in 1938 in Edmonton reflected the nascent Muslim presence, with a modest congregation corresponding to the size of the community at the time (Kazemipur 2014: 24). However, during World War I, racially exclusive policies in Canada hindered Muslim immigration, leading to deportations of Turkish immigrants under the pretext of enemy alien status (Kazemipur 2014: 24; Zine 2012: 5).

Available records indicate a gradual increase in the Muslim population in Canada, from four individuals in 1854 to 478 in 1921. Many migrants, particularly from the declining Ottoman Empire, sought opportunities in Canada, particularly in the Western regions where land was more affordable and labour was in demand. Communities like Lac La Biche, Alta., emerged as Muslim settlements, while Ontario, notably London, hosted some of the oldest Muslim communities in the province (*The Hamilton Spectator* 2018).

Presently, the Muslim community in Canada has experienced significant growth. In 2006, the population stood at 842,200, representing 2.6% of the total Canadian populace (Zine 2012: 6). By 2011, this figure had risen to 940,000, and projections estimate a further increase to 2 million by 2021. The majority of Canadian Muslims reside in urban centres, with Ontario hosting 61%, followed by Quebec at 19%, and British Columbia and Alberta each at 10% (Hanniman 2008: 272; Kazempur 2014: 26). This expansion is attributed to both immigration and the high fertility rates among the immigrant population (Kazempur 2014: 26). By the late 1990s, Muslims had become the second-largest religious group in Canada, showcasing Islam as the country's fastest-growing religion (Zine 2012: 6). These demographic shifts underscore the urgency of integrating Muslims more effectively into Canadian society (Khelifa 2017: 2–3).

In 1991, Canadian-born Muslims accounted for 22% of the Muslim population, a figure that gradually increased to 28% by 2011, surpassing the one million mark. Currently, Muslims constitute 3.2% of Canada's total population, ranking fifth among faith communities and denominations. Predominantly urban, two-thirds of Canadian Muslims reside in Toronto and Montreal. This community comprises both newcomers and descendants of families settled in Canada for over a century. Canadian-born Muslims already outnumbered the Arab Muslims and are poised to replace South Asians as the largest subgroup (Hamdani 2015), reflecting a shift away from ethnic identity towards a shared Canadian heritage and faith (Houtsman 1987). This emerging generation, bound by a common Canadian identity and Islamic faith, presents an opportunity for visionary leadership to cultivate a distinct Canadian Muslim identity, setting a precedent for Muslims in Western societies (Haq 2021: 40).

The Muslim population in Canada reflects a diverse array of religious affiliations, with the majority adhering to Sunni Islam, while significant minorities follow Shia (Twelvers or Ismaili) and Ahmadiyya

branches (Adams 2007). While Sunni Islam predominates among Canadian Muslims, other sects such as Shias and Ahmadiyyas also contribute to the religious terrain. Shias have been part of Canada since the early twentieth century, constituting approximately 15% of the Muslim population. The influx of Shia migrants from troubled regions in the 1970s contributed to their growth, alongside a smaller but notable presence of Ahmadiyyas, estimated at 25,000. Ismailis, known for their social activism and political engagement, have also made their mark (McDonough and Hoodfar 2005; Maclean 2010). Additionally, the Canadian Muslim community includes converts, whose numbers are challenging to ascertain due to the private nature of conversions and the prevalence of unmosqued Muslims (Flower and Birkett 2014). Projections suggest a significant increase in the self-identified Muslim population, expected to reach nearly 2.7 million by 2030, comprising 6.6% of Canada's total population (Pew Research Center 2011).

Canada's Muslim population embodies remarkable ethnic and religious diversity, with 91% being foreign-born and originating from over 30 countries across South Asia, the Middle East, the Arab world, the Caribbean, Europe, Africa, China, Afghanistan, Bosnia, Persia, Turkey, and more. Various religious and spiritual backgrounds, including Shia, Sufi, and Ismaili sects, contribute to this diversity, although Sunni Islam remains the largest denomination (Zine 2012: 6). Recognizing the nature of Canadian Muslim communities is crucial for understanding their integration into Canadian society (Khelifa 2017: 3).

The development of Muslim institutions in Canada has been hindered by the initially small size and dispersion of the Muslim community. The construction of the first mosque in Canada, the Al Rashid Mosque in Edmonton in 1938, marked a significant milestone in the establishment of Muslim religious infrastructure. However, it wasn't until the 1950s that a notable influx of Muslim immigrants from the Arab world and other regions began, leading to the proliferation of mosques across major urban centres throughout the country (Abu-Iaban 2008).

In contrast to the national average, Canadian Muslims tend to be younger, with an average age of 28 in 2004, rising slightly to 28.9 in 2013 (Press 2013). Moreover, they exhibit higher levels of educational attainment, with 45% holding post-secondary degrees compared to 25% in the general population as of 2007 (Hanniman 2008: 272; Zine 2012: 8). Despite their educational achievements, however, Canadian Muslims face challenges in achieving financial success. In 2004, the unemployment

rate among Muslims was 14%, nearly double the national average of 7.4%. The most prevalent employment sector among Muslim Canadians is the sales and service industry, which often offers modest incomes and does not necessarily require high levels of education (Hanniman 2008: 273).

In the ongoing discourse on integration, Canadian Muslims exhibit a spectrum of perspectives. Some hold the belief that integration into Western society contradicts their religious principles, while others advocate for complete assimilation. Conversely, there are those who endorse an integration approach that allows them to maintain both their Canadian and Muslim identities concurrently (Ramadan 2004: 25–30). This diversity of viewpoints underscores the complexity of the integration process among Muslim communities in Canada.

Moreover, findings from the 2016 Survey of Muslims in Canada shed light on prevailing attitudes towards identity and integration. A significant 72% of respondents expressed that being Muslim and Canadian are highly important aspects of their identity. This indicates a widespread inclination towards integration rather than separation among Canadian Muslims, suggesting a desire to reconcile their religious and national affiliations (The Environics Institute 2016: 15).

The success of integration hinges upon the immigrant population's ability to seamlessly adapt to their new society, striving to reconstruct a sense of "home" and reclaim feelings of familiarity and belonging within the host country (Zine 2012: 3). However, the failure to cultivate strong positive sentiments towards the host nation can lead to profound social and psychological tensions that are challenging to reconcile. Typically, the integration process involves a blending of cultures, often resulting in unequal power dynamics where new groups, characterized by ethnicity, culture, or race, face marginalization (Moghassi et al. 2009). This phenomenon creates a Canadian "vertical mosaic," wherein immigrant and indigenous communities are relegated to second-class status beneath dominant European, white settlers, exacerbating feelings of displacement and alienation. Consequently, instead of fostering a sense of belonging and attachment to Canada, Muslim immigrants may experience nostalgic longings for their homeland, which are perceived to compromise their loyalty and kinship with their adopted society, fuelling arguments that multiculturalism has failed and assimilation is the sole pathway for integration (Zine 2012: 4; Khelifa 2017: 4).

In some instances, Muslim Canadians may grapple with feelings of not belonging, not due to any factual basis, but because their Islamic faith is

persistently subjected to stereotyping and bigotry, perpetuating a cycle of isolation and marginalization. Consequently, these sentiments may discourage Muslim immigrants from actively seeking integration into the broader community, perceiving themselves as misunderstood and disliked (Khelifa 2017: 4).

Recent findings from the 2016 Survey of Muslims in Canada conducted by The Environics Institute offer reassurance regarding concerns about the marginalization of the Canadian Muslim diaspora. A significant majority, comprising 55% of respondents, expressed a very strong sense of belonging to Canada, while 39% reported a generally strong sense of belonging. Only a minimal 3% indicated a generally weak or very weak sense of belonging to the country. Moreover, an impressive 58% stated that their sense of belonging to Canada had strengthened over the past five years, with only 5% reporting a weakening of this sentiment (The Environics Institute 2016: 9).

For Muslims, the journey towards integration unfolds in a two-step process, commencing with adaptation. They are encouraged to embrace and engage in all aspects of Canadian life that align with core Islamic principles. This approach emphasizes the integration of elements from Canadian culture that do not contradict religious prohibitions, allowing Muslims to comfortably navigate their identities within the broader Canadian context (Ramadan 2004: 220). When uncertainties arise, scholars engage in a process of re-examining Islamic texts and rulings, seeking to address modern needs without compromising fundamental religious tenets. This dialogue, known as *ijtihad* or creative thinking, enables Muslims to adapt religious rulings to better suit their cultural environment, facilitating a harmonious coexistence between Islamic principles and Canadian societal norms (Kazemipur 2014: 40–42; Ramadan 2004: 53). For instance, in the case of music, where Islamic perspectives vary, interpretations that permit listening to music with conditions emphasizing ethical values may be deemed more suitable for Canadian Muslims, fostering a more relaxed practice of religion within the Canadian context (Ramadan 2004: 220). However, instances where Islamic principles conflict with Canadian culture necessitate government accommodation.

The second phase of the Muslim integration process involves the cultivation of a distinctive Canadian-Islamic identity, characterized by an integrated cultural identity that harmonizes with the surrounding society. This endeavour aims to develop a uniquely Canadian interpretation of Islam, one that is not about losing identity through assimilation, but

rather about fostering a natural and indigenous understanding of Islam, rooted in the Canadian context (Abd-Allah 2006: 369). This reform movement hinges on empowering Muslims to shed the perception of being a marginalized minority and instead become active, productive citizens who fully engage in both Canadian and Muslim societies. It calls for the establishment of deeply entrenched Muslim-Canadian cultures and identities within Canada (Ramadan 2004: 224–225).

In Canada, the politics of recognition approach has gained considerable traction and demonstrated remarkable success. This approach has led to the adoption and implementation of multicultural policies, making Canada the pioneering country in this regard (Kazemipur 2014: 5–6). These policies have given rise to the concept of the “Canadian mosaic,” envisioning Canada as a mosaic of diverse cultural pieces, each distinct yet engaging with others in mutual respect and contributing to the nation as a whole (Dryden 2010: 199). Canada’s understanding and tolerance have fostered a sense of belonging among Muslim immigrants, with a significant majority expressing pride in their Canadian identity. However, challenges such as proposals for niqab bans in Quebec and the escalation of Islamophobia and anti-Muslim hate crimes underscore the need for continued efforts to ensure a better future for all (Khelifa 2017: 9).

While Canada is known for its strong commitment to liberal values and the protection of religious freedom, the country still faces challenges in accommodating the needs of its Muslim citizens (Shachar 2001: 17). The question arises of how Canada can reconcile religious fidelity with its secular ideals in order to address the needs of its Muslim population (Blackstone 2005: 207–208). One proposed solution has been the establishment of Muslim Arbitration Tribunals (MAT) to handle family-related disputes within Muslim-minority communities (Boyd 2004).

However, the process of establishing these tribunals has faced significant obstacles. Dr. Baig, the founder of the Canadian Society of Muslims (CSM), initially proposed the implementation of Muslim Personal Laws to the Ontario Courts, but the proposal was not seriously considered. Subsequently, Mumtaz Ali, who succeeded Dr. Baig as the leader of the CSM, also encountered difficulties in advocating for the creation of a more accommodating environment for Muslims to address their family-related needs (Mumtaz Ali 1997).

The introduction of religious-based tribunals has often been met with negative reactions from the media and some politicians. Critics, such as Canadian columnist Val MacQueen, have expressed concerns that Canada

is yielding to the demands of immigrants by allowing them not only to settle in the country and practise their religion freely but also to bring their own laws with them (MacQueen, 10 May 2004).

These debates highlight the tension between accommodating religious diversity and maintaining a secular legal framework in Canada. While there are ongoing discussions about how best to address the needs of Muslim citizens without compromising the principles of the secular state, it is important to consider the perspectives and concerns of all stakeholders involved in these discussions, including Muslim community organizations, legal experts, and public opinion. The ultimate goal is to find a balance that respects both religious freedom and the principles of Canadian society.

Indeed, the debate surrounding the implementation of Shari'a in Western countries, including Canada, often focuses on the scope and limitations of its application. Many Islamic organizations propose that Shari'a implementation should be limited to Family Law, addressing issues such as marriage and divorce, while others advocate for broader tribunals that represent all Muslims regardless of their specific Islamic legal traditions (Berger 2006; Poulter 1990).

To understand the progress and proposals for tribunals, it is informative to examine Mumtaz Ali's discussion paper titled "Oh! Canada! Whose Land, Whose Dream?" (Mumtaz and Whitehouse 1991). Initially, Ali sought positive responses to his proposal for the recognition of Muslim personal laws. However, in 2002, he shifted towards advocating for the formation of a Muslim arbitration tribunal operating under the Ontario Arbitration Act of 1991, which would provide court-enforceable decisions (Mumtaz 2002; Blackstone 2005: 213–214).

One of the key issues within Islamic Family Law is divorce, as different Islamic legal traditions have their own principles and practices. However, there are common principles shared among these traditions that could form the basis for tribunals and their regulations (El Alami 1992). While marriage is generally expected to be permanent, divorce is permitted if it would improve the conditions of the spouses rather than worsen them (Esposito and DeLong-Bas 2001: 28). However, the regulation of divorce according to Shari'a laws is seen as problematic in Western states due to the disadvantaged position it often places women in. A husband can unilaterally divorce by saying "talaq" without any reason, while a wife does not have the same rights and ease of divorce (Esposito and DeLong-Bas 2001: 27–32; El Alami and Hinchliffe 1996: 22–25). Additionally,

before divorce, a husband is obligated to pay “mahr,” a dowry, while if the divorce is initiated by a woman through “khul,” with the husband’s approval, he may not be obliged to pay the full amount of the mahr (Esposito and DeLong-Bas 2001: 32; El Alami and Hinchliffe 1996: 27–28).

These issues demonstrate the struggles and clashes between Shari’a law and local secular legal systems in various Western societies, where Muslim-minority groups, like the Canadian Society of Muslims, seek external recognition of Islamic laws (Blackstone 2005). The tension arises from the differences in principles and practices between Shari’a and secular legal systems, particularly in matters of family law, and finding a balance that respects both religious freedom and the principles of the secular state remains a complex challenge.

The implementation of Shari’a law in Canada was not as extensive as often misperceived. The Arbitration Act of 1991 simply allows private parties to choose their own rules to settle disputes (Berger 2006: 175). In 2003, the Islamic Institute of Civil Justice was established in Ontario to regulate and settle family and inheritance disputes according to Islamic laws (Berger 2006: 176). Mumtaz Ali, the president of the Canadian Community of Muslims, emphasized that the decisions made by the Islamic courts were final and binding, and parties could seek enforcement through the Canadian secular courts (Berger 2006: 176).

The Islamic courts in Canada do not exercise coercive power, and their decisions can be reviewed by Canadian courts (Berger 2006: 176). However, misunderstandings and misconceptions about the role and authority of these courts led to concerns and criticisms. To address these issues, a report was prepared in 2004 to provide clarification and analysis, highlighting the need for critical questioning and the importance of meeting the needs of all citizens in Canada (Berger 2006).

The use of arbitration and alternative dispute resolution is not exclusive to Islamic tribunals. Jewish and Christian groups have also established arbitration tribunals for dispute resolution in Canada. El Noor mosque, for example, has provided arbitration services since 1982 (Boyd 2004). Each religious-based arbitration tribunal follows its own rules and regulations, including practices such as unilateral divorces, which are not recognized in the Canadian legal system (Berger 2006: 179). However, coercion is not permitted in any case. Concerns about coercion, particularly for vulnerable groups such as women, have been raised by Canadian

organizations, emphasizing the need for protection and support (Canadian Council of Muslim Women 2004).

The allowance of Islamic tribunals is accompanied by recommendations to safeguard the rights and well-being of the more vulnerable demographics, such as women and children (Blackstone 2005). The intention is to strike a balance between religious freedom and the protection of individual rights within the framework of the Canadian legal system.

Marion Boyd was appointed by the Attorney General and Women's Issue Minister in Ontario to conduct research on religious tribunals and their impact, with a specific focus on the protection of vulnerable parties. The findings of her research were published in 2004, along with recommendations aimed at safeguarding the rights of individuals involved in dispute resolution processes (Blackstone 2005).

In Ontario, the Muslim tribunals operate under Section 32 of the Arbitration Act, which grants parties the freedom to choose their own laws (Nelson 2005; Blackstone 2005). Once the laws are decided, the arbitrators, who are expected to be impartial, cannot withdraw from their decisions (Blackstone 2005). In cases where dispute resolution fails, both parties are provided with assistance. However, certain sections of the Arbitration Act can pose challenges for Muslim Arbitration Tribunals. For example, Section 19 of the Act requires that treatment be conducted "equally and fairly" for both sides. This means that in Muslim tribunals, both parties can invoke Section 19(2) to present their cases (Nelson 2005: 159; Blackstone 2005). However, Section 19(1) becomes a point of contention due to the disparity in gender treatment between Muslim tribunals and the Canadian legal system, which mandates equal treatment between women and men (Arbitration Act 1991; Blackstone 2005).

Although Section 19 promotes gender-equal treatment, parties can still be subjected to gender-differential Muslim family law, as the tribunals operate on a private contractual basis (Bakht 2004: 4). If one party disagrees with the decisions made, particularly if it involves gender inequality, they can appeal (Bakht 2004). This has led to opposition from Muslim women's groups who argue that private religious tribunals can lead to gender discrimination and negative consequences (Canadian Council of Muslim Women). These organizations advocate for the exclusion of Islamic family laws from the Arbitration Act (Syrtash 2004). The issue of excluding private religious tribunals sparked debate in 2005 and was used in anti-Islamic rhetoric. Dalton McGuinty, at the time, stated

that religiously based tribunals would not be enforced, despite still being in the process (Blackstone 2005). He emphasized that there would be one law for all Ontarians and no implementation of Shari'a law in Ontario (Ghobadzadeh 2010: 315).

## AUSTRALIA

In 1989, Australian Prime Minister Bob Hawke initiated a multicultural agenda aimed at protecting minority rights in terms of culture and religion, driven by the increasing number of non-Christian populations (Poulter 1998; Blackstone 2005). According to statistical data, the Muslim population in Australia was 281,576 in 2001. Despite sharing a common religion, Australian Muslims form a culturally and linguistically diverse community. Approximately two-thirds of them were born outside Australia, coming from different regions such as the Middle East, South Asia, Far Asia, the Balkans, Africa, Turkey, and all other different countries and regions where Muslims live. Contrary to the stereotype associating all Muslims with Arab or Middle Eastern origins, less than 20% of Australian Muslims were born in Middle Eastern or Arab countries. A substantial portion hails from Asia, Europe, and Africa, bringing linguistic diversity with languages such as Arabic, Turkish, Persian (Farsi), Bosnian, Albanian, Bahasa Indonesia, Bengali, Malay, Dari, Hindi, Kurdish, and Pashtu. While the majority of Australian Muslims are Sunni, a noteworthy minority adheres to Shi'ite Islam, along with smaller groups practising Bektashis, Ahmadis, Alawis, and Druze (Human Rights and Equal Opportunity Commission 2004: 26; Saeed 2004: 7). As understood, the Australian Muslims are as diverse as they can be, representing the whole colourfulness of the Muslim community.

According to the 2016 Australian Census, 604,200 individuals identified themselves as Muslims, comprising 2.6% of the entire Australian population. This marked a notable increase of over 18% from the previous Census in 2011 when the Muslim population share was 2.2%. Consequently, Islam has become the second-largest religion in Australia. Despite these recent statistics Hassan (2018: 6) argues that the historical and geographical context reveals that the presence of Islam and Muslims in Australia is not a recent development.

Important background information on Islam and Muslims in Australia is provided by a survey about Islam in Australia that was conducted with 1034 Muslim Australian citizens and permanent residents in September

and October of 2019 (Rane et al. 2020). The survey highlights the challenges faced by the Muslim community, such as the rise of political parties with anti-Islam agendas and an increase in anti-Islam sentiments. As a reflection of the variety within the Muslim community, all survey participants—aside from four respondents of Aboriginal descent—are either immigrants or the descendants of migrants. According to this research, most respondents freely identify as Muslims and value Islam highly when it comes to their identity. According to Rane et al. (2020), the majority of respondents identified as Sunni Muslims, with a sizeable percentage identifying as Muslims only. Moreover, a significant percentage of participants became Muslims, underscoring the variety of the Australian Muslim population (Rane et al. 2020).

The Qur'an is considered the most authoritative source of information about Islam for Australian Muslims, with hadith, academic literature, and religious authorities coming in second and third, respectively. According to the survey, participants have a high degree of confidence in the veracity of their knowledge about Islam and are receptive to learning new things. Respondents mainly consult the Qur'an and Hadith for assistance when faced with an Islamic issue, highlighting the significance of these core texts in forming their view of Islam (Rane et al. 2020). According to Rane et al. (2020), the survey underscores the significance of legitimate Islamic sources and proficient scholars in moulding the religious convictions and customs of Muslims.

The institutionalization of Islam in Australia began with the establishment of various organizations and bodies, including the Islamic Society of New South Wales, the Lebanese Muslim Association of Sydney, the Islamic Society of Victoria, and the Australian Federation of Islamic Societies in the mid-twentieth century (Black and Hosen 2009). Over time, these organizations underwent restructuring and new bodies were formed, such as the Australian Federation of Islamic Councils (AFIC), the Australian National Imams Council (ANIC), and the Darulfatwa Islamic High Council (Black and Hosen 2009).

The AFIC aims to represent the interests of all Muslims in Australia, but there are criticisms that it primarily serves as a platform for middle-aged Muslim men (Black and Hosen 2009). The Darulfatwa Islamic High Council is responsible for issuing fatwas that guide the everyday lives of Muslims in Australia, and it actively opposes radicalism and extremism, promoting a moderate understanding of Islam (Black and Hosen 2009). The ANIC, established in 2006, plays a role in issuing fatwas and consists

of a Council of Fatwas composed of seven imams (Black and Hosen 2009).

The perception and practice of Shari'a among Muslims in Australia vary among different generations. The first generation of Muslim migrants, predominantly from the 1980s, practised Shari'a at the individual level while adhering to the state's legal system (Saeed 2004). Their focus was on ethnic rituals rather than religious practices. However, in recent years, there has been a rise in Islamic revivalism, particularly among the second and third generations of Muslim youth. These generations view the West not as a realm of conflict (*dar al-Harb*) but as a space where they must practise Shari'a as part of their identity construction. They engage in newer Islamic movements and activities that aim to make Muslims more devout and support the Islamization of Muslims.

The practice of Shari'a in Australia is often described as an "unofficial parallel system". The second generation desires recognition of Shari'a in applicable contexts, but attitudes towards practising Shari'a extend beyond intergenerational differences. Some individuals actively rediscover their religious identity and resist assimilation into Western values, while others, including certain migrants and subsequent generations, may not practise Islam at all. Research suggests that most Muslim Australians prefer a "one law for all" principle rather than the implementation of Shari'a (Esmaceli 2015).

Australian society is founded on key values, including the concept of a "fair go," parliamentary democracy, the rule of law, openness and friendliness, freedom of questioning and debate, human rights, gender equality, egalitarianism, and mutual support during crises like bushfires and droughts. Most Australians generally endorse these values, and Muslims, being part of Australian society, are expected to align with them. While some Australians believe that Muslims reject Western and Australian values, the majority of Muslims have no issue with these and other Australian principles. In fact, many have migrated to Australia attracted by these values. From a Muslim perspective, Australia is viewed as a generous and inclusive society that welcomes people of all faiths, colours, languages, and ethnicities, offering them recognition and the freedom to practise, teach, and propagate their religion. While a small number of Muslims insist that Australian values are incompatible with Islam, representing a foreign influence, this perspective is held by a minority and doesn't reflect the mainstream Muslim opinion in Australia. The vast majority of Muslims see no conflict between the listed values and their religion. It's

crucial to note that the opinions of this small minority do not represent the broader Muslim community in Australia (Saeed 2004: 9).

The debates surrounding the compatibility of Muslim values, specifically Shari'a, with Western values, including Australian values, have led to a polarization of views. Some politicians have expressed strong anti-Islamic sentiments, arguing that Muslims in Australia are antagonistic to the Australian way of life and that Shari'a represents alien values.

The rhetoric used by these politicians suggests a rejection of Shari'a as a potential parallel legal system in Australia. Former Attorney General Robert McClelland also rejected the introduction of Shari'a in Australia (Saeed 2004). Politicians often interpret Shari'a as divisive, patriarchal, and inconsistent with the principles of the rule of law (Voyce and Possamai 2011: 338). This binary opposition between Islamic law and Western law portrays Shari'a as backward and patriarchal, while presenting Western law as secular and egalitarian (Voyce and Possamai 2011: 339).

Some argue that the anti-Islamic sentiments expressed by politicians, such as John Howard, were driven by political motivations to gain support (Voyce and Possamai 2011: 341). Criticism has been raised regarding the emphasis on Muslim Australians needing to learn English, despite a significant portion of them being born and raised in Australia (Department of Immigration and Citizenship 2006). "According to the 2016 Australian Census, around 37% of Muslims were Australian born..." (Hassan 2018: 6) and "about 83% of Australian Muslims report good or very good proficiency in the English language" (Hassan 2018: 11). Furthermore, in some cases, debates against Shari'a implementation have arisen without any initial proposals by Australian Muslims (Voyce 2011: 341).

Debates surrounding Shari'a family law in Australia have predominantly resulted in negative responses, and only a small portion of the Muslim population supports its implementation. As in other Western countries, the Shari'a debate in Australia is highly politicized. Politicians have frequently instrumentalized anti-Islamic rhetoric for electoral support, turning it into a political tool. El-Matrah, the manager of the Islamic Women Council of Victoria, described Treasurer Costello's anti-Islamic stance as "politically motivated" (Ghobadzadeh 2010: 314). Costello is just one example of politicians who have expressed their opposition. Other members of parliament, including Peter McGauran and Philip Ruddock, rejected the proposal of Shari'a laws, emphasizing the secular nature of Australian law and the equal application of laws to all citizens regardless of religion (Dunlevy 2005: 6). Politicians often argue

that Muslim citizens and residents should understand and adhere to what they perceive as the Australian identity. Minister of Education Brendan Nelson, for instance, expressed his willingness to meet with the Islamic Council to assess whether students in Islamic schools could meet the same requirements and learn about the history and culture of Australia. He argued,

We want them to understand our history and our culture, the extent to which we believe in mate ship and giving another person a hand up and a fair go. And basically, if people don't want to be Australians and they don't want to live by Australian values and understand them, well basically they can clear off. (2005: 1)

Indeed, while the opposition to Shari'a laws in Australia has been prominent, there have also been political actors who expressed support for such laws. Kurt Kennedy, the founder of the Best Party of Allah, argued that everyone in Australia should live under Islamic law dictated by the Quran (Karvelas 2005: 6). This perspective led to calls for the establishment of separate Islamic courts to handle marital issues specifically for Muslim families. However, these appeals for separate Islamic courts and the implementation of Shari'a laws were rejected and overridden in Australia (Ghobadzadeh 2010). As a result, the existing legal framework and secular laws were maintained without modifications to accommodate Shari'a laws.

Outside of political debates and misconceptions, the debate surrounding the compatibility of Shari'a with the Western legal system is a complex and ongoing issue in its core. One of the key reasons for a fierce debate is the fundamental differences between Shari'a and the Australian legal system in terms of their historical development, scope, and underlying philosophies (Voyce and Possamai 2011: 346).

Shari'a is often perceived as a "pre-modern" legal system in Australia, with a decentralized and fragmented nature that lacks a central authority. This decentralization and lack of a unified structure make Shari'a highly divisive in comparison to the Western legal system, which seeks to apply the same laws to all members of society (Voyce and Possamai 2011: 346).

In the Western legal system, secularism plays a significant role, advocating for the complete separation of religion and state. In contrast, Shari'a encompasses various spheres of life, including political, social, and economic aspects. This comprehensive nature of Shari'a poses challenges

in terms of its compatibility with a legal system that is based on secular principles (Voyce and Possamai 2011: 346).

The debates on legal pluralism and the compatibility of Shari'a with Western values are not just descriptive but also ideological and political in nature (Parashar 2012: 569). The intense focus on Shari'a and its perceived incompatibility with Western values has led to a cleavage not only between Muslims and non-Muslims but also within the Muslim community itself. It is important to approach these debates with nuance and consider the diverse perspectives and experiences within the Muslim community. He posted his statement online where he argued,

We the undersigned, believe that Shari'a (or Islamic) law is wholly incompatible with the Australian way of life and western culture. Accordingly, we call upon the Australian Government and all Australian political parties to reject the introduction of any aspect of Shari'ah law in Australia, reject the establishment of Shari'ah courts and reject any amendments to our existing laws to allow compliance with Shari'ah law. (Cory Bernardi)

Radical groups such as Hizb-ut-Tahrir criticize the Australian National Imam Council for engaging in dialogue with non-Muslims, arguing that Muslims should not be governed by non-Muslims and that the Western system is designed to undermine Muslim faith (Akbarzadeh 2016: 330). However, the Australian National Imam Council has expressed appreciation for the Australian rule of law and liberal democracies, recognizing the safe and open environment they provide for the practice of Islam (Akbarzadeh 2016: 318).

The emergence of far-right parties and groups like AQ Society and ALA has further amplified Islamophobia in Australia. Daniel Nalliah, for example, has expressed his opposition to the teaching of Islam, while ALA has labelled Islam as a "dangerous ideology" (Rise Up Australian Party 2015). According to Akbarzadeh (2016: 326), there is a positive correlation between the rise of far-right groups and the presence of anti-Islamic sentiments in the political mainstream.

The rise of certain groups, such as Reclaim Australia and the Australian Liberty Alliance party, has contributed to an increase in Islamophobia in Australia. Politicians, including Senator Pauline Hanson, have expressed strong opposition to mosques, Shari'a law, halal certification, and Muslim refugees, suggesting that Islam is incompatible with Western values (*Herald Sun*, 8 October 2015). This rhetoric highlights a rejection of

Muslim refugees and a perception that Muslim countries should bear the responsibility for accepting them. It also reinforces the belief that Islam is fundamentally incompatible with Western values.

The distinct functioning and system of Shari'a present challenges in its implementation within a secular legal system. Shari'a is not a monolithic entity, as there are various interpretations and understandings of Shari'a laws (Voyce and Possamai 2011: 339). This raises the question of whose interpretations of Shari'a should be accepted. Additionally, Shari'a lacks a centralized governing authority, leading to debates over who represents the Muslim community in Australia (Voyce and Possamai 2011: 344). The issuance of fatwas (religious rulings) by different imams adds to the diversity of interpretations, and Muslims may choose the interpretations that align with their cultural and ethnic backgrounds (Black and Hosen 2009: 420). This has been seen in the US, the UK, and elsewhere, where Muslims "fatwa shop" to legitimize what they believe the right thing to do is. This is not limited to the perspective of the Muslim leaders from that country, as diverse as they might be, and it is expanded to the opinions of Muslim leaders from around the world, more noticeably from the countries of origin of that individual (Sokolova-Shipoli 2020: 79–80).

The combination of these factors, including anti-Islamic sentiments expressed by politicians, the presence of far-right groups, and the complexities of Shari'a as a legal system, contributes to an ongoing debate and tension regarding the place of Shari'a and Muslims within the Australian society.

Another major debate revolves around the perceived position of women in Islam and some matters of family law. Conservative jurists have been criticized for making disparaging comments about women, while organizations like the Islamic Information and Services Australia argue that such interpretations are a result of misunderstanding and misinterpretation of the Quran and Hadith (Voyce and Possamai 2011: 340). Islamic Information and Services Australia promote the idea that women and men are equal but acknowledge that misinterpretations have led to gender-related problems. Within the realm of Shari'a, there are specific laws, particularly in the area of Family Law, that have sparked intense debates among scholars, politicians, and the general public in Australia. These debates primarily revolve around issues such as marriage, divorce, child custody, and inheritance (Voyce and Possamai 2011: 346).

Muslim women often face gender discrimination in divorce proceedings. While the Marriage Act 1961 allows marriages to be solemnized

by a minister of religion, these marriages do not pose a challenge to the Australian legal system (Saeed 2004: 5; Esmaceli 2015: 75; Black 2010). As a result, many Muslim families opt for both religious and civil marriages. Research shows that 95% of respondents consider it important to have both a *nikah* (religious marriage) and a civil marriage licence (Macfarlane 2012: 9). Some Muslims choose not to have a religious marriage at all if they do not feel the need to do so, while others advocate for the establishment of arbitration boards based on Islamic family law (Black 2008).

The Family Law Council prepared a report addressing cultural community divorce and the differences between Jewish and Muslim divorce procedures and the Australian Family Law Act 1975 (Saeed 2004: 9). While the Australian legal system recognizes the solemnization of religious marriages, the same cannot be said for religious divorce procedures. Women do not have the same extrajudicial divorce option as men, who can terminate their marriages by pronouncing *talaq* (divorce) three times. In cases where husbands obstruct the termination of the marriage, women can seek a divorce under the decision of legal scholars (Black 2010: 65). Unilateral divorce in *Shari'a* is not recognized by the Australian legal system. Another issue arises when imams may refuse to grant divorce if the husband does not agree to the termination of the marriage (Saeed 2004). Some women in Australia have applied for religious divorce and have faced rejection by imams, as reported by ABC News. Due to the strong belief in the solemnization of marriage before God, women often challenge the divorce procedure. Until the termination of the marriage is granted by religious scholars, women are considered married, and remarriage may be seen as a “limping marriage” (Saeed 2004: 9). The Board of Imams in Australia operates as a hybrid system, dealing with family, divorce, and property issues based on *Shari'a* principles while selectively incorporating the Australian legal system (Voyce and Possamai 2011: 343). Similar debates were present for the aboriginal law. Aboriginal marriages, for example, were not legally recognized under the Australian Marriage Act of 1961 but were acknowledged by the society. Family law specialist Patrick Parkinson suggested that religious minorities could face a similar lack of recognition (1994: 480). Although the Australian Law Reform Commission did not disagree, the recognition of religious marriages was not implemented (Boyle and Sheen 1997; Parkinson 1994; Blackstone 2005).

Criticism of the discriminatory position of women in Islam is often directed at the allowance of polygamous marriages. While men can marry multiple women simultaneously, the same is not permitted for women. The Australian Law Reform Commission has prepared reports on Islamic law, including a report titled “Multiculturalism and the Law” in 1992, which proposed that polygamous marriages should not be allowed under Australian law (Esmaeili 2015: 76). The Marriage Act explicitly forbids polygamous marriages, and violation of this law can result in a prison sentence of up to five years (Saeed 2004). Some individuals, such as Keysar Trad, a spokesperson for the Islamic Friendship Association, have suggested that the Australian legal system should recognize polygamous marriages. However, research has shown that 90% of Australian Muslims prefer to maintain the current legal system (Black 2010). Ghena Krayem argues that the Australian legal system should find alternative ways to meet the needs and resolve disputes within Muslim communities, rather than implementing Shari’a (Krayem 2012). Additionally, polygamous marriages conducted and validated outside of Australia are not recognized within the country (Black 2010). There are ongoing debates and criticisms regarding polygamy and its impact on women’s rights. While some voices argue against polygamous marriages and their recognition, other individuals, such as Naqvi (2017: 40), believe that the judicial approaches and discourses surrounding polygamy are influenced by racism, imperialism, orientalism, and sexism.

Another area of focus in discussions about women’s discrimination is the debate around women’s garments. For example, some individuals, like Bernardi, have suggested banning the burqa, arguing that women wearing the burqa are socially isolated from society. The wearing of the burqa has various associated consequences and poses not only a social oppression to women but also security risks. In response to these discourses, Islamist activists have protested against the ban, expressing concerns about women who wear the burqa and may become completely isolated, not even leaving their homes due to the ban. One problem with Shari’a and Islamic legal jurisprudence is that women’s position is predominantly interpreted by male scholars. As a result, there are numerous negative perceptions of Shari’a, particularly regarding its treatment of women’s rights and the implementation of punishments that may infringe upon fundamental human rights. Shachar (1999: 87) argues that granting autonomous rights to practise family law within cultural communities may lead to a deterioration of women’s rights.

As we can see in every topic, the opinion of Muslim Australians change as Muslims are not unified in one interpretation, and their interpretation is highly affected by their cultural background, political leaning, and other social influents that are present in every other society. Westerners usually perceive Muslims as one, and those who have heard “islam-ish” sounding words, like ummah, in the media or political campaigns, usually opt in for that idea. They wrongly argue that while the Western societies view individualism as a core value, the Muslims often view the society based on a collective view known as the ummah. In Australia the Ummah has been in the discussions regarding the allegiance of the Muslim Australians to the law of the land or the Shari’a which, in their opinion, will be guided by unofficial ummah.

In terms of trust, studies have shown that a significant proportion of Muslims in Australia trust religious institutions more than the political and judicial systems of the country. This indicates a higher level of trust in religious authorities and their interpretations of Islamic principles (Esmaili 2015).

The negative rhetoric and emphasis on Muslims’ non-integration due to Shari’a does not reflect the views and desires of all Muslims in Australia. The Muslim community itself is not homogeneous, and there are varying perspectives on Shari’a within the community (Voyce and Possamai 2011: 341). The perception and practice of Shari’a among Muslims in Australia are influenced by generational differences, the dynamics of Islamic revivalism, and varying attitudes towards the integration of religious and legal systems. It is not accurate to assume that all Muslims in Australia seek the implementation of Shari’a. Actually, most don’t.

## CONCLUSION

When anti-Shari’a campaigns protest against Islamic law, they often assume that all Muslims interpret their religious texts in the same way. Just as Christians and Jews vary widely in interpretation of their religion so do Muslims in their interpretations of Islam and Islamic law. There exists a spectrum of interpretations and variations of Islam and Islamic law, ranging from moderate to radical, similar to other religions like Christianity and Judaism. Within Muslim-majority countries and Muslim communities worldwide, there are ongoing discussions and

divergences regarding the understanding and application of Islamic law in the contemporary context.

Indeed, the context of Western democracies, including the United States, provides a platform for Muslims to engage in discussions and debates about the interpretation and application of their faith. The secular and civil nature of these democracies allows for religious freedom, which enables Muslims to explore various aspects of their religion, including matters of jurisprudence, non-legal aspects, and spirituality. Unlike in some Muslim-majority countries, where the legal framework may limit or restrict discussions and dissent regarding Islamic law, Western democracies often provide an environment that encourages open dialogue and the exchange of ideas. This allows Muslims to critically examine and appropriate their faith within the framework of their respective societies.

The diversity of perspectives within Muslim communities in Western democracies reflects the nature of Islam itself. Muslims in these societies have the freedom to interpret and practise their faith according to their individual understanding, cultural backgrounds, and personal convictions. The engagement and discourse within Western Muslim communities regarding the appropriation of their faith vary.

The development of unofficial interpretations of Shari'a and Western laws, that serve the religious as well as civic needs of Muslim in the West, has always been preeminent. Muslims living in Western democracies encounter challenges when applying the classical Shari'a principles even in civil matters as they may not fully address the contemporary circumstances and obligations faced by Muslims today. Some Muslims voluntarily seek the application of some degree of Shari'a practice to navigate potential difficulties and to align their religious practices with the legal frameworks of the societies in which they live.

The debate surrounding the implementation of partial Shari'a family laws, including the establishment of Islamic councils or Muslim tribunals, is highly contentious and involves various perspectives within both the Muslim community and broader society. Not all Muslims are supportive of the implementation of Shari'a law, and there is diversity of opinion within the Muslim community on this issue.

One significant aspect to consider is the evolving position of women in Muslim communities, particularly their increased participation in various social and political activities. Women have been actively advocating for their rights and opposing certain interpretations of Shari'a law that they perceive as discriminatory or limiting. These efforts are aimed

at promoting gender equality and ensuring that women's voices and concerns are heard and addressed within their communities.

## REFERENCES

- Abbas, T. 2007. "Muslim Minorities in Britain: Integration, Multiculturalism, and Radicalism in the Post-7/7 Period." *Journal of Intercultural Studies* 28 (3): 287–300.
- Abd-Allah, Umar F. 2006. "Islam and the Cultural Imperative." *CrossCurrents* 56 (3): 357–375.
- Abdel-Fattah, Randa. 2017. *Islamophobia and Everyday Multiculturalism in Australia*. Abingdon: Routledge.
- Abu-Iaban, Baha. 2008. "Arab Canadians." *The Canadian Encyclopedia*, June 12. <https://www.thecanadianencyclopedia.ca/en/article/arabs#:~:text=Their%20immigration%20was%20relatively%20limited,in%20small%20numbers%20in%201882>. Accessed 1 February.
- Adams, Michael. 2007. "Muslims and Multiculturalism in Canada." <http://www.environicsinstitute.org/PDF-MuslimsandMulticulturalismInCanada-LiftingtheVeil.pdf>. Accessed 29 December 2023.
- Ahsan, Manazir. 1995. "The Muslim Family in Britain." In *God's Law Versus State Law: The Construction of an Islamic Identity in Western Europe*, 21–30. London: Grey Seal Books.
- Akbarzadeh, S. 2016. The Muslim Question in Australia: Islamophobia and Muslim Alienation. *Journal of Muslim Minority Affairs*, 36(3), 323–333. <https://doi.org/10.1080/13602004.2016.1212493>
- Ali, Syed Mumtaz, and Anab Whitehouse. 1991. "Oh! Canada-Whose land? Whose Dream." *The Canadian Society of Muslims*.
- Ameli, S. R. 2002. *Globalization, Americanization and British Muslim Identity*. London: ICAS Press.
- Ansari, H. 2018. *"The Infidel Within": Muslim in Britain Since 1800*. New York: Oxford University Press.
- Anway, Carol L. 2000. "American Women Choosing Islam." In *Muslims on the Americanization Path?*, edited by Yvonne Yazbeck Haddad and John L. Esposito, 145–160. Oxford University Press.
- Bakht, Natasha. 2004. "Family Arbitration Using Shari'a Law: Examining Ontario's Arbitration Act and Its Impact on Women." *Muslim World Journal of Human Rights* 1 (1): 1–24.
- Bashford, Alison, and Jane McAdam. 2014. "The Right to Asylum: Britain's 1905 Aliens Act and the Evolution of Refugee Law." *Law and History Review* 32 (2): 309–350.

- Berger, M. 2006. "Shari'a Law in Canada—Also Possible in the Netherlands?" In *Crossing Borders: Essays in European and Private International Law, Nationality Law, and Islamic Law in Honour of Frans Van Der Velden*, edited by P. Van Der Grinten and T. Heukels. Alphen aan den Rijn: Kluwer.
- Black, Antony. 2008. *The West and Islam: Religion and Political Thought in World History*. Oxford: Oxford University Press.
- Black, Ann 2010. *Window into shariah family law. Part one: Aspects of marriage*. Family Relationships Quarterly 15: 3–7.
- Black, Ann, and Nadirsyah Hosen. 2009. "Fatwas: Their Role in Contemporary Secular Australia." *Griffith Law Review* 18 (2): 405–427.
- Blackstone, Laureve. 2005. "Courting Islam: Practical Alternatives to a Muslim Family Court in Ontario." *Brooklyn Journal of International Law* 31: 207.
- Bourke, L. 2014. "Jacqui Lambie Says Islamic Law Involves Terrorism as She Stands Firm on Burqa Ban." *Sydney Morning Herald*, September 21. <http://www.smh.com.au/federal-politics/political-news/jacqui-lambie-says-islamic-law-involves-terrorism-as-she-stands-firm-on-burqa-ban-20140921-10jw4b.html>. Accessed 22 January 2017.
- Bowen, Patrick D. 2009. "Conversion to Islam in the United States: A Case Study in Denver, Colorado." *International West Journal of Religious Studies* 1 (1): 41–64.
- Bowen, Patrick D. 2015. *History of Conversion to Islam in the United States: White American Muslims Before 1975*. Vol. 1. Leiden: Brill.
- Boyd, Marion. 2004. *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion*. Toronto: Ontario Ministry of Attorney General.
- Boyle, K., and J. Sheen. 1997. "Freedom of Religion and Belief: A Global Survey." *OSCE Bulletin* 5 (2): 1.
- Bradney, Anthony. 1993. *Religions, Rights and Laws*. Leicester: Leicester University Press.
- Canadian Muslim women account for just under half of the total Canadian Muslim Population. Daood Hamdani, Canadian Council of Muslim Women: Beyond the Perceptions iii 2004.
- Cashill, Jack. 2006. "Why Men Pull Away." WND, February 9. <http://www.wnd.com/2006/02/34736/>. Lastly accessed 19 October 2015.
- Cesari, Jocelyn. 1997. *Faut-il Avoir Peur de L'Islam?* Paris: Presses Universitaires de France.
- Cesari, Jocelyne. 2003. "Muslim Minorities in Europe—The Silent Revolution." In *Modernizing Islam*, edited by John L. Esposito and Francois Burgat, 251–271. London: Hurst and Company.
- Cesari, Jocelyne. 2004. *When Islam and Democracy Meet: Muslims in Europe and the United States*. New York: Palgrave Macmillan.
- Cornwell, Rupert. 2008. "Warith Deen Mohammed: Imam Who Preached a Moderate form of Islam to Black Americans." *The Independent*, September

14. <http://www.independent.co.uk/news/obituaries/warith-deen-mohammed-imam-who-preached-a-moderate-form-of-islam-to-black-americans-930887.html>. Accessed 10 November 2015.
- Cumper, Peter. 2013. "The Participation of Religious Communities in Public Life—The British Experience." In *Transformation of Church and State Relations in Great Britain and Germany*, edited by Antje von Ungern-Sternberg and Christian Walter, 189–208. Nomos Verlagsgesellschaft mbH & Co. KG.
- Cumper, Peter. 2014. "Multiculturalism, Human Rights and the Accommodation of Shari'a Law." *Human Rights Law Review* 14 (1): 31–57.
- Curtis IV, Edward E. 2009. *Muslims in America: A Short History*. New York: Oxford University Press.
- Curtis IV, Edward E. 2010. "Five Myths About Mosques in America". *The Washington Post*, September 29. <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/26/AR2010082605510.html?noredirect=on>.
- Dagistanli, Selda, Adam Possamai, Bryan S. Turner, Malcolm Voyce, and Joshua Roose. 2018. "The Limits of Multiculturalism in Australia? The Shari'a Flogging Case of R v. Raad, Fayed, Cifici and Coskun." *The Sociological Review*, 0038026118768133.
- Danso, Iketina. 2000. *The Commission for Racial Equality*. European Union. [https://ec.europa.eu/employment\\_social/social\\_situation/responses/a24277\\_en.pdf](https://ec.europa.eu/employment_social/social_situation/responses/a24277_en.pdf). Accessed 24 January 2024.
- Dessing, N. M. 2002. "An Islamic Wedding in a Dutch Living Room." *ISIM Newsletter* 10.
- Dryden, Ken. 2010. *Becoming Canada*. Toronto: McClelland and Stewart.
- Duderija, Adis, and Halim Rane. 2019. *Islam and the Muslims in the West*. New York: Palgrave Macmillan.
- Dunlevy, S. 2005. "We Want Court of Our Own: Muslims." *Daily Telegraph*, April 5: 6.
- Eid, Paul. 2002. *Ethnic and Religious Identity Retention Among Second Generation of Arab Youths in Montreal*. PhD thesis, University of Toronto, Toronto.
- El Alami, Dawoud Sudqi. 1992. *The Marriage Contract in Islamic Law*. London: Graham & Trotman.
- El Alami, Dawoud Sudqi, and Doreen Hinchcliffe. 1996. *Islamic Marriage and Divorce Laws of the Arab World*. No. 2. Kluwer Law International.
- Elghawaby, A., and Hassam Munir. 2017. "History of Muslims in Canada Reminds Us All of Who We Are." *National Council of Canadian Muslims*, July 1. <https://www.nccm.ca/history-of-muslims-in-canada-reminds-us-all-of-who-we-are/>. Accessed 25 February 2024.
- Esmacili, Hossein. 2015. "Australian Muslims: The Role of Islamic Law and Integration of Muslims into Australian Society." *Flinders Law Journal* 17: 69–94.

- Esposito, John L. 2008. "W.D. Mohammed: A Witness for True Islam". *The Washington Post*, September 10. <http://www.faithstreet.com/onfaith/2008/09/10/wd-mohammed-a-witness-for-true/4586>. Accessed 20 December 2015.
- Esposito, John L., and Natana J. DeLong-Bas. 2001. *Women in Muslim Family Law*. Syracuse: Syracuse University Press.
- Estin, Ann Laquer. 2004. "Embracing Tradition: Pluralism in American Family Law." *Maryland Law Review* 63: 540–604.
- Fetzer, Joel S., and J. Christopher Soper. 2005. *Muslims and the State in Britain, France, and Germany*. Cambridge: Cambridge University Press.
- Flower, Scott, and Deborah Birkett. 2014. "(Mis)Understanding Muslim Converts in Canada: A Critical Discussion of Muslim Converts in the Contexts of Security and Society". *Working Paper Series, Canadian Network for Research on Terrorism, Security, and Society* 14 (6): 1–20.
- Geiger, Chas. 2023. "Suella Braverman UK-Pakistani Grooming Claim Misleading, Says Press Regulator." *BBC*, October 4. <https://www.bbc.com/news/uk-politics-66960890>. Accessed 23 January 2024.
- Ghanea Bassiri, Kambiz. 2010. *A History of Islam in America: From the New World to the New World Order*. New York: Cambridge University Press.
- Ghobadzadeh, Naser. 2010. "A Multiculturalism–Feminism Dispute: Muslim Women and the Shari'a Debate in Canada and Australia." *Commonwealth & Comparative Politics* 48 (3): 301–319.
- Gutbi, Ahmed Mahdi. 1991. "Muslim Organizations in the United States." In *The Muslims of America*, edited by Yvonne Yazbeck Haddad, 11–24. New York: Oxford University Press.
- Haddad, Yvonne Yazbeck, and Adair Lummis, eds. 1987. *Islamic Values in the United States: A Comparative Study*. New York: Oxford University Press.
- Hamdani, Daood. 2015. "Canadian Muslims: A Statistical Review." *The Canadian Dawn Foundation*, March 29. <https://muslimlink.ca/pdf/Canadian-Muslims-A-Statistical-Review-Final.pdf>. Accessed 5 February 2024.
- Hanniman, Wayne. 2008. "Canadian Muslims, Islamophobia and National Security." *International Journal of Law, Crime and Justice* 36 (4): 271–285.
- Haq, Muhammad Izzul. 2021. "Belongingness to Canada: Synthesizing Canadianness and Muslimness Among Newly Emergent Canadian Muslims." *Islamica* 16 (1): 30–57.
- Hassan, Riza. 2018. "Australian Muslims: The Challenge of Islamophobia and Social Distance," 1–127. <https://www.unisa.edu.au/contentassets/4f85e84d01014997a99bb4f89ba32488/australian-muslims-final-report-web-nov-26.pdf>. Accessed 25 January 2024.
- Hennessy, Patrick, and Melissa Kite. 2006. "Poll Reveals 40pc of Muslims Want Shari'a Law in UK." *The Telegraph* February 19. <https://www.telegraph.co.uk/news/uknews/1510866/Poll-reveals-40pc-of-Muslims-want-Shari'a-law-in-UK.html>. Accessed 25 April 2018.

- Houtsma, M. Th., ed. 1987. *E.J. Brill's First Encyclopedia of Islam 1913–1936*. Leiden and New York: E.J. Brill.
- Human Rights and Equal Opportunity Commission (HREOC). 2004. *Ismae—Listen: National Consultations on Eliminating Prejudice Against Arab and Muslim Australians*, Human Rights and Equal Opportunity Commission, Sydney, 1–215. [https://humanrights.gov.au/sites/default/files/content/racial\\_discrimination/isma/report/pdf/ISMA\\_complete.pdf](https://humanrights.gov.au/sites/default/files/content/racial_discrimination/isma/report/pdf/ISMA_complete.pdf). Accessed 24 January 2024.
- Jackson-Best, Fatimah. 2019. “Black Muslims in Canada: A systematic Review of Published and Published Literature.” *Tessellate Institute*: 4–19.
- Jan, Einat. 2023. “The Political Influence of an Interest Group: A Comparative Study on the Muslim Minority in the United States and Britain.” *Humanities and Social Science Communications* 10 (113): 1–11.
- Joppke, Christian. 2004. “The Retreat of Multiculturalism in the Liberal State: Theory and Policy.” *The British Journal of Sociology* 55 (2): 237–257.
- Karvelas, P. 2005. “Muslim Party Seeks Islamic Law for Australians.” *The Australian*, September 6: 6.
- Kazempipur, Abdolmohammad. 2014. *The Muslim Question in Canada: A Story of Segmented Integration*. Vancouver: UPC Press.
- Khelifa, Sahar. 2017. “A Delicate Mosaic: The Future of Muslims in Canada.” *University of Saskatchewan Undergraduate Research Journal* 3 (2): 1–14.
- Klausen, Jytte. 2007. *The Islamic Challenge*. New York: Oxford University Press.
- Kose, Ali. 2010. *Conversion to Islam: A Study of Native British Converts*. Abingdon: Routledge.
- Krayem, Ghena. 2011. *To Recognise or Not to Recognise, That Is NOT the Question: Family Law and the Muslim Community in Australia*. Diss.
- Krayem, G. 2012. Islamic Family Law in Australia: To Recognise or Not to Recognise. *University of Sydney Law Review*, 34(1), 1–23.
- Laurence, Jonathan, and Justin Vaisse. 2006. *Integrating Islam: Political and Religious Challenges in Contemporary France*. Washington, DC: Brookings Institute Press.
- Lentin, Alana, and Gavan Titley. 2012. “The Crisis of ‘Multiculturalism in Europe: Mediated Minarets, Intolerable Subjects.” *European Journal of Cultural Studies* 15 (2): 123–138.
- Leonard, Karen Isaksen. 2003. *Muslims in the United States: The State of Research*. New York: Russell Sage Foundation.
- Lepore, Christopher R. 2012. “Asserting State Sovereignty over National Communities of Islam in the United States and Britain: Shari’a Courts as a Tool of Muslim Accommodation and Integration.” *Washington University Global Studies Law Review* 11 (3): 669–692. [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1415&context=law\\_globalstudies](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1415&context=law_globalstudies). Accessed 3 February 2024.
- Lomax, Louis E. 1963. *When the World Is Given: A Report on Elijah Muhammad, Malcolm X, AND the Black Muslim World*. Greenwood Press.

- Macfarlane, Julie. 2012. "Shari'a Law: Coming to a Courthouse Near You?" What Shari'a Really Means to American Muslims. Institute for Social Policy and Understanding. [http://www.ispu.org/pdfs/ISPU%20Report\\_Marriage%20I\\_Macfarlane\\_WEB.pdf](http://www.ispu.org/pdfs/ISPU%20Report_Marriage%20I_Macfarlane_WEB.pdf).
- Maclean, Derryl. 2010. "Religion, Ethnicity, and the Double Diaspora of Asian Muslims." In *Asian Religions in British Columbia*, edited by Larry DeVries, Don Baker, and Dan Overmyer, 64–84. Vancouver, BC: University of British Columbia Press.
- MacQueen, Val. 2004. "Canada's Shari'a Option." *FrontPage Magazine*, May 10.
- Malik, Mustafa. 2004. "Muslims Pluralize the West, Resist Assimilation." *Middle East Policy* 11 (1): 1–23.
- Malik, Maleiha. 2014. "Minorities and Law: Past and Present." *Current Legal Problems* 67 (1): 67–98.
- Mazrui, Ali A. 2004. "Muslims Between the Jewish Example and the Black Experience: American Policy Implications." In *Muslims' Place in the American Public Square: Hope, Fears, and Aspirations*, edited by Zahid H. Bukhari, Sulayman S. Nyang, Mumtaz Ahmad, and John L. Esposito, 117–144. Altamira Press.
- McCloud, Aminah Beverly. 2003. "Islam in America: The Mosaic." *Religion and immigration: Christian, Jewish, and Muslim experiences in the United States*, edited by Yvonne Y. Haddad, Jane I. Smith, and John L. Esposito, 159–174. New York: Altamira Press.
- McDonough, Sheila, and Homa Hoodfar. 2005. "Muslim Groups in Canada: From Ethnic Groups to Religious Community." In *Religion and Ethnicity in Canada*, edited by Paul Bramadat and David Seljak, 133–153. Toronto: Pearson Education Canada.
- McKinney, Matthew J. 1999. "Negotiated Rulemaking: Involving Citizens in Public Decisions." *Montana Law Review* 60: 499–540.
- Modood, Tariq. 2008. "Is Multiculturalism Dead?" *Public Policy Research* 15 (2): 84–88.
- Modood, Tariq. 2013. "Post-Immigration 'Difference' and Integration." *Meritum, revista de Direito da Universidade FUMEC* 8 (1).
- Moghassi, Hadeh, Saeed Rahnema, and Mark J. Goodman. 2009. *Diaspora by Design: Muslim in Canada and Beyond*. Toronto: University of Toronto Press.
- Morsy, Magali. 1992. "Rester Musulman en Societe Etrangere." *Pouvoirs*, No. 62: 119–133.
- Mumtaz Ali, Syed. 1997. "A Word from the President: Campaign Up to 1997". *Canadian Society of Muslims*.
- Mumtaz Ali, Sayed. 2002. "Establishing an Institute of Islamic Justice (Darul Qada)." *The Canadian Society of Muslims*.
- Naqvi, Zainab Batul. 2017. A contextualised historical account of changing judicial attitudes to polygamous marriage in the English courts. *International*

- Journal of Law in Context*. 13(3): 408–428. <https://doi:10.1017/S1744552316000513>
- Nelson, B. 2005. “Accept Australian Values or Get Out, Nelson Declares.” *The Age*, August 25: 1.
- Nielsen, Jorgen S. 1999. *Toward a European Islam: Migration, Minorities and Citizenship*. London: Macmillan.
- Nuruddin, Yusuf. 2000. “African-American Muslims and the Question of Identity.” In *Muslims on the Americanization Path?*, edited by Yvonne Yazbeck Haddad and John L. Esposito, 163–214. New York: Oxford University Press.
- Ozdemir, Cam. 1999. *Currywurst und Doner: Integration in Deutschland*. Bergisch Gladbach, Germany: Gustav Lubbe Verlag.
- Paghdwala, Tasneem. 2007. “The Aging of the Moors.” *Chicago Reader*, November 15. <https://www.chicagoreader.com/chicago/the-aging-of-the-moors/Content?oid=999633>. Accessed on 28 September.
- Parashar, Archana. 2012. “Australian Muslims and Family Law: Diversity and Gender Justice.” *Journal of Intercultural Studies* 33 (5): 565–583.
- Parkinson, Patrick. 1994. “Taking Multiculturalism Seriously: Marriage Law and the Rights of Minorities.” *Sydney Law Review* 16: 473.
- Pearl, D., and W. F. Menski, 1998. *Muslim Family Law*. 3rd ed. London: Sweet and Maxwell.
- Peek, Lori. 2005. “Becoming Muslim: The Development of a Religious Identity.” *Sociology of Religion* 66 (3): 215–242.
- Pepicelli, Renata. 2017. “Young Muslim Women of Bengali and Moroccan Origin in Italy: Multiple Belongings, Transnational Trajectories and the Emergence of European Islam.” *International Review of Sociology* 27 (1): 61–79.
- Pew Research Center. 2011. “The Future of the Global Muslim Population.” *Pew Research Center*, January 27. <https://www.pewresearch.org/religion/2011/01/27/the-future-of-the-global-muslim-population/>. Accessed 1 March 2024.
- Pew Research Center. 2015. “Religious Composition by Countries 2010–2050”. Washington DC, April 2. <http://www.pewforum.org/2015/04/02/north-america/> and <http://www.pewforum.org/2015/04/02/religious-projection-table/2010/number/all/>. Accessed on 28 September.
- Possamai, Adam, et al. 2016. “Shari’a and Everyday Life in Sydney.” *Australian Geographer* 47 (3): 341–354.
- Possamai, Adam, Jennifer E. Cheng, Stephane Lathion, and Malcom Voyce. 2017. “Representations of Shari’a in Three Global Cities: Sydney, New York and Geneva 2008–2013.” *Islam and Christian–Muslim Relations* 28 (1): 1–17.

- Poulter, Sebastian. 1990. "The Claim to a Separate Islamic System of Personal Law for British Muslims." In *Islamic Family Law*, edited by C. Mallat and J. Connors, 147–166. London: Graham and Trotman.
- Poulter, Sebastian. 1998. *Ethnicity, Law and Human Rights*. New York: Oxford University Press.
- Press, Jordan. 2013. "Survey Shows Muslim Population Is Fastest Growing Religion in Canada." *Euro-Islam.info*, May 8. <https://www.euro-islam.info/2014/01/10/survey-shows-muslim-population-fastest-growing-religion-canada/>. Accessed 27 February 2024.
- Quraishi, Asifa, and Najeeba Syeed-Miller. 2004. "No Altars: A Survey of Islamic Family Law in the United States." *Emory Law*.
- Ramadan, Tariq. 1999. *To Be a European Muslim, A Study of Islamic Sources in the European Context*. Leicester: The Islamic Foundation.
- Ramadan, Tariq. 2004. *Western Muslims and the Future of Islam*. New York: Oxford University Press.
- Ramadan, Tariq. 2005. *Western Muslims and the Future of Islam*. UK: Oxford University Press
- Rane, Halim, Adis Duderija, Riyad H. Rahimullah, Paul Mitchell, Jessica Mamone, and Shane Satterley. 2020. "Islam in Australia: A National Survey of Muslim Australian Citizens and Permanent Residents." *Religions* 11 (8): Article No. 419. <https://doi.org/10.3390/rel11080419>.
- Roald, Anne Sofe. 2004. "Who Are the Muslims? Questions of Identity, Gender and Culture in Research Methodologies." In *Gender, Religion and Diversity*, edited by Ursula King and Tina Beattie, 179–190. London: Continuum.
- Rise Up Australia Party. (2015). Party Manifesto. <https://riseupaustralia.com.au/>
- Saeed, Abdullah. 2004. "Muslim Australians: Their Beliefs, Practices and Institutions." <https://rest.neptune-prod.its.unimelb.edu.au/server/api/core/bitstreams/f38a2d97-ff02-5d92-af37-2ebafcdb212d/content>. Accessed 24 January 2024.
- Saeed, Abdullah. 2007. "Trends in Contemporary Islam: A Preliminary Attempt at a Classification." *The Muslim World* 97 (3): 395–404.
- Selby, Jennifer A. 2023. "History of Muslims in Canada." *Oxford Research Encyclopedias/Religion*, August 23. <https://oxfordre.com/religion/display/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-854?p=emailAMkm6P0S/ljDM&cd=/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-854>. Accessed 17 February 2024.
- Shachar, Ayelet. 1999. "The Paradox of Multicultural Vulnerability: Individual Rights, Identity Groups, and the State." In *Multicultural Questions*, edited by C. Joppke and S. Lukes, 87–111. Oxford: Oxford University Press.
- Shachar, Ayelet. 2001. *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Cambridge: Cambridge University Press.
- Shane, Scott. 2011. "In Islamic Law, Gingrich Sees a Mortal Threat to US." *New York Times*, 15.

- Sheikh, Rahil. 2018. "Forgotten Muslim Soldiers of World War One 'Silence' Far Right." BBC, November 9. <https://www.bbc.com/news/uk-46124467>. Accessed 24 January 2024.
- Siddiqui, Mona. 2018. *The Independent Review into the Application of Shari'a Law in England and Wales*, 1–40. UK Parliament. [https://assets.publishing.service.gov.uk/media/5a750e8040f0b6397f35d531/6.4152\\_HO\\_CPFG\\_Report\\_into\\_Shari'a\\_Law\\_in\\_the\\_UK\\_WEB.pdf](https://assets.publishing.service.gov.uk/media/5a750e8040f0b6397f35d531/6.4152_HO_CPFG_Report_into_Shari'a_Law_in_the_UK_WEB.pdf). Accessed 2 February 2024.
- Smith, Jane I. 1999. *Islam in America*. New York: Columbia University Press.
- Sokolova-Shipoli, Denitsa Pirinova. 2020. "Fiqh al-Aqalliyat in the Sense of Belonging for Muslim Minorities in Contemporary America." Deakin University. Thesis, 4-243.
- Syrtaash, John Tibor. 2004. "Ontario Has Nothing to Fear." *National Post*, September 21.
- The Environics Institute. 2016. "Survey of Muslims in Canada 2016." *The Environics Institute*: 1–43. <https://www.environicsinstitute.org/docs/default-source/project-documents/survey-of-muslims-in-canada-2016/final-report.pdf>. Accessed 25 February 2024.
- The Hamilton Spectator*. 2018. "The Long and Forgotten History of Muslims In Canada," October 8. [https://www.thespec.com/news/hamilton-region/the-long-and-forgotten-history-of-muslims-in-canada/article\\_fb28b56d-34e7-521f-be99-93a9445e8202.html](https://www.thespec.com/news/hamilton-region/the-long-and-forgotten-history-of-muslims-in-canada/article_fb28b56d-34e7-521f-be99-93a9445e8202.html). 25 Accessed 2024.
- Torrance, David. 2019. *Shari'a Law Courts in the UK*, 1–16. House of Commons Library. <https://researchbriefings.files.parliament.uk/documents/CDP-2019-0102/CDP-2019-0102.pdf>. Accessed 2 February 2024.
- Turner, Richard Brent. 2003. *Islam in the African-American Experience*. Bloomington and Indianapolis: Indiana University Press.
- Turner, Bryan S., and James T. Richardson. 2013. "America: Islam and the Problems of Liberal Democracy." In *Applying Shari'a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in the West*, edited by M. S. Berger, 47–64. Leiden: Leiden University Press.
- Vertovec, Steven, and Susanne Wessendorf, eds. 2010. *Multiculturalism Backlash: European Discourses, Policies and Practices*. Abingdon: Routledge.
- Voyce, M., & Possamai, A. 2011. Legal pluralism, family personal laws, and the rejection of Shari'a in Australia : a case of multiple or "clashing" modernities? *Democracy And Security*, 7(4), 338–353. <https://doi.org/10.1080/17419166.2011.617603>
- Walker, Dennis. 2005. *Islam And the Search for African-American Nationhood*. Atlanta, GA: Clarity Press Inc.
- Wegner, Judith Romney. 1982. "The Status of Women in Jewish and Islamic Marriage and Divorce Law." *Harvard Women's Law Journal* 5 (1): 20–23.

- UK Parliament. 2016. January 14. <https://researchbriefings.files.parliament.uk/documents/CDP-2019-0102/CDP-2019-0102.pdf>. Accessed 12 February 2024.
- Yilmaz, I. 2000. Muslim Law in Britain, Reflections in the Socio-Legal Sphere and Differential Legal Treatment, *Journal of Muslim Minority Affairs*, Vol. 20, No. 2, 283–298.
- Yilmaz, I. 2001. Law as Chameleon: The Question of Incorporation of Muslim Personal Law into the English Law, *Journal of Muslim Minority Affairs*, Vol. 21, No. 2, May 2001, pp. 297–308.
- Yilmaz, I. 2002. “The Challenge of Post-Modern Legality and Muslim Legal Pluralism in England.” *Journal of Ethnic and Migration Studies* 28 (2): 343–354.
- Yilmaz, I. 1999. Dynamic legal pluralism and the reconstruction of unofficial Muslim laws in England, Turkey and Pakistan. *Unpublished PhD thesis*. London: School of Oriental and African Studies.
- Yilmaz, I. 2003. “Muslim Alternative Dispute Resolution and Neo-Ijtihad in England.” *Alternatives: Turkish Journal of International Relations* 2 (1): 117–139.
- Yilmaz, I. 2005. “Muslim Laws.” In *Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Aldershot: Ashgate.
- Younis, Mohamed. 2009. “Muslim Americans Exemplify Diversity, Potential.” Gallup Center for Muslim Studies.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Reprint. London and New York: Routledge.
- Yilmaz, I. 2019a. Nation Building, Islamic Law and Unofficial Legal Pluralism: the Cases of Turkey and Pakistan. In Norbert Oberauer, Yvonne Prief, Ulrike Qubaja (eds) *Legal Legal Pluralism in Muslim Contexts*, pp. 109–138. Leiden, The Netherlands: Brill.
- Yilmaz, I. 2019b. Potential Impact of the AKP’s Unofficial Political Islamic Law on the Radicalisation of the Turkish Muslim Youth in the West. In: Mansouri F., Keskin Z. (eds) *Contesting the Theological Foundations of Islamism and Violent Extremism*. *Middle East Today*. Palgrave Macmillan, Cham. 163–184.
- Yilmaz, I. 2021. *Creating the Desired Citizens: State, Islam and Ideology in Turkey*. Cambridge and New York: Cambridge University Press.
- Yilmaz, I. 2022. *Authoritarianism, Informal Law, and Legal Hybridity: The Islamisation of the State in Turkey*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.

- Zaman, Saminaz. 2008. "From Imam to Cyber-Mufti: Consuming Identity in Muslim America." *The Muslim World* 98 (4): 465–474.
- Zine, Jasmine. 2012. "Introduction: Muslim Cultural Politics in the Canadian Hinterland." In *Islam in the Hinterlands: Muslim Cultural Politics in Canada*, edited by Jasmine Zine, 1–37. Vancouver: UBC Press.

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# Unofficial Shari'a Courts in the West: Conflict or Coexistence?

## INTRODUCTION

The coexistence of Shari'a law within Western societies presents a complex picture, characterized by debates, controversies, and divergent attitudes by the states (Yilmaz 2003; 2016; 2023; 2024). In recent years, the emergence and operation of unofficial Muslim civil courts, often referred to as Shari'a courts, have sparked intense scrutiny and debate across countries like Britain, Europe, and the United States. These courts primarily handle family matters within the Muslim community, such as marriage, divorce, and child custody, operating within the framework of existing legal systems but often subject to polarized debates and sensationalism.

This chapter explores the motivations behind the opposition to Shari'a law in family matters in Western societies, examining the economic, cultural, and political factors at play. While some argue that the interest in accommodating certain aspects of Shari'a law is driven by a desire to address the needs of specific communities, others express concerns about potential conflicts with human rights standards and gender equality.

Muslim arbitration tribunals, also known as Sharia councils or Islamic dispute resolution mechanisms, are alternative forums for resolving civil and family disputes within Muslim communities. These tribunals operate based on Islamic legal principles and are often utilized for matters such

as divorce, inheritance, and financial disputes. Research on Muslim arbitration tribunals has garnered significant attention due to the complex intersections of religious law, human rights, and multiculturalism.

Studies such as Bano's (2011; 2013) provide a comprehensive analysis of Islamic dispute resolution and family law, offering insights into the structure, operation, and legal implications of Sharia councils. Brechin (2013) contributes to the discourse by examining the use of Sharia law in religious arbitration in the United Kingdom, particularly focusing on the implications for human rights. Shachar (2011) addresses the challenges of multicultural jurisdictions and women's rights within the context of religious arbitration, shedding light on the tensions between cultural differences and legal norms. Shah-Kazemi (2001) explores the experiences of Muslim women in divorce proceedings and the complexities of navigating Shariah-based arbitration systems. Wilson (2010) critically assesses the Sharia debate in Britain, with a particular emphasis on the role of Sharia councils and their impact on the rights of Muslim women.

In Canada, Bakht (2004) examines the use of family arbitration using Sharia law, with a specific focus on Ontario's Arbitration Act and its implications for women's rights. Cohen (2000) provides insights into the workings of Beit Din, a Jewish arbitration tribunal, offering comparative perspectives on religious arbitration mechanisms in Canada. In the Netherlands, Bakker et al. (2010) conduct a study on Islamic advisement and dispute resolution among Muslims, highlighting the role of Sharia in legal decision-making processes. Berger (2015) discusses the possibilities and challenges of implementing Sharia law in the Dutch context, proposing recommendations for the application of Islamic family law. Rohe (2011) offers a general discussion on alternative dispute resolution in Europe under the auspices of religious norms, presenting insights into the legal, social, and cultural dynamics surrounding religious arbitration mechanisms.

The varying attitudes towards Shari'a and its manifestations reflect broader debates on cultural integration, religious diversity, and the limits of religious accommodation within secular democratic frameworks. Some Western countries opt for recognizing or accommodating certain aspects of Shari'a law, aiming to address the needs of specific communities while upholding the primacy of the state's legal system. Others take a more stringent stance against any form of Shari'a law implementation, prioritizing the uniformity of the legal system and safeguarding individual rights and equality.

## UNITED STATES OF AMERICA

The United States differs from the UK in terms of the origins of its Muslim population. Many British Muslims come from countries governed by Shari'a law, such as Pakistan and Bangladesh. In contrast, many Muslims in America originate from countries where "Islamic" forms of government were not desired or seen as illegitimate. Iranians, for instance, sought refuge in the United States following Ayatollah Khomeini's Islamic Revolution in 1979, after having previously lived under the secular leadership of Reza Shah. Similarly, Muslims from the Middle East fled tyrannical regimes in search of a better life in America. African-American Muslims, on the other hand, were less concerned with jurisprudential issues or Shari'a law. For them, Islam offered a moral and political recourse to address societal issues affecting African Americans. Other Muslim migrants arrived in the United States for educational and business opportunities, while refugees embraced America's principles of freedom of religion, keeping their faith in the private sphere or within their homes.

Shari'a courts and the implementation of Shari'a rules in US courts were the biggest campaign that Frank Gaffney, Pamela Galler, Robert Spencer, and other anti-Islam campaigners used. But there was no case that used any Shari'a law to rule on a particular case. All those cases that Gaffney et al. claimed were assumptions that helped the "Islamophobia Industry" raise millions of dollars in donations, but all of them were made up and rebuked by US authorities (Lean 2012), despite no cases of the implementation of the Shari'a or the request by the Muslim community to call for the recognition of the Shari'a law in the US. Some policymakers went even further. For example, in 2010, the state of Oklahoma passed a vote to ban the use of Shari'a law in court cases, which supporters say was "a necessary pre-emptive strike" against Islamic law (Johnson and Sergie 2014: 3). However, the vote was later blocked by a federal judge who deemed it "unconstitutional" and "suspect" on the grounds it discriminated against religions (Huss 2012). Oklahoma was the first state to do that, and few other states followed Oklahoma, to ban a non-existent Shari'a law in the United States.

The use of Islamic law in America has been subject to various assertions and criticisms. Some of the main assertions against the use of Shari'a law in America are as follows:

1. Shari'a law advocates for the overthrow of Western civilization and the establishment of an Islamic caliphate. This assertion suggests that Shari'a law is seen as a threat to the existing social and political order in the United States (Huus 2012; Mach and Dakwar 2011).
2. All Muslims adhere to Shari'a law and that there is no moderate form of it. This perspective assumes that all Muslims either actively promote Shari'a law or are not truly adhering to it if they appear to be moderate. It disregards the diversity of beliefs and interpretations among Muslims (Patel et al. 2013).
3. Shari'a law is inherently anti-women, anti-freedom, and against other religions. This assertion suggests that Shari'a law is incompatible with principles of gender equality, individual liberties, and religious freedom. It highlights concerns about the treatment of women and non-Muslims under Shari'a law.
4. If people in the United States do not resist Shari'a law, Muslims will take over America. This assertion perpetuates the idea of a supposed Islamic takeover or domination, stoking fears about the influence of Shari'a law on American society (Huus 2012).

There are diverse perspectives on the nature and application of Shari'a law, and generalizations can overlook the complexities and nuances within Muslim communities. However, there is no serious, organized, campaign by any Muslim community in the US for the implementation of Shari'a law in the courts. Mostly due to the above-mentioned reasons, in general Muslim Americans are not preoccupied with the implementation of the Shari'a in America. The main discussions around Shari'a are driven by the anti-Islam pundits such as Pamela Galler and others.

The fear of Muslim arbitration courts extends to the perception of a new legal order emerging in America. Julie Macfarlane (2012: 15), who conducted fieldwork in the area of Muslim family law in Northern America, describes the inaccurate reporting on "Muslim arbitration tribunals" and argues that they "bear little or no resemblance to a formal arbitration" (Macfarlane 2012: 15). From her research, Macfarlane (2012: 15) stipulates, "There is no formal hearing or evidence presented, no legal representation of the parties, only rarely a written agreement to arbitrate, and no record of the proceedings (aside from the outcome, in some cases)." Macfarlane (2012: 15) believes these assumptions contribute to public hysteria about the creation of a parallel legal system or as she puts it "private processes with an aura of authority."

They are unofficial and unstructured, which increases the public hysteria on one hand, but have no legal implication on the other.

Macfarlane further notes (2012: 217) how some imams and Muslim leaders she interviewed advocated for one legal system instead of a separate Shari'a system. Some respondents argued it was better for North American courts to incorporate Islamic aspects of Shari'a to accommodate the needs of Muslims. This was only fair considering that many courts in America already catered to the needs of Christians (Macfarlane 2012: 216–217). Macfarlane concludes that Muslims can benefit from a private “marketplace model” that offers a range of services “including counselling, assessment, mediation and arbitration” (both binding and non-binding). She adds services in premarital and marital counselling will help inform Muslim about their rights through qualified Muslim professional in areas of litigation, counselling, and religious service (Macfarlane 2012: 251).

## EUROPE

Islamic law in Europe is not as foreign as we think of today. Islamic law has been practised in Greece since the establishment of the Modern Greek state in 1830. Following Greece's independence from the Ottoman Empire, a significant number of Muslims chose to stay in Greece, just as many Greeks remained in the Ottoman Empire's territory. To protect the rights of these minorities in both countries, an international treaty was necessary. The implementation of such a treaty became possible after the proclamation of the Turkish Republic in 1923 with the signing of the Lausanne Treaty. This treaty explicitly stated that the remaining Muslim minority in Greece could apply Islamic law. The treaty granted Muslim Greek citizens the right to use Islamic civil law in personal matters, as long as the rulings did not contradict Greece's constitution or international human rights standards (Boussiakou 2008: 13). Both Greece and Turkey were bound by the treaty to respect the rights of their religious minorities and to resolve matters pertaining to personal issues in accordance with their respective religious customs and rules (Hellenic Resources Network, n.d.; Tsaoussis and Zervogianni 2007: 211).

The recognition of Islamic law in Greece differs significantly from its recognition in Great Britain. Firstly, it is an older phenomenon that has largely been forgotten by many people. Secondly, the Greek state has

strictly limited its application only to Western Thrace, with the intention of eventually abolishing it (European Commission of Human Rights 1997). The Greek government has made several attempts to abolish the application of Shari'a law, even in Western Thrace. A Muslim member of parliament, expressed his support for the complete abolition of Shari'a law, noting that no other EU country applies it. He viewed the steps taken by the Greek government to abolish Shari'a courts as an important and positive development that would lead to greater freedom for the Muslim community (Guardian 2018). Therefore, Greece differs from Britain in that the implementation of Islamic law resulted from the presence of Muslims in Greece before its proclamation as a state, whereas in Great Britain, it arose as a response to the integration of Muslim migrants (Tsitselikis 2004: 402). Furthermore, the case of Greece is rooted in international treaties, while in Britain, the recognition of Islamic law emerged as a means to address the issue of Muslim integration. Also, the Muslim population in Greece is distinct from that in Great Britain and other parts of Europe. In Greece, Islamic law applies specifically to the native Greek-Muslim minority residing in Western Thrace, who have been present since the dissolution of the Ottoman Empire. It does not apply to the immigrant Muslim population from the Middle East, North Africa, Iran, and Turkey.

Austria also presents an intriguing case study. It was one of the few European countries that recognized Islam as a state religion in 1912. The Muslim community in Austria gradually grew through the migration of workers in the 1960s and 1970s. In 1979, the Islamic Religious Community of Austria (Islamische Glaubensgemeinschaft in Österreich) was constitutionally recognized as the main legal body representing Muslims, alongside the other 15 legally recognized churches in Austria (Hafez 2017: 269). This official recognition of Muslims in Austria entailed various state-funded religious services, including Islamic religious education in public schools, pastoral services, the appointment of Muslim chaplains in the military and prisons, and consultative forums for discussing policy issues affecting the Muslim community's religious life. Alongside the state-funded institutions, there are also smaller organizations linked to the Muslim Brotherhood and Turkish-origin organizations that operate outside the official Islamic religious community (Hafez 2013).

In Austria, the pluralistic understanding of church and state was challenged in 2015 with significant amendments to the Islam Act. These

amendments raised concerns about Muslims being viewed as a national security threat. Opponents of the Act were labelled as “radicals,” “extremists,” and affiliates of the “Muslim Brotherhood” (Hafez 2016). The amendments included a ban on foreign aid for mosques and other religious services, while allowing Christians and Jews to receive international support (BBC 2015). However, Austrian government officials argued that the new laws strengthened the legal status of Islam by guaranteeing Islamic pastoral care in hospitals and the army, as well as facilitating the consumption and production of halal food (Nasralla 2015). Despite these guarantees, the Austrian government demonstrated its conservative agenda by introducing the “anti-face-veiling act” in 2017 to diminish the visibility of orthodox Islam (Oltermann 2018).

### GREAT BRITAIN

Earlier research in the early 2000s provided foundational insights into the operations of Sharia councils, with Kazemi’s seminal study (2001) being frequently referenced. Kazemi conducted empirical research on the Muslim Law (Shariah) Council (MLSC), examining 287 cases and conducting interviews with Muslim women utilizing the council’s services. Expanding on this research, Bano’s PhD thesis (2004) offered significant empirical contributions, focusing on organizational structures and administrative processes of these councils. Through comparative analysis of different Sharia councils and their dispute resolution approaches, Bano identified common procedural steps involved in issuing religious divorces. These steps include application submission, investigation, mediation or reconciliation sessions, and panel meetings for final decisions (Bano 2004: 160). Subsequent studies by researchers such as Walker (2016), Parveen (2017), and Cusairi and Zahraa (2018) have corroborated these commonalities in procedural frameworks.

The recognition of Shari’a courts in Great Britain has been a topic of discussion for quite some time. Islamic courts, commonly referred to as Shari’a courts, have been in operation since the 1980s, with the establishment of the first Shari’a council in 1982. Initially, these courts were unofficial, and it is estimated that there were approximately 85 Shari’a courts operating in Great Britain during that period (Hamilton 2009).

In 2007, the first official Islamic arbitration court was established in Great Britain. It operates under the condition that all parties involved voluntarily consent to have their disputes resolved in this court (Toplansky

2010; Hickley 2008). Over the course of a decade, the acceptance of Shari'a courts for civil matters has had a positive impact on the way Muslim Britons associate themselves with the country and has also helped improve its image abroad, particularly in the Middle East.

The primary role of these courts today is to resolve civil disputes, with a focus on cases such as divorce and inheritance. However, their scope can be broader, encompassing a range of issues including neighbour disputes, domestic violence, child custody, and financial disputes (Taher 2008; Hickley 2008). What is particularly interesting is that some Islamic arbitration courts have received applications from non-Muslims. These courts are not exclusive to Muslims, and non-Muslims may choose to have their disputes resolved in these courts due to the perceived advantages of a less bureaucratic, faster, and more informal process compared to traditional legal avenues (Hamilton 2009).

One example of this is:

A non-Muslim Briton took his Muslim business partner to the tribunal to sort out a dispute over the profits in their car fleet company. The non-Muslim claimed that there had been an oral agreement between the pair. The tribunal found that because of certain things the Muslim man did, that agreement had existed. The non-Muslim was awarded £48,000. (Hamilton 2009)

The establishment of Shari'a courts in Great Britain has sparked significant public debate. Critics of these courts argue that the existing legal system in the country is sufficient and that there should not be a parallel legal system for specific religious or cultural groups (White 2008; Doughty 2009; Edwards 2008). Some critics also express concerns about gender discrimination within Islamic law, highlighting potential inequalities faced by women (Taher 2008; Hickley 2008).

However, the arbitration system, which includes Islamic courts, is not exclusive to Muslims. Other religious and non-affiliated groups in Britain, such as the Jewish population, have their own arbitration courts known as Beth Din courts. The presence of these courts is made possible by the Arbitration Act of 1996, which allows for the use of religious codes and alternative dispute resolution methods (Taher 2008).

Prominent figures supporting the recognition of Shari'a courts include the Archbishop of Canterbury, Rowan Williams, and Lord Chief Justice, Lord Philips. The Archbishop argued that the recognition of these courts

is inevitable and could contribute to social cohesion. He cited polls indicating that Muslim communities in the country desire the freedom to live under Shari'a law (Williams 2008). Lord Philips, on the other hand, emphasized that the British legal system permits the use of religious codes in arbitration and stated that there is no reason why Shari'a principles or any other religious code should not serve as the basis for mediation or alternative dispute resolution (BBC 2008). Supporters of Shari'a courts do not view them as a conflicting or parallel legal system challenging state laws but rather as civil courts open to all members of society on a voluntary basis.

The Islamic Shari'a Council gained popularity for its active role in resolving matrimonial issues according to both Islamic and English laws. Even if a marriage is terminated by the secular courts, there can be a problem of a "limping marriage" in the Muslim community (Yilmaz 2000; 2001; 2002), where the marriage continues until it is terminated according to Islamic law as well. The resolution of such disputes requires recognition from both civil and religious perspectives (Pearl and Menski 1998: 79). The main challenge arises when the husband refuses to grant a divorce, but provisions exist to assist the wife in obtaining a divorce if the requirements are fulfilled. The process involves adherence to both Islamic and English laws. Consequently, Islamic councils have taken on the responsibility of handling marital issues based on Islamic jurisdiction, with religious scholars playing a role in the process. This has even led some mosques in Britain to serve as places for marriage registration.

There are five potential options for the state's stance towards Islamic councils: (i) full accommodation; (ii) partial independent accommodation; (iii) partial dependent accommodation; (iv) no accommodation, no intervention; (v) state intervention (Zee 2014: 1). Supporters of Shari'a family law favour partial dependent accommodation, while in practice, the UK follows a no accommodation, no intervention approach (2014: 1). However, there are still criticisms of the Islamic councils and their practice of Shari'a family laws.

Moreover, Dr. Williams argued that the methodologies and nature of both the secular and Islamic laws are very divisive. He stated,

Thus, in contrast to what is sometimes assumed, we do not simply have a standoff between two rival legal systems when we discuss Islamic and British law. On the one hand, Shari'a depends for its legitimacy not on any human decision, not on votes or preferences, but on the conviction

that it represents the mind of God; on the other, it is to some extent unfinished business so far as codified and precise provisions are concerned. To recognise Shari'a is to recognise a method of jurisprudence governed by revealed texts rather than a single system. (Shah 2010: 7)

It might be important to understand that even though Islamic councils are providing Muslim minorities with services in the family law spheres in Britain, the criticism and debates are never-ending. As an example, the letter written by the secularist campaigners states,

Our research shows that the power and control of Muslim fundamentalist networks has grown enormously over the last 30 years. This has led to a widespread belief that a civil marriage is not necessary; that women must have a divorce certificate issued by a Shari'a "court" in apparent judicial procedure; and that they must get this "certificate" even if they already have a civil divorce...If the government is serious about gender equality and ending violence against women, why is it undermining the validity of a civil divorce under English law? Why is it pushing women towards religious courts? (National Secular Society 14 August 2018)

The presence and influence of Shari'a councils stand as a testament to the diverse religious and legal environment shaping the nation. Since the 1980s, these councils, often misconstrued as Shari'a courts, have provided guidance to Muslim believers, particularly in matters of marriage and divorce. Yet, their emergence has stirred debates, with concerns raised about their role in perpetuating discriminatory practices against women and their impact on the broader legal framework of the country.

Since the 1980s, Shari'a councils, often misidentified as Shari'a courts, have operated in the UK, offering guidance primarily for women seeking divorces when their husbands refuse consent. As legal aid cuts have made divorces more expensive, more married couples are turning to these councils, posing a significant threat to Muslim women. These organizations, accused of establishing a parallel legal system, issue rulings without legal validity but with decision-making capacity, raising concerns about their impact on cultural and religious practices within UK Muslim communities.

Despite many Muslims benefiting from Shari'a councils and following religious codes, reports suggest that some councils may work in discriminatory ways (GOV.UK 26 May 2016). One significant issue is the increasing number of Muslim couples who rely on Shari'a councils

because they have undergone religious marriage ceremonies that are not legally recognized under UK law. Due to the lack of a central registry for Islamic marriages, which can occur outside mosques and without an imam, it is challenging to determine the exact number of couples who have solely undergone religious ceremonies.

Some men opt out of legal marriage to safeguard their assets in case of divorce, instead of relying on prenuptial agreements. Some women, fearing the loss of marriage prospects, agree to this arrangement despite its lack of legal protection. Consequently, these Muslim women face vulnerability, especially if they have left their jobs to take care of their children. The potential outcome is the risk of women being left without legal recourse, facing potential homelessness upon marital dissolution. The Casey Review highlights the compounded vulnerability within Muslim communities due to lower rates of female employment, limited English proficiency, and a perceived lack of awareness regarding civil rights. Home Secretary Theresa May highlighted these concerns, emphasizing the importance of the singular rule of law in the country, which provides rights and security for every citizen (GOV.UK 26 May 2016).

As part of the government's Counter-Extremism Strategy, Home Secretary Theresa May commissioned Dr. Siddiqui, a professor of Islamic and Interreligious Studies, to chair an independent review specifically examining the application of Shari'a law within councils in England and Wales. The review aimed to assess whether Shari'a law is being misused or applied in a manner incompatible with domestic law, particularly focusing on potential discriminatory practices against women using Shari'a councils (Siddiqui 2018: 3). The resulting report, published in 2018, titled "The Independent Review into The Application of Shari'a Law In England and Wales," remains the latest comprehensive investigation on the subject, serving as a cornerstone for subsequent discussions and debates regarding Muslims, Shari'a, and Shari'a councils in the UK.

The ambiguity surrounding Shari'a councils is evident, with no clear definition of their makeup or number. Estimates in England and Wales vary widely, ranging from 30 to 85, while there are no known Shari'a councils in Scotland. For the purposes of the review, Shari'a councils are defined as voluntary local associations of scholars authorized to offer advice primarily in the realm of religious marriage and divorce (Siddiqui 2018: 4).

Despite their widespread presence, Shari'a councils possess no legal status or binding authority under civil law in England and Wales. While

Shari'a serves as guidance for many Muslims, decisions or recommendations made by Shari'a councils inconsistent with domestic law are deemed illegal, with domestic law prevailing. Although Shari'a councils claim no legal authority, they indeed hold decision-making capacity, especially concerning Islamic divorce (Siddiqui 2018: 10).

The review's examination of Shari'a councils sheds light on their primary users: women, with nearly all individuals seeking Islamic divorces. The review found that a significant number of Muslim couples fail to civilly register their marriages, leaving some women with no option but to seek an Islamic divorce. This underscores the complexity of reasons motivating Muslim women to turn to Shari'a councils (Siddiqui 2018: 5).

The report highlights the perception of the rise of extremism as indicative of a lack of social and political integration within many parts of the UK. The adherence to Shari'a, loosely translated as Islamic law, is seen by some as contributing to the isolation and lack of engagement of many Muslims in wider British citizenship and civic life (Siddiqui 2018: 3).

Evidence collected by the review reveals a variety of practices within Shari'a councils. Despite proposals to ban Shari'a councils, there is a lack of alternative solutions for individuals seeking religious divorce. Shari'a councils fulfil a genuine need within certain Muslim communities, addressing the demand for religious divorce (Siddiqui 2018: 4).

It's crucial to clarify that Shari'a councils are not courts and should not refer to their members as judges. This distinction is essential to dispel public misconceptions about the primacy of Shari'a over domestic law and concerns regarding the existence of a parallel legal system (Siddiqui 2018: 10; Torrance 2019: 2). Both organizations and academics specializing in religion and law prefer the term "Shari'a council" over "Shari'a courts" (Torrance 2019: 2).

Shari'a councils aren't the sole entities managing Muslim divorces. The Muslim Arbitration Tribunal (MAT), operational since the early 2000s, operates independently under the Arbitration Act 1996. It provides binding arbitration services primarily for commercial issues. MAT decisions can be enforced through formal courts if contracts adhere to specific standards and comply with English and Welsh law. However, there's ongoing debate over whether the Act should extend to arbitrating family disputes, with governments holding differing positions (Siddiqui 2018: 11).

The Arbitration Act's applicability to family disputes remains a topic of contention. While the Act doesn't explicitly exclude family cases, governmental positions on the matter vary. In November 2008, Jack Straw, the then Secretary of State for Justice, emphasized that arbitration isn't intended for resolving family disputes. Consequently, draft consent orders resulting from Shari'a Council agreements haven't been enforceable under the Arbitration Act 1996 in matrimonial proceedings. Presently, there's no mechanism to track the enforcement of such agreements in civil proceedings, and judges in England and Wales are only made aware of consent orders originating from a Shari'a council if parties disclose it.

Baroness Cox, a crossbench member of the British House of Lords, introduced the Arbitration and Mediation Services (Equality) Bill to the House of Lords on 10 May 2012. The bill aimed to safeguard Muslim women from misconceptions regarding Shari'a councils' jurisdiction, allowing British courts to disregard agreements if one party's consent was coerced. It proposed retracting decisions made under pressure and preventing discrimination, harassment, or victimization based on gender. Additionally, the bill sought to empower courts to ignore orders based on illegitimate consent and ensure women's protection regarding unregistered marriages.

However, Baroness Cox's six-year campaign for British Muslim women concluded in 2016 without success. Despite multiple attempts, her bill failed to pass through the House of Lords, and government opposition hindered its progress. Lord Gardiner, representing the government, acknowledged the bill's noble objectives but argued against its viability, citing concerns about religious arbitration prohibitions conflicting with the Arbitration Act of 1996.

In 2012, Lord Gardiner of Kimble addressed the Government's stance during a Second Reading debate on Baroness Cox's Arbitration and Mediation Services (Equality) Bill. He highlighted the existence of the Muslim Arbitration Tribunal, established in 2007, as an alternative avenue for resolving civil disputes according to Shari'a principles. Lord Gardiner emphasized that while parties could choose religious principles for arbitration under the Arbitration Act 1996, decisions remained subject to national court review, ensuring that agreements were freely made (Torrance 2019).

## CANADA

In Canada, debates surrounding Sharia courts mirror those in other Western countries, reflecting a nuanced interplay of legal, cultural, religious, and human rights considerations. Sharia courts, also known as Islamic tribunals or councils, have emerged as alternative dispute resolution mechanisms primarily dealing with family law matters within Muslim communities in Canada. These courts operate based on Islamic principles and jurisprudence, providing a platform for community members to resolve disputes in accordance with their religious beliefs and practices (Bouchard and Turek 2011).

Proponents of Sharia courts argue that they offer a culturally sensitive and accessible avenue for resolving family conflicts within Muslim communities, thereby promoting social cohesion and religious freedom (Fadel 2013). Advocates view Sharia courts as an expression of legal pluralism, accommodating diverse religious and cultural norms within Canada's secular legal framework. Moreover, proponents contend that Sharia courts can empower marginalized community members, particularly women, by providing them with a forum to address issues such as divorce, custody, and inheritance in a manner consistent with their religious convictions (Bano 2011; Bano 2013).

However, the establishment and operation of Sharia courts in Canada have elicited concerns and criticisms from various quarters. Critics raise apprehensions about potential conflicts between Sharia law and Canadian legal principles, particularly regarding gender equality and women's rights (Bouchard and Turek 2011). They argue that certain interpretations and applications of Sharia law may contravene Canadian laws and human rights standards, particularly with respect to issues such as polygamy, unilateral divorce, and the treatment of women in matters of inheritance and child custody (Fadel 2013).

Furthermore, there are concerns about the lack of oversight, accountability, and transparency in the functioning of Sharia courts, raising questions about the fairness and impartiality of their decisions (Bano 2011; Bano 2013). Critics contend that these courts may perpetuate patriarchal norms and undermine the principles of equality and justice enshrined in Canadian law.

In response to these concerns, there have been calls for greater regulation and oversight of Sharia courts to ensure compliance with Canadian legal standards and human rights principles (Bouchard and

Turek 2011). Stakeholders, including legal scholars, policymakers, and community leaders, advocate for mechanisms to safeguard the rights of vulnerable individuals, particularly women and children, within the context of religious arbitration.

## AUSTRALIA

The debates surrounding the establishment and operation of Sharia courts in Australia represent a complex intersection of legal, cultural, religious, and human rights considerations. Sharia courts, also known as Islamic tribunals or councils, have emerged as alternative dispute resolution mechanisms primarily dealing with family law matters, including marriage, divorce, custody, and inheritance, among Muslim communities in Australia. These courts operate based on Islamic principles and jurisprudence, providing a forum for community members to resolve disputes according to their religious beliefs and practices (Krayem 2014).

Proponents argue that Sharia courts offer a culturally sensitive and accessible avenue for resolving family conflicts within Muslim communities, promoting social cohesion and religious freedom (Jamal 2016). They view these courts as an expression of legal pluralism, accommodating diverse religious and cultural norms within a secular legal framework. Moreover, proponents contend that Sharia courts can empower marginalized community members, particularly women, by providing them with a forum to address issues such as divorce and custody in accordance with their religious beliefs (Maxwell 2014).

However, the establishment of Sharia courts has sparked considerable controversy and debate. Critics raise concerns about the potential for discriminatory practices, particularly regarding gender equality and women's rights (Barker 2011). They argue that Sharia law, as interpreted and applied in some contexts, may conflict with Australia's legal principles and human rights standards, particularly concerning issues such as polygamy, unilateral divorce, and unequal treatment of women in matters of inheritance and child custody (Farrar and Krayem 2014).

Furthermore, there are apprehensions about the lack of oversight, accountability, and transparency in the functioning of Sharia courts, leading to questions about the fairness and impartiality of their decisions (Maxwell 2014). Critics argue that these courts may perpetuate patriarchal norms and undermine the principles of equality and justice enshrined in Australian law.

In a study done in Australia in 2020, when the responders were asked about their understanding of the term shariah, the majority of them (51.1%) described it as “Islamic jurists’ opinions and interpretations based on the Qur’an and other sources,” while 36.4% viewed it as a “divine/revealed law/legal code.” It’s noteworthy that some respondents identified shariah as a “path” or a “way,” referencing Quranic verses (Rane et al. 2020). Historically, the concept of shariah as “law” did not exist during the time of the Prophet Muhammad, and the terms fiqh and shariah were not used in canonical hadith compendia in reference to jurisprudence or legal code. Classical Islamic jurists developed the concept of shariah as an ideal expression of Allah’s will, encompassing beliefs, ethics, morals, values, and laws of Islam. In modern times, particularly since the latter half of the twentieth century, the idea of shariah has evolved to be associated closely with the notion of a legal code. Globally, Muslims are more likely to view shariah as the revealed word of God rather than a legal code developed by men. Despite concerns over its appropriation by Islamist and jihadist groups, there’s a need for a critical-analytical understanding of shariah, including its evolution and contemporary usage.

Regarding respondents’ views on practising or implementing shariah, the survey found that a significant majority are content with the current ability to practise Islam in Australia and view the legal system as upholding principles of justice. While a slight majority express interest in recognizing classical shariah laws in family matters within Australian law, a smaller proportion express support for living in a country where polygamy is legal or classical shariah punishments are implemented. Notably, there are gender disparities in these views, with males more likely than females to support the implementation of shariah laws and punishments, and to express interest in living in countries where such laws are enforced (Rane et al. 2020).

In response to some voiced and some unvoiced concerns, various stakeholders, including legal scholars, policymakers, and community leaders, have called for greater regulation and oversight of Sharia courts to ensure compliance with Australian legal standards and human rights principles (Krayem 2014). They advocate for mechanisms to safeguard the rights of vulnerable individuals, particularly women and children, within the context of religious arbitration.

## CONCLUSION

In general, Islamic councils or Muslim tribunals serve as dispute resolution bodies for issues related to marriage, divorce, and inheritance within Muslim families. While such tribunals exist in some Western countries, in other ones there is a strong opposition to the establishment of Islamic courts. The dynamics and attitudes towards Shari'a and its various manifestations can differ significantly among Western countries. While some countries have shown acceptance or tolerance towards Shari'a-compliant finance, they may still have reservations or concerns when it comes to the implementation of Shari'a law in other areas of life. The Australian case is an example where there is significant opposition to Shari'a and its implementation.

The varying attitudes can be attributed to a range of factors, including historical, cultural, and political contexts. Western societies grapple with the challenge of accommodating diverse religious and cultural practices while maintaining the principles of secularism, equality, and the rule of law. Balancing religious freedom with the need to uphold a common legal framework is an ongoing debate in these societies.

Some Western countries have opted to recognize or accommodate certain aspects of Shari'a law within specific domains, such as family law or dispute resolution, while upholding the primacy of the state's legal system. This approach aims to provide a level of religious accommodation and address the needs of specific communities. However, it is often subject to scrutiny and criticism, with concerns raised about potential conflicts with human rights standards, gender equality, and the overall coherence of the legal system. In contrast, other Western countries have taken a more stringent stance against any form of Shari'a law implementation, citing concerns about potential infringements on individual rights, gender equality, and the principle of legal uniformity. These countries prioritize the adherence to a single legal system that applies to all citizens, regardless of their religious or cultural backgrounds.

## REFERENCES

- "Austria passes controversial reforms to 1912 Islam law." BBC World 25 February 2015. <https://www.bbc.com/news/world-europe-31629543>. Accessed 11 July 2018.

- Lean, N. (2012). *The Islamophobia Industry: How the Right Manufactures Fear of Muslims*. London: Pluto Press.
- "Shari'a Law "could have UK role"." *BBC News*, 4 July 2008. [http://news.bbc.co.uk/2/hi/uk\\_news/7488790.stm](http://news.bbc.co.uk/2/hi/uk_news/7488790.stm). Accessed 25 April 2018.
- Bakht, Natasha. 2004. "Family Arbitration Using Sharia Law: Examining Ontario's Arbitration Act and its Impact on Women." *Muslim World Journal of Human Rights*, 1.
- Bakker, Laurens G.H. et al. 2010. *Sharia in Nederland. Een studie naar islamitische advisering en geschilbeslechting bij moslims in Nederland*.
- Bano, S. 2011. "The Sharia, Islamic Family Laws and International Human Rights: Challenge for the CEDAW and the UN General Assembly." *Religion & Human Rights*, 6 (2): 101–122.
- Bano, Samia. 2013. "Islamic Family Law and English Family Courts: Reflecting on Legal Pluralism from the Perspective of Muslim Women's Access to Justice." *Social & Legal Studies* 22 (1): 57–78.
- Barker, Renae. 2011. "Sharia Law in Australia: Our History and Current Proposals." *Murdoch University Electronic Journal of Law* 18 (3): 48–60.
- Berger, Maurits S. 2015. "De (on)mogelijkheid van Sharia in Nederland. Met voorstellen voor toepassing van islamitisch familierecht." In *Actuele ontwikkelingen in het familierecht*, edited by Katharina Boele-Woelki, 69. Ars Aequi.
- Bouchard, M., & Turek, P. 2011. "Sharia Law and Canadian Family Law: Theory and Practice in Ontario." In *Islam, Society and Politics in Central Asia and the Caucasus* edited by B. S. Turner and R. T. Kavanagh, 235–254. London: Routledge.
- Boussiakou, Iris. 2008. "Religious Freedom and Minority Rights in Greece: The Case of the Muslim Minority in Western Thrace." *The European Institute*, (December). [http://eprints.lse.ac.uk/23191/1/GreeSE\\_No\\_21.pdf](http://eprints.lse.ac.uk/23191/1/GreeSE_No_21.pdf). Accessed 15 July 2018.
- Brechin, Jessie. 2013. "A Study of the Use of Sharia Law in Religious Arbitration in the United Kingdom and the Concerns that this Raises for Human Rights." *Ecclesiastical Law Journal* 15: 293.
- Cohen, Lynne. 2000. "Inside the Beit Din." *Canadian Lawyer* 5: 27.
- Doughty, Steve. 2009. "British has 85 Shari'a Courts: The Astonishing Spread of the Islamic Justice Behind Closed Doors." *Daily Mail*, (June). <http://www.dailymail.co.uk/news/article-1196165/Britain-85-Shari'a-courts-The-astonishing-spread-Islamic-justice-closed-doors.html>. Accessed on 25 April 2018.
- Edwards, Richard. 2008. "Shari'a Courts Operating in Britain." *The Telegraph*, September 14. <http://www.telegraph.co.uk/news/uknews/2957428/Shari'a-law-courts-operating-in-Britain.html>. Accessed on 25 April 2018.

- European Commission of Human Rights. (1997). *Report on the Application of Sharia Law in Europe*. Brussels: European Commission of Human Rights.
- Fadel, M. 2013. "The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law." *Fordham Law Review*, 82 (1): 751–802.
- Farid, Hafez. 2016. "Die MJÖ als Projektionsfläche für Verschwörungen." In *Jung, muslimisch, österreichisch: Einblicke in 20 Jahre Muslimische Jugend Österreich*, edited by, Farid Hafez, Reinhard Heinisch, Raoul Kneucker and Regina Polak. Vienna: New Academic Press & Alhambra.
- Farrar, Salim and Ghena Krayem. 2014. "Sharia in the West: From Constitutional Pluralism to Legal Pluralism in Europe and the USA." *Melbourne Journal of International Law* 15 (1): 36–63.
- Guardian. 2018. "Greece's Muslim Minority Hails Change to Limit Power of Shari'a Law." *The Guardian*. January 11. <https://www.theguardian.com/world/2018/jan/10/historic-step-greek-pm-hails-change-to-limit-power-of-Shari'a-law>. Accessed 3 August 2018.
- Hafez, Farid. 2013. "One Representing the Many, Institutionalized Austrian Islam." In *Debating Islam. Negotiating Religion, Europe, and the Self*, edited by S. Behloul, S. Leuenberger & A. Tunger-Zanetti, 227–242. Bielefeld: Transcript Verlag.
- Hafez, Farid. 2017. "Austrian Muslims Protest against Austria's Revised "Islam Act."" *Journal of Muslim Minority Affairs*, 37 (3): 267–83.
- Hamilton, Fiona. 2009. "Non-Muslims Turning to Shari'a Courts to Resolve Civil Disputes." *The Times*, July 21. [http://themuslimlawyer.blogspot.com/2009/07/non-muslims-turning-to-Shari'a-courts-to\\_29.html](http://themuslimlawyer.blogspot.com/2009/07/non-muslims-turning-to-Shari'a-courts-to_29.html). Accessed 25 April 2018.
- Hickley, Matthew. 2008. "Islamic Shari'a Courts in Britain are now "Legally Binding"." *Daily Mail*, September 15. <http://www.dailymail.co.uk/news/article-1055764/Islamic-Shari'a-courts-Britain-legally-binding.html>. Accessed 25 April 2018.
- Huus, Kari. 2012. 'Federal Court Deals Blow to Anti-Shari'a Efforts,' *NBC News*, January 10. [http://usnews.nbcnews.com/\\_news/2012/01/10/10097954-federal-court-deals-blow-to-anti-Shari'a-efforts?lite](http://usnews.nbcnews.com/_news/2012/01/10/10097954-federal-court-deals-blow-to-anti-Shari'a-efforts?lite). Accessed 16 July 2018.
- Jamal, Arif. 2016. "Australian Sharia Law Courts: An Alternative Form of Justice or a Threat to Our Legal System?" *Sydney Law Review* 38 (4): 625–650.
- Johnson, Toni and Sergie, Mohammed A. 2014. "Islam: Governing under Shari'a." *Council on Foreign Relations* July 25. [http://www.netadvisor.org/wp-content/uploads/2014/09/2014-00-00-Islam\\_-\\_Governing-Under-Shari'a-Council-on-Foreign-Relations.pdf](http://www.netadvisor.org/wp-content/uploads/2014/09/2014-00-00-Islam_-_Governing-Under-Shari'a-Council-on-Foreign-Relations.pdf). Accessed 13 July 2018.
- Krayem, Ghena. 2014. "Recognition of Islamic Marriages in Australia: A Cautionary Tale." *Melbourne University Law Review* 38 (2): 692–733.

- Macfarlane, Julie. 2012. *Islamic Divorce in North America: A Shari'a Path in a Secular Society*. Oxford: Oxford University Press.
- Mach, Daniel and Jamil, Dakwar. 2011. "Anti-Shari'a Law: A Solution in Search of a Problem." *Huffpost Religion*, May 20. [http://www.huffingtonpost.com/2011/05/20/anti-Shari'a-law-a-solutio\\_n\\_864389.html](http://www.huffingtonpost.com/2011/05/20/anti-Shari'a-law-a-solutio_n_864389.html). Accessed 16 July 2018.
- Maxwell, Daniel. 2014. "An Examination of Sharia Law in Australia in Light of Its Application in England." *Alternative Law Journal* 39 (1): 17–21.
- Nasralla, Shadia. 2015. "Austria Passes "Law on Islam" Banning Foreign Money for Muslim Groups." *Reuters*, February 26. <https://www.reuters.com/article/us-austria-muslims/austria-passes-law-on-islam-banning-foreign-money-for-muslim-groups-idUSKBN0LT28420150225>. Accessed 11 July 2018.
- Oltermann, Philip. 2018. "Austrian Full-face veil ban Condemned as a Failure by Police." *The Guardian*, March 27. <https://www.theguardian.com/world/2018/mar/27/austrian-full-face-veil-ban-condemned-failure-police-integration-smog-marks-animal-costumes>. Accessed 12 July 2018.
- Patel, Fazia, Duss, Matthew and Toh, Amos. 2013. "Foreign Law Bans: Legal Uncertainties and Practical Problems." *Center for American Progress and Brennan Center for Justice*, May 16. <http://www.americanprogress.org/wp-content/uploads/2013/05/ForeignLawBans.pdf>. Accessed 16 July 2018.
- Pearl, D, Menski, W. (1998). *Muslim Family Law*. London: Sweet & Maxwell.
- Rane, H, Ewart, J, and Abdalla, M. (2020). *Media Framing of the Muslim World: Conflicts, Crises and Contexts*. Singapore: Palgrave Macmillan.
- Rohe, Mathias. 2011. "Alternative Dispute Resolution in Europe under the Auspices of Religious Norms." *RELIGARE Working Paper* 6. <http://www.religareproject.eu/system/files/Alternative%20Dispute%20Resolution%20by%20Rohe%20e-version.pdf>.
- Shachar, Ayelet. 2011. *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Cambridge: Cambridge University Press.
- Shah, P. (2010). *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law*. London: Routledge.
- Shah-Kazemi, Sonia N. 2001. *Untying the Knot: Muslim Women, Divorce and the Shariah*. Nuttfield Foundation.
- Siddiqui, Mona. 2018. *Independent Review into the Application of Sharia Law in England and Wales*. London: UK Parliament. <https://www.gov.uk/government/publications/applying-sharia-law-in-england-and-wales-independent-review>
- Taher, Abul. 2008. "Revealed: UK's First Official Shari'a Courts." *The Sunday Times*, September 14. [http://www.wildernesschristianity.net/info/UK\\_Shari'a\\_courts/Times-On-Line\\_UK-first-official-Shari'a-courts\\_edited.html](http://www.wildernesschristianity.net/info/UK_Shari'a_courts/Times-On-Line_UK-first-official-Shari'a-courts_edited.html). Accessed 25 April 2018.

- Toplansky, Eileen F. 2010. "Shari'a Law in Canada and Britain." *American Thinker*, August 8. [https://www.americanthinker.com/articles/2010/08/Shari'a\\_law\\_in\\_canada\\_and\\_brita.html](https://www.americanthinker.com/articles/2010/08/Shari'a_law_in_canada_and_brita.html). Accessed 25 April 2018.
- Torrance, D. 2019. Sharia Law Courts in the UK. Debate Pack Number CDP-2019-0102, House of Commons Library, 1st May 2019. Available at <https://researchbriefings.files.parliament.uk/documents/CDP-2019-0102/CDP-2019-0102.pdf>
- Tsaoussi, Aspasia and Zervogianni, Eleni. 2008. "Multiculturalism and Family Law: The Case of Greek Muslims." In *European Challenges in Contemporary Family Law*, edited by Katharina Boele-Woelki and Tone Sverdrup, Intersentia: Antwerp, Oxford and Portland.
- Tsitselikis, Konstantios. 2004. "The Legal Status of Islam in Greece." *Die Welt Des Islam, New Series* 44(3), 402–431.
- White, Hilary. 2008. "Shari'a Courts Operating in England Recognized by British Law." *Life Site News*, December 17. <http://www.lifesitenews.com/news/archive/ldn/2008/sep/08091708>. Accessed 25 April 2018.
- Williams, Rowan. 2008. "Civil and Religious Law in England: A Religious Perspective." *The Times*, February 8. <https://www.thetimes.co.uk/article/full-text-of-archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective-gr55xb6d0n9>. Accessed 1 May 2011.
- Wilson, Jemma. 2010. "The Sharia Debate in Britain: Sharia Councils and the Oppression of Muslim Women." *Aberdeen Student Law Review* 1: 46.
- Yilmaz, I. 2000. Muslim Law in Britain, Reflections in the Socio-Legal Sphere and Differential Legal Treatment. *Journal of Muslim Minority Affairs*, Vol. 20, No. 2.
- Yilmaz, I. 2001. Law as Chameleon: The Question of Incorporation of Muslim Personal Law into the English Law. *Journal of Muslim Minority Affairs*, Vol. 21, No. 2, pp. 297–308.
- Yilmaz, I. 2002. The challenge of post-modern legality and Muslim legal pluralism in England. *Journal of Ethnic and Migration Studies*, Vol. 28, No. 2, pp. 343–354.
- Yilmaz, I. 2003. Muslim Alternative Dispute Resolution and Neo-Ijtihad in England. *Alternatives: Turkish Journal of International Relations*, Vol. 2, No. 1, pp. 1–24.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Reprint. London and New York: Routledge.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.

Zee, M. (2014). *Choosing Sharia? Multiculturalism, Islamic Fundamentalism and British Sharia Councils*. Leiden: Eleven International Publishing.

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## Religious Scholars (*Ulama*) and Unofficial Islamic Law in the Western Cyberspace

### INTRODUCTION: ULAMA AS THE CUSTODIANS OF ISLAM

“Ulama: The Custodians of Islam” is a seminal work by M. Qasim Zaman (2001), analysing the crucial role of the *ulama*, or Islamic scholars, in shaping and preserving the religious tradition of Islam. Throughout the book, Zaman highlights the responsibilities and profound influence wielded by the *ulama* across different historical and cultural contexts within the Muslim world and how the *ulama* have served as guardians and interpreters of Islamic knowledge, ethics, and jurisprudence. Zaman shows that the *ulama*’s authority extends beyond religious matters, encompassing aspects of governance, morality, education, and social welfare, especially shedding light on the dynamic relationship between the *ulama* and political authority, illustrating how they have both cooperated with and challenged prevailing power structures throughout history (see also Hatina 2008). It must be noted that, as Ahmet Kuru (2020) has shown, the *ulama* mostly succumbed to the challenges in maintaining their independence and integrity in the face of political pressures. Regrettably, the *ulama* have often succumbed to co-option by rulers rather than serving as objective and independent arbiters of knowledge and wisdom. Kuru critiques the decline of intellectual and economic creativity in Muslim-majority countries, attributing it to the “*ulama*-state alliance” established in the eleventh century. Initially, the *ulama* maintained independence and resisted state influence. However, alliances between the

ulama and the state emerged through state-sponsored madrasas, militarization of the iqta system, tax farming, and the marginalization of philosophers and merchants.

One of the most common criticisms directed towards Islam is that it lacks a representative hierarchy similar to the Church in Christianity. While this criticism holds some truth, it fails to fully explain the crisis of authority in Islam. It has been argued that the decentralization within Islam actually fosters competition and the democratization of ideas and opinions within the Islamic legal and scholarly tradition. In Islam, there exists a class of intellectuals who specialize in religious sciences, theology, Islamic law, sociology, and political science. These individuals are known as ulama or trained religious scholars. Depending on their qualifications, they may hold various titles, but in the West, they are commonly referred to as imams or shaykhs. The ulama also include *fugaha* (jurists), *muftis* (legal specialists), and *mutakallimun* (theologians). Their roles encompass providing counsel, conducting marriages and funerals, and serving as mediators and judges (El Fadl 2007: 28). While there is an intellectual class in Islam, it is not as centralized or powerful as the Papacy or the Priesthood in Christianity. Nevertheless, the lack of centralization has allowed the ulama to develop and share diverse and competing scholarly opinions while maintaining a degree of independence from the state.

For Muslims, the ulama experienced a significant blow towards the end of the nineteenth century with the onset of colonialism. This period witnessed the emergence of a new generation of Muslim elites, as the ulama were either silenced or co-opted by the state. Under the guise of modernization, Shari'a was replaced with Western-based legal systems, and Western-trained lawyers became the new legal authorities. Furthermore, rulers installed by Western colonialists dismantled traditional Shari'a scholarship. Ebrahim Moosa (2009: 165) attributes this to the "elevation of the European model of the nation-state and its laws." Colonial administrators, as Moosa (2009: 165) argues, felt compelled to label all indigenous laws and practices as barbaric or reduce them to local, folk, or customary status. Similarly, Zaman (2002: 31) adds that Islamic law "acquired a new salience and an unprecedented rigidity" under the pressures of colonial rule.

Moreover, during the 1950s and 1960s, many rulers were military men who were trained in Western military doctrine and adhered to nationalist ideologies (El Fadl 2007: 35). This period witnessed the confiscation

of private religious endowments (*awqaf*) and the nationalization of religious institutions. Islamic universities, such as Al-Azhar in Egypt, faced the brunt of the state's new policies, with the state gaining powers to hire and fire faculty staff (El Fadl 2007: 35; Zeghal 2007: 118). Similarly, in Turkey, state-controlled ulama officials and Islamic schools were used to gain legitimacy and indoctrinate the next generation of Muslim scholars, lawyers, and intellectuals. Yilmaz (2021) critiques the Turkish state's control over religion, particularly through its efforts to shape the desired and tolerated citizens. The Diyanet has largely been subservient to the state's overarching political agendas, serving as a tool for nation-building under both secular-Kemalist and Islamist-Erdoganist regimes. This dynamic, termed as "statist Diyanet Islam," illustrates the alignment of religious institutions with state ideologies over time (Yilmaz 2021; Whyte 2024: 39; Yilmaz 2022; Yilmaz and Albayrak 2022).

As state bureaucracies grew more powerful, certain chairs of Islamic studies, books, and influential religious scholars were censored or dismissed in an attempt to promote the state's preferred version of Islam. As Khaled Abou El Fadl (2007: 36–37) notes, the state aimed to be the gatekeeper of religious learning and, in some cases, aspired to become the ultimate religious authority, determining what is considered religious or not. Another argument suggests that the religious curriculum of universities made it difficult for religious graduates to compete with those who held modern degrees in the job market. However, such reform et al.-Azhar had unexpected consequences. First, the ulama largely rejected them, second it generated a new wave of Muslim intellectuals who mixed religious and social sciences, i.e. the Islamists.

Consequently, the next generation of ulama were relegated to performing limited religious roles in society, such as leading daily prayers, delivering weekly Friday sermons, and, in some cases, serving as judges in personal law courts. With their authority and responsibilities curtailed, they were deprived of the opportunity to engage in intellectual discussions, interpret laws, or find new solutions to emerging problems. Additionally, they faced low wages, and the poor quality of state-driven education curriculum further diminished the status of religious scholars.

Religious institutions and madrasas, once esteemed centres of learning, no longer emphasized subjects such as jurisprudence theory, legal maxims, precedents, hermeneutics, rhetoric, or procedural theory with the same rigour and intensity. Instead, the focus shifted towards training students to lead religious practices for the masses. Consequently, the graduates of

these schools lacked the depth of knowledge necessary to become Muslim jurists or Islamic legal experts.

There is also a counterargument suggesting that the stagnation of Islamic education began much earlier, during the twelfth century. Talbani (1996: 70) contends that “educational knowledge became increasingly irrelevant to changing socio-economic realities and to new expectations and aspirations among Muslims. In other words, outside the madrasa, everything was changing, while inside, everything remained static.” However, scholars like Ebrahim Moosa, Fadl, and Zaman are more inclined to argue that madrasa education still holds a vital place in the interpretation and transmission of Islamic texts.

The void left by state-controlled institutions and imported Western scholarship could not be filled adequately. It not only created an intellectual vacuum in Muslim countries but also led to a proliferation of competing interpretations of traditional Islamic scholarship. There was no longer a mechanism or authority to authenticate Islamic knowledge. In response to this situation, some prominent jurists of the early twentieth century, such as Rifa al-Tahtawi (d. 1873), Jamal al-Din al-Afghani (d. 1897), Abd al-Rahman al-Kawakibi (d. 1902), Muhammad Abduh (d. 1905), and Rashid Rida (d. 1935), sought to revive Shari’a reform. They attempted to reinterpret Islamic law to address modern challenges, including issues related to human and women’s rights, democracy, governance, and equality (El Fadl 2007: 37).

However, this situation took a different turn as Salafi-inspired literalists, Islamist groups, and self-proclaimed experts emerged, claiming religious authority. As Fadl (2014: 98) asserts, “...virtually every Muslim was suddenly considered to possess the requisite qualifications to become a representative and spokesperson for the Islamic tradition, and even Shari’a law.” This can be attributed in part to theological assertions about the accessibility of the Qur’an to all Muslims: “Indeed we have made the Qur’an easy to remember, so is there anyone who will heed?” (Q54:17). In this context, Jonathan AC Brown (2015: 119) discusses the divide between the “scriptural egalitarianism” advocated by certain Salafi groups and the “interpretive control,” regulation, and methodological sciences of traditional Sunni ulama.

Many lay Muslims and Salafi adherents have been inspired by the Qur’anic declaration that the Qur’an is accessible to everyone. Hence, there is a belief that anyone can become an expert by putting in the effort. However, understanding the Qur’an and practising it for oneself does not

automatically qualify one to issue fatwas or legal opinions to others. The ulama have cautioned against this, which is why people pursue studies in Islamic sciences.

Today, the concerns expressed by scholars like Fadl have become a reality. Eloquent speakers with limited knowledge of Islamic scripture are often considered or referred to as experts in Islamic law, even though their training is usually in fields such as engineering, medicine, or the physical and natural sciences. Peter Mandaville (2007: 102) refers to this phenomenon as the emergence of “personal pious narratives” that integrate various fields of knowledge with the Qur’an, forming a “hybrid form of discursive method.”

As Whyte (2024: 15) notes in the digital age, Muslims are leveraging various platforms and a dynamic public sphere to shape their religious experiences and there’s a growing trend towards the cultivation of a “private sphere,” where individuals navigate and discern their sources of religious guidance (Yilmaz 2023; 2024). Within this hyperpluralistic terrain, Muslims exhibit a willingness to delve deeper into the complexities of religious authority and its dynamics (Whyte 2024: 15).

As a result, there has been a shift in the loose definition and application of “Shari’a law” from a highly regarded legal system characterized by technical jargon, legal processes, and procedures, to a symbol of identity, authenticity, and legitimacy that are often used casually.

### DAR AL-CYBER: FATWA WEBSITES AND ONLINE AUTHORITIES

A developing phenomenon in contemporary Muslim and non-Muslim societies is the emergence of fatwas. Fatwas are non-binding legal opinions issued by a juris consult (*mufiti*) addressing specific issues (Hallaq 2001: 174). Fatwas serve a pragmatic role in keeping Islamic law up-to-date and addressing contemporary issues faced by Muslims (Black and Hosen 2009: 405).

With the rise of the Internet as a primary source of information and answers, this trend extends to young people and Muslims seeking quick resolutions to their religious questions. It has become popularly known as “fatwa-shopping” (Yilmaz 2005a: 39; Yilmaz 2005b), where Muslim consumers search for fatwas online, selecting and adopting those that align with their understanding and personal interests. This phenomenon is referred to by Bunt (2003) as “Cyber Islamic Environments,” which

encompasses online platforms hosting sermons, interpretations of Islam, and discussions that go beyond traditional ideological and religious frameworks (Bunt 2003: 5). The increasing usage of fatwa websites and web forums can be related to the debate between post-modern fragmentation of authority and the democratisation of ideas in Islam. It is “essential to analyse these fatwās, because we believe that today we are talking about another ‘dar’ or territory: *the dar al-Cyber*, where people from all over the world can join, comment, argue, and bond, without any central authority” (Sokolova-Shipoli 2020: 205).

A vast array of Islamic libraries and information resources are readily available to Internet users. Online interaction of the forums is typically casual, non-hierarchical, loosely supervised, and anonymous in her investigation of one of Australia’s largest virtual Muslim communities. It is more acceptable to disagree with Islamic normative beliefs in electronic space. Every member in the online forum is free to express how they understand and interpret Islam. Online fatwas, texts by Muslim experts, or passages from the Bible are common examples of credible sources that debate participants use. Moderator-controlled, these online Muslim discussions are diverse in form and substance, which can help to strengthen and advance Islamic principles and values. Moderators have the ability to prohibit users, remove remarks, and intervene in conversations even in situations where traditional authority is lacking (Possamai et al. 2020: 130).

Both Shia and Sunni communities have established their presence in cyberspace, investing time and resources to enhance their online outreach (Bunt 2003: 132). Muslims seek fatwas on a wide range of issues, from theological questions to contemporary social and legal matters. They inquire about topics such as prayer, marriage and divorce, inheritance, finance, as well as specialized subjects like in vitro fertilization (IVF), genetic engineering, organ transplantation, soap operas, and the Internet. However, the reliance on cyber fatwas raises concerns regarding the credentials and qualifications of scholars issuing these opinions. For example, when answering a question about IVF, it is important to determine if the scholar issuing the fatwa possesses knowledge or qualifications in biology or medicine. Additionally, it is unclear whether scholars obtain scientific details from hospitals or medical professionals as part of the fatwa-making process. In some cases, it is challenging to ascertain if cyber muftis have received any formal theological training or education at all (Bunt 2000: 104–131; 2003: 125–126).

Proposals to apply Shari'a law to legal proceedings in Western nations are controversial and encounter resistance from Muslim groups as well as the host community. According to research by Possamai et al. (2016), many Muslims actively seek out guidance, or fatwas, from scholars, imams, and mullahs either locally or online in areas like Sydney, Australia, and New York, USA, where Shari'a is not formally recognized by the law. According to 57 Muslims surveyed in Sydney, the Internet (58%) Islamic scholars (58%)—with a greater share of local scholars than those based abroad—and family (25%) were the main sources of information about Shari'a-related issues (Possamai et al. 2020: 130–131).

Moreover, the phenomena of “fatwa shopping,” in which people seek out different ideas until they find one that suits them, is clarified by the perspectives of Muslim legal experts. This tendency is further encouraged online, where people may quickly switch between many sources to locate the information that best fits their needs. According to some experts, trustworthy websites and people are crucial for directing religious inquiries. They also emphasize the significance of local sheikhs or family members for delicate matters. On the other hand, younger people are more likely to rely on online sources, which has given rise to the “Sheikh Google phenomenon” (Possamai et al. 2020: 131).

Research like this, and similar, highlight the dynamics that surround the implementation and interpretation of Shari'a in Western contexts, which are influenced by things like information accessibility, source trust, and the disparities in religious guidance sought between generations.

Fatwas continue to play a significant role in the decision-making process of Western Muslims. Comparative analysis of Islamic websites based in the United States offers important insights into how Muslims use these platforms to share Islamic legal decisions with Muslims in various Western contexts (Possamai et al. 2020). Some of the most visited fatwa websites in the West, and especially in America, include the Assembly of Muslim Jurists of America (AMJA), Islam Questions and Answers (IslamQA.info), and Fatwa-Online. The following list presents some of the most popular issues that are frequently requested or inquired about on fatwa websites in America.

Answers to spiritual and theological questions are provided by the non-profit Fatwa Centre of America in an effort to serve the needs of the Muslim community worldwide. Nearly 2000 responses have been made public under 22 categories, showing how open individuals are to sharing their private inquiries with the world. The subjects of prayer, faith and

beliefs, business dealings, and marital problems are the most frequently discussed ones. Notably, there is no way to monitor how many views each issue has received. Along with user-scholar interactions, the website answers a variety of questions about everything from business ethics to prayer practices (Possamai et al. 2020). The website discourages unethical business practices like dishonest methods and deceptive marketing and highlights how Islam and free market capitalism can coexist (Possamai et al. 2020). Despite the apparent finality of published answers, users can access the religious scholars directly via phone or email for further clarification. This accessibility underscores the site's commitment to facilitating the dissemination of Islamic guidance and reflects the Sheikh's genuine interest in understanding and contextualizing Islam within the United States (Possamai et al. 2020).

The Rahmat-E-Alam foundation in Chicago founded the Shariah Board of America in 1998 with the goal of spreading Islamic teachings via its website, which will shortly be renamed Islamic Social Services (Possamai et al. 2020). The website's responses and design are autocratic, leaving little opportunity for user inquiry or debate. One reaction that discourages participation in the beauty industry on the basis of religious beliefs is an example of how responses are frequently judgmental and conservative (Possamai et al. 2020). The Shariah Board of America has a more conservative and authoritarian stance than other platforms, like the Assembly of Muslim Jurists in America (Fatwabank), which reinforces the authority of jurists over individual adherents and pays little attention to local context (Possamai et al. 2020).

In order to preserve genuine Sharia norms, the Assembly of Muslim Jurists of America (AMJA), a non-profit organization with its headquarters in Sacramento, California, was established in 2002 with a focus on moderation and rigorous academic requirements (Possamai et al. 2020). According to Possamai et al. (2020), the organization is dedicated to providing fatwas and fostering the intellectual growth of American Muslim communities. The AMJA, which is run by academics with a wealth of knowledge in Islamic studies, provides a number of ways for people to get advice, such as a fatwa hotline and a fatwa bank that organizes decisions according to topic (Possamai et al. 2020).

The AMJA receives questions on a wide range of subjects; the most often asked questions deal with family matters and financial transactions (Possamai et al. 2020). But as seen by decisions about unpaid

zakat and incidents of sexual abuse, AMJA scholars' opinions are typically authoritative and may ignore unique situations (Possamai et al. 2020).

The website of the American Muslim Association (AMJA) exhibits a conservative perspective on Islam, prioritizing conformity to conventional views and providing minimal opportunities for inquiry or discourse (Possamai et al. 2020). The AMJA preserves a more centralized authority structure in contrast to many second-generation websites that permit community involvement and consensus-building (Possamai et al. 2020). However, online forums such as the AMJA have a substantial influence on the customs and conduct of Muslim communities in the West, emphasizing the relationship between innovation and tradition in diasporic settings (Possamai et al. 2020).

In the case of America, the 23 Muslim participants in Sokolova-Shipoli's (2020) study noted that when they search online, they often come across the website Islam Questions and Answers first. However, this website tends to follow the Salafi interpretation of Islam, which doesn't encourage Muslims in the West to participate in politics or obtain Western citizenship. This stance can be controversial and unsettling for converts as it conflicts with their sense of belonging. After talking more about this issue, some participants mentioned that they would prefer information from Western-educated Islamic scholars who understand the challenges faced by Muslims in the West. They trust these scholars to provide more relevant and reliable guidance (Sokolova-Shipoli 2020: 203).

There is similar finding in Selby and Sayeed (2023) research. Drawing from qualitative interviews conducted with 278 self-identified Muslims across Canada, Selby and Sayeed (2023) explored the manner in which Muslim Canadians interact with online sources of religious authority. They analysed their criteria for assessing the credibility of websites, their preferences regarding influential figures, and the extent to which the Canadian context shapes their interpretation of Islam-related content online (Selby and Sayeed 2023: 1). They found that among the religious authority figures mentioned, a significant number were scholars based in both the USA and Canada. However, upon closer examination of the scholars referenced throughout the interviews, those based in the USA were most frequently cited. This phenomenon could be attributed to the greater accessibility of American-based online sources and leaders, possibly due to the ease of technological access and the prevalence of freedom of speech in the United States. This accessibility is particularly notable among Muslim Canadians, especially converts.

Islamic instruction is provided to the Australian Muslim community through a range of platforms and approaches. Established in 2011, Darul Ifta Australia is a non-profit organization situated in Melbourne, Australia, that primarily offers a complete online fatwa service via its website, [www.fatwa.org.au](http://www.fatwa.org.au). The organization's objectives are to distribute free publications, provide reliable fatwas, and assist Islamic educational projects. When customers submit questions through the website or a mobile device, they should anticipate receiving prompt responses. The website organizes decisions into various categories, reflecting the variety of ways that Shari'a is used in the day-to-day lives of Muslims. However, most of the interpretations offered are consistent with a traditionalist perspective, which provides little room for individual judgement after a decision is made (Possamai et al. 2020: 130–131).

Conversely, Darul Fatwa Australia was established in 2005 and is the Australian representation of a coalition including 27 Muslim groups. The website [www.darulfatwa.org.au](http://www.darulfatwa.org.au) offers a more extensive platform for Islamic education. Offering fatwas on a variety of topics without any clear hierarchy, the website emphasizes community involvement, education, and combating extremism. Popular postings that address the practical aspects of religious practice tend to be more popular than others, suggesting that devout Muslims are actively seeking direction from the community for their everyday lives. However, the decisions' conventional and conservative viewpoint preserves established norms and provides little room for opposing viewpoints or critical interaction (Possamai et al. 2020: 136–137).

More interactively, the United Muslims Australia-affiliated Sydney Muslim Youth website offers a place for young Australian Muslims to debate Islamic concepts and pose situation-specific queries. The website encourages peer-to-peer debate and understanding of Islamic concepts through forums like "Ask the Sheikh" and "Ask the Members," allowing users to freely share their challenges and seek consolation in a supportive environment. By facilitating mediated ijthad—in which individuals interpret Islamic teachings in light of their own circumstances—this more democratic approach fosters a sense of community and encourages people to actively engage with religious concepts (Possamai et al. 2020: 139–140).

Additionally, Sana Patel's (2023: 34–55) study from 2018 to 2019 investigated the ways millennial Muslims in North America navigate online Islamic authority. Patel's research highlights the influence of

celebrity imams such as Yasir Qadhi, Suhaib Webb, Mufti Menk, and Omar Suleiman, all of whom were also identified in the earlier study. Furthermore, Patel's findings underscore how offline conferences and tours contribute to reinforcing the online authority of these figures (Patel 2023: 34–55).

Secular university affiliation and proficiency in Arabic are identified as significant sources of authority among Canadian participants. Albarghouthi (2011) examines the influence of academic positions held by prominent Islamic leaders, such as Amina Wadud and Sherman Jackson, highlighting the social prestige associated with their secular institutions. Albarghouthi suggests that the structured nature of the academic sphere, including academic positions, publications, and conferences, enables academics to compete with religious leaders more effectively within their sphere of influence (Albarghouthi 2011: 22). While figures like Yasir Qadhi, Hamza Yusuf, Mufti Menk, and Omar Suleiman, who were mentioned by participants, did not hold university positions at the time of the interviews, they all possessed doctoral degrees. Nonetheless, despite the appeal of university affiliation, expertise in Islamic sciences such as *fiqh*, *Shari'a*, and *hadith*, along with proficiency in Arabic, continue to be primary indicators of legitimacy and popularity (Selby and Sayeed 2023: 9).

Regarding the criteria for trusting a website, participants were free to cite multiple sources. Despite scholarly discussions characterizing the Internet era as a period of mediatization of Islamic authority (Anderson 1999; Bunt 2018; Eickelman and Piscatori 1996), over 55% of participants considered the presence of the *Qur'an* and *hadith* on a website as essential indicators of authenticity (Selby and Sayeed 2023: 10). One Canadian participant emphasized the importance of the North American context in her online search for authority. She specifically mentioned Umar Faruq Abdullah, Hamza Yusuf, and Usama Canon, whom she viewed as relevant to her life in Canada. According to her perspective, these scholars' ability to address North American realities is a crucial factor in granting them authority. It is noteworthy that these scholars, all American-born White Muslim converts, possess extensive training in language and traditional religious sciences in the Middle East. In addition to their linguistic proficiency in English and Arabic, they also possess what Bourdieu terms "cultural capital," allowing them to connect with the university-educated, religiously inclined community of Canadian Muslims (Selby and Sayeed 2023: 10–11).

## WEB FORUMS

The advent of the Internet and online platforms has undoubtedly transformed the way information is accessed and shared, including within the realm of religious guidance and fatwas. As Zaman (2008) points out, the popularity of Internet forums, discussion groups, and platforms offering “Ask-a-Mufti” style question and answer services has led to a greater inclination among Muslim youth to seek answers to questions related to their Islamic identity online.

This shift towards online sources of information poses both challenges and opportunities. On the one hand, it has facilitated the dissemination of a wide range of legal opinions and online discussions on Islamic matters. This has allowed for greater access to diverse perspectives, including voices from different religious sects, women, and minority groups, which were traditionally marginalized or underrepresented in the formal religious authority.

On the other hand, the online space also presents challenges in terms of the breakdown of traditional religious authority and the potential for a fragmented approach to religious guidance. With the abundance of online fatwas and opinions, individuals may engage in “pick-and-choose” or “do-it-yourself” approaches to religious rulings, which can lead to a phenomenon known as virtual patching or *talfiq*, where individuals combine different legal opinions to suit their preferences or circumstances (Yilmaz 2005a; 2005b).

This decentralized nature of online religious discourse raises questions about the credibility and qualifications of those issuing fatwas online, as well as the need for a reliable framework to assess the reliability of online sources. It is important for individuals to exercise caution and seek guidance from knowledgeable and qualified scholars who can provide well-grounded interpretations based on sound methodology and scholarly rigour.

The evolving terrain of Islamic law on the Internet highlights the need for ongoing discussions and efforts to navigate the challenges and opportunities presented by this digital era, ensuring the preservation of religious authenticity, while promoting a balanced and inclusive understanding of Islam.

## MUSLIM CONVERTS AND THEIR QUESTIONS

As mentioned earlier, the increasing number of converts in the West, particularly in the United States, brings forth new questions that Muslim scholars must address. Many of these questions revolve around the converts' relationships with their non-Muslim family members, inter-religious or non-religious marriages, and their lives before embracing Islam.

For instance, a Muslim convert may inquire about receiving a present from their family during Christmas. A scholar would explain that while Muslims are only permitted to celebrate Islamic holidays such as Eid al-Fitr (Ramadan) and Eid al-Adha (Hajj pilgrimage), accepting a gift on Christmas from friends and family is acceptable (AMJA 2005). Additionally, the scholar may suggest that the Muslim convert reciprocate by giving gifts to their parents for Eid (AMJA 2005). However, due to their historical and religious roots, many Muslim scholars argue against celebrating or participating in American holidays like Christmas, Thanksgiving, and Halloween (Fatwa-Online 2015, 2010; AMJA 2008). Nevertheless, the majority of scholars emphasize the importance of maintaining good relations with parents and family members (Fatwa-Online 2006).

Converts often have more specific questions about their previous cultural practices and interactions. These may include dilemmas such as having dinner with non-Muslim family members who consume alcohol during the meal or families who pray to Jesus before a meal (IslamQA.info). In addition to family and communal matters, converts seek guidance on personal issues like name changes, circumcision, and the removal of tattoos (Fatwa-Online 2016; Islam Online n.d; IslamQA.info 2008).

The question of marrying a non-Muslim is a frequently asked and central topic in the process of issuing fatwas. This subject covers a wide range of issues, including the normative practices for female Muslim converts who have non-Muslim husbands. Responses to these questions vary among scholars. Some fatwas advise that the convert should divorce her non-Muslim husband, even if they have children together. The AMJA scholar, Salah Al-Sawy (AMJA 2009), explains that women have a choice:

...she may either request an annulment in order to marry whomever she pleases, or she may watch and wait, hoping that he will become Muslim.

However, it is not permissible for her in any of these cases to allow him to have intercourse with her until he submits his face to Allah. (Mighty & Majestic)

The *fatwa* refers to the historic example of the Prophet's daughter, Zainab who waited a number of years for her husband to become Muslim. The *fatwa* recalls the Prophet telling Zainab: "He must not come to (have intimate relations with) you, for you are not permissible for him." The scholar concludes that it is up to the Muslim community to help sustain the women to avoid dependence on a non-Muslim spouse. The *fatwa* (AMJA 2009) goes on to quote the Qur'anic verse:

Then if you know them to be true believers, send them not back to the disbelievers. They are not lawful (wives) for the disbelievers, nor are they (the disbelievers) lawful (husbands) for them. (60: 10)

Indeed, there is a diversity of fatwas regarding interfaith marriages, particularly concerning Muslim women marrying non-Muslim men. Some fatwas advise against such marriages, cautioning Muslim women not to marry someone who converts to Islam solely for the purpose of marriage (AMJA 2008). There are even fatwas discouraging Muslim women from remaining married to non-converting husbands, even if they have children together (IslamQA.info 2000).

On the other hand, when it comes to Muslim men marrying non-Muslim women, some fatwas offer a more positive stance, permitting such marriages as long as the women are from the people of the book, namely Jews and Christians.

Some of these fatwas may lack proper citation of historical sources or a clear chain of Prophetic narration to support their rulings. They may also fail to present alternative arguments or perspectives. This can lead to concerns about the scholarly rigour and methodology employed in issuing these fatwas.

Moreover, the issue of male-dominated interpretations within Islamic scholarship is a valid concern. Traditional Islamic scholarship has been predominantly male-centred, and this can influence the perspectives and rulings provided in fatwas. It highlights the importance of promoting diverse and inclusive voices within the field of Islamic scholarship to ensure a more comprehensive and balanced understanding of religious matters.

It is worth mentioning that these fatwas are mostly related to personal matters, such as marriage, relations with their non-Muslim friends and family members, and similar topics, showing the extent to which Shari'a is viewed among Western Muslims, limited to the daily civil and family matters.

## CONCLUSION

The phenomenon of “fatwa shopping” in the Information Age reflects the active engagement of Muslims in constructing their own religious identities by seeking interpretations and rulings that align with their needs and perspectives. Online platforms offering fatwas provide a convenient space for individuals to search for and find interpretations that resonate with their beliefs and situations. The anonymity afforded by online platforms allows individuals to ask questions without revealing their identity, which can be particularly beneficial for sensitive or personal inquiries. This anonymity gives individuals the freedom to explore their religious concerns without fear of judgement or repercussions. Furthermore, the availability of online fatwa websites allows Western Muslims to access a wide range of interpretations and rulings, transcending geographical boundaries and providing a platform for diverse voices and perspectives. These websites often function as niche markets, bringing together individuals who share common interests, beliefs, and outlooks, fostering a sense of community and facilitating the exchange of ideas.

However, the control and influence over online fatwa sites can vary depending on the context. In some Muslim-majority countries, the state may exercise control or intervention over these platforms, potentially shaping the interpretations and rulings presented. State influence can be seen in cases where political conflicts or changes in power dynamics lead to shifts in control over online fatwa sites. In contrast, Western Muslims generally enjoy more freedom and unrestricted access to online fatwa platforms, as they are not subjected to the same state constraints. This allows for a broader range of interpretations and opinions to be available to Western Muslims, enabling them to explore different perspectives and make informed decisions regarding their religious practices.

## REFERENCES

- “A non-Muslim man wants to covert to marry a Muslim woman: What’s the procedure?,” Assembly of Muslims Jurists of America 28 November 2008. <http://www.amjaonline.org/fatwa-76966/info>. Accessed 1 August 2017.
- “Accepting gifts from my family in Christmas,” Assembly of Muslims Jurists of America 13 December 2005. <http://www.amjaonline.org/fatwa-1021/info>. Accessed 27 July 2017.
- “Exchanging congratulatory messages and good wishes at Christmas,” Fatwa-Online 21 December 2015. <http://www.fatwa-online.com/exchanging-congratulatory-messages-and-good-wishes-at-christmas/>. Accessed 20 July 2017.
- “Exchanging greetings & well-wishes for the New Year,” Fatwa-Online, 4 December 2010. <http://www.fatwa-online.com/exchanging-greetings-well-wishes-for-the-new-year/>. Accessed 20 July 2017.
- “Immigration for the sake of US privileges,” Assembly of Muslims Jurists of America 10 January 2009. <http://www.amjaonline.org/fatwa-77394/info>. Accessed 20 July 2017.
- Possamai, A, Turner, B. S, Cheng, J. E, Voyce, M, & Dagistanli, S. (2016). Shari’a and Everyday Life in Sydney. *Australian Geographer*, 47(3), 341–354. <https://doi.org/10.1080/00049182.2016.1191137>
- Possamai, Adam, Roose, Joshua, Turner, Bryan S, Dagistanli, Selda, Voyce, Malcolm and Worthington, Lisa. 2020. “Shari’a in Cyberspace: An analysis of Australian and US Internet Sites”. *The Digital Social: Religion and Belief*, edited by Alpha Possamai-Inesedy and Alan Nixon, Berlin, Boston: De Gruyter, pp. 129–150. <https://doi.org/10.1515/9783110497892-007>
- “Rights of non-Muslim parents, siblings and relatives,” Fatwa-Online, 31 December 2016. <http://www.fatwa-online.com/rights-of-non-muslim-parents-siblings-and-relatives/>. Accessed 20 July 2017.
- “Ruling on democracy and elections and participating in that system,” IslamQA, 9 October 2008. <https://islamqa.info/en/107166>. Accessed 6 July 2018.
- “Stories of Women who Became Muslim and Left their Non-Muslim Husbands,” IslamQA 23 February 2000. <https://islamqa.info/en/3408>. Accessed 25 August 2017.
- Albarghouthi, A. 2011. “Authority and Representation in North America: The *Ijtihad* Criteria and The Construction of New Religious Authority.” *The Journal of Islamic Law and Culture* 13 (1): 18–33.
- Anderson, J. 1999. “The Internet and Islam’s New Interpreters”. In *New Media in the Muslim World: The Emerging Public Sphere*, 41–55. Indiana: Indiana University Press.
- Black, Ann, and Nadirsyah Hosen. 2009. “Fatwas: Their Role in Contemporary Secular Australia.” *Griffith Law Review* 18 (2): 405–27.

- Brown, Jonathan AC. 2015. "Is Islam Easy to Understand or Not?: Salafis, the Democratization of Interpretation and the Need for the Ulema." *Journal of Islamic Studies* 26 (2): 117–44.
- Bunt, G. R. 2018. *Hashtag Islam: How Cyber-Islamic Environments Are Transforming Religious Authority*. North Carolina: University of North Carolina Press.
- Bunt, Gary R. 2000. *Virtually Islamic: Computer-mediated Communication and Cyber Islamic Environments*. Wales: University of Wales Press.
- Bunt, Gary R. 2003. *Islam in the Digital Age: E-jihad, Online Fatwas and Cyber Islamic Environments*. London: Pluto Press.
- Eickelman, D. F., and Piscatori, J. P. 1996. *Muslim politics*. Princeton: Princeton University Press.
- El Fadl, Khaled Abou. 2014. *Reasoning with God: Reclaiming Shari'ah in the Modern Age*. London: Rowman & Littlefield.
- El Fadl, Khaled Abou. 2007. *The Great Theft: Wrestling Islam from the Extremists*. New York: HarperOne.
- Hallaq, Wael B. 2001. *Authority, Continuity and Change in Islamic Law*. Cambridge: Cambridge University Press.
- Hatina, Meir ed. 2008. *Guardians of Faith in Modern Times: Ulama in the Middle East*. Leiden: Brill.
- Kuru, A. T. (2020). *Islam, Authoritarianism, and Underdevelopment: A Global and Historical Comparison*. Cambridge and New York: Cambridge University Press.
- Mandaville, Peter. 2007. "Globalization and the Politics of Religious Knowledge: Pluralizing Authority in the Muslim World." *Theory, Culture & Society* 24 (2) 101–15.
- Moosa, Ebrahim. 2009. "Colonialism and Islamic Law." In *Islam and Modernity Key Issues and Debates: Key Issues and Debates*, edited by Muhammad Khalid Masud, Armando Salvatore and Martin van Bruinessen, 158–181. Edinburgh: Edinburgh University Press.
- Patel, S. 2023. "Hybrid Imams: Young Muslims and Religious Authority on Social Media." In *Cyber Muslims: Mapping Islamic Digital Media in the Internet Age*, edited by R. Rozehnal, 34–50. London: Bloomsbury Publishing Plc.
- Selby Fennifer A. and Rahan Sayeed. 2023. "Religious Authority In the Digital Age: The Case of Muslims in Canada." *Contemporary Islam*. July 2. 1–22.
- Sokolova- Shipoli, Denitsa Pirinova. 2020. "Fiqh al-Aqalliyat in the Sense of Belonging for Muslim Minorities in Contemporary America." Deakin University. Thesis. 4–243.
- Talbani, Aziz. 1996. "Pedagogy, Power, and Discourse: Transformation of Islamic Education." *Comparative Education Review* 40 (1): 66–82.

- Whyte, S. A. (2024). *Islamic Religious Authority in a Modern Age: Australian and Global Perspectives*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2005a. "Muslim Laws." *Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Aldershot: Ashgate.
- Yilmaz, I. 2005b. Inter-Madhhab Surfing, Neo-Ijtihad, and Faith-Based Movement Leaders. In Peri Bearman, Rudolph Peters and Frank E. Vogel (eds) *The Islamic School of Law: Evolution, Devolution and Progress*. Harvard University Press. 191–206.
- Yilmaz, I. 2021. *Creating the Desired Citizens: State, Islam and Ideology in Turkey*. Cambridge and New York: Cambridge University Press.
- Yilmaz, I. 2022. *Authoritarianism, Informal Law, and Legal Hybridity: The Islamisation of the State in Turkey*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.
- Yilmaz, Ihsan, and Albayrak, Ismail. (2022). *Populist and Pro-Violence State Religion: The Diyanet's Construction of Erdoğanist Islam in Turkey*. Singapore: Palgrave Macmillan.
- Zaman, Muhammad Qasim. 2001. *The Ulama in Contemporary Islam: Custodians of Change*. New Jersey: Princeton University Press.
- Zaman, M. Q. (2002). *The Ulama in Contemporary Islam: Custodians of Change*. Princeton, NJ: Princeton University Press.
- Zaman, Saminaz. 2008. "From Imam to Cyber-Mufti: Consuming Identity in Muslim America." *The Muslim World* 98 (4): 465–474.
- Zeghal, M. (2007). *Islamism in Morocco: Religion, Authoritarianism, and Electoral Politics*. Princeton, NJ: Princeton University Press.



# Shari'a on Citizenship and Political Participation in a "Non-Muslim" Country

## INTRODUCTION

The issue of civic participation among Muslims in the West encapsulates a broad spectrum of perspectives among scholars and individuals, reflecting the diversity of experiences and beliefs within Muslim communities. From fervently advocating for active engagement in political processes to expressing reservations or even discouragement towards such activities, the discourse surrounding Muslim civic engagement is diverse and complex (Jamal 2005: 524; Cesari 2006; March 2009a; El Fadl 1994a; 1994b). These varying viewpoints are shaped by a myriad of factors, including religious interpretation, cultural upbringing, and socio-political contexts (Yilmaz 2002; 2003; 2005; 2023; 2024).

Examining the patterns of political behaviour among Muslim communities in America reveals the profound influence of ethnic and cultural backgrounds. Arab Muslim communities, for instance, often exhibit higher levels of participation and engagement within mosques compared to their South Asian or African-American counterparts, illustrating the nuanced dynamics at play within different segments of the Muslim population (Jamal 2005: 524; Cesari 2006).

The political engagement of Arab Americans in the aftermath of the 9/11 terrorist attacks underscores the complex motivations driving Muslim involvement in Western political life. Beyond the imperative to combat

negative stereotypes and improve public perception, many Arab Americans perceive greater political engagement as a means to advocate for issues of significance to their communities, particularly regarding American policies in the Middle East, such as the Palestinian-Israeli conflict (Jamal 2005: 535; Cesari 2010).

On the other hand, the vast majority of respondents to a research study conducted in Australia, 92.2%, perceive interactions with non-Muslims as “normal and good.” Only a small percentage, 5.7%, believe that engaging with non-Muslims should primarily be for proselytizing purposes, while very few respondents expressed views suggesting that engaging with non-Muslims is discouraged or forbidden in Islam. These findings challenge notions propagated by some Wahhabi and Salafi interpretations, which advocate for loyalty to Muslims and disavowal of non-Muslims. Instead, the survey suggests that Muslim Australians overwhelmingly reject the idea that engaging with non-Muslims contradicts Islamic teachings (Rane et al. 2020).

Renowned Muslim scholar Tariq Ramadan passionately advocates for robust Muslim participation in various spheres of Western society, emphasizing the importance of societal integration in fulfilling the essence of Islam (Ramadan 1999: 134). However, this perspective encounters challenges from within the Muslim community, where differing viewpoints—ranging from moderate to puritanical—highlight the complexity of navigating civic participation in Western democracies.

This chapter aims to explore the dynamic intersection of civic engagement, political participation, and the evolving Muslim identity within Western societies, shedding light on the factors influencing Muslim political behaviour and advocating for inclusive dialogue to foster cohesive civic participation.

## DEMOCRACY

It is true that there are groups, both among Muslims and non-Muslims, who believe that Islam and democracy are not compatible. They argue that democratic values and human rights contradict Islamic beliefs and values. Democracy, being a concept developed in the West with a focus on individual rights, is opposed by some Muslim groups as an incompatible system. Similarly, some non-Muslims also perceive democracy as conflicting with their own values. The ongoing debate extends beyond the question of whether democracy can be replicated in Muslim-majority

countries. Moderate and puritan Muslim leaders, experts, and scholars engage in theological discussions regarding the permissibility for Muslims to live in a democratic government, particularly in the West. Among the topics debated is whether Muslims should be granted collective rights, including the option to choose their own set of laws in order to live in a particular state. The theological aspect of this debate often centres around the question of whether Muslims can live according to human-made laws rather than the laws of God (El-Fadl 2007: 180–182). This debate sometimes overlooks the human dimension of Shari'a, an oversight shared by some non-Muslims who criticize Shari'a and by Muslims who defend the “laws of God” against human laws.

Differentiating between moderates and puritans is not always straightforward, even for El-Fadl, who introduced this categorization. Moderates are often perceived as Muslims who favour democracy, human rights, and Western values. However, this is not always the case. Moderates do value the positive aspects of the West, unlike others who tend to view everything Western as inherently negative. For instance, Rafa al-Tahtawi, an Egyptian moderate scholar who visited Paris in the early twentieth century, admired the cleanliness, organization, and beauty of the city. He was impressed by the diligence, punctuality, productivity, and education of the Parisians. He praised these qualities and, like any Muslim scholar, considered them to be Islamic values. In his view, the achievements of Parisians were, in fact, Islamic values, leading to a debate about whether other religions possess these values. However, in Tahtawi's Egypt, people were not known for their diligence, education, productivity, or punctuality, and the cities were not well-organized, clean, or beautiful. Tahtawi famously remarked after his trip, “In Paris, I saw Islam but there were no Muslims, but in Egypt, I see Muslims but there is no Islam” (El-Fadl 2007: 176).

Moderate Muslim scholars generally argue that although democracy and human rights may be Western inventions, this does not mean that Muslims cannot live in democracies or uphold human rights. They disagree with those, both Muslims and non-Muslims, who claim that non-Westerners are incapable of living in democracies and that democracy is incompatible with Islam. On the contrary, they contend that both democracy and human rights are rooted in Islamic theology and law. They further argue that oppression is a grave offence against both God and fellow humans, citing the Qur'an, which describes oppression as corruption and an offence against the Almighty because humans possess inherent dignity (El-Fadl 2007: 183). Moreover, moderates refer to certain verses

of the Qur'an that argue Muslims who accept to live under despotism become complacent, submit to the oppressor, and act unjustly towards themselves, causing harm (El-Fadl 2007: 184).

Moderate Muslim scholars often cite Qur'anic verses and traditions from the Prophet's time to argue that liberty is an inherent right granted to every individual. They emphasize that God has created humans as free beings and question who has the right to oppress people when God has given them freedom. According to them, freedom is necessary for the sincerity of one's submission to God. If individuals are forced into religious practices without the freedom to choose, the sincerity of their belief is compromised. The Qur'an calls for the worship of God alone, and if humans are elevated above one another, oppression becomes the result.

The view that Islam and democracy are incompatible has been promoted by some extremist groups like al-Qaeda and ISIS, but rejected by others like the Muslim Brotherhood. In the Islam in Australia survey, over 80% of respondents agreed that Islam is mostly or completely compatible with democracy. Additionally, there is strong support among Muslim Australians for key principles of democracy such as freedom of religion, equality under the law, human rights, and the rule of law. These findings indicate a strong rejection of the idea that Islam and democracy cannot coexist (Rane et al. 2020).

The concept of haqq (right) is also commonly invoked by scholars who argue for the compatibility of Islam with democracy. In Islamic law, both God and humans have their respective rights. The rights of God are ultimately measured on the Day of Judgment by God Himself, while the rights of individuals need to be safeguarded by humans in this world.

Justice is a central pillar of Islam and signifies the presence of God. While only God can deliver perfect justice, it is the responsibility of humans to strive for the best form of justice in this world. Many Islamic scholars consider justice as an obligation, with some even suggesting that a just non-Muslim is superior to an unjust Muslim in the eyes of God. Thus, justice should be a fundamental element of the ideal political system for Muslims, with a balance between rights and duties for individuals, access to power and institutions, and the promotion of justice, combating injustice, and protecting people from oppression.

The notion of Shura, or consultation, is also frequently discussed by moderate scholars in relation to democracy. Shura is seen as a method by which Muslims should conduct their affairs and make decisions. It emphasizes interaction, debate, and finding the best way to govern through

collective decision-making. This concept of Shura is considered by some, including Mawlana Abul Kalam Azad and Muhammad Iqbal, as a clear reflection of democracy.

Historical examples are often referenced to support the argument that Islam is compatible with democracy. The Prophet of Islam drafted the constitution of Medina, which outlined the duties, obligations, and rights of Muslims and non-Muslims in the Islamic state. This early form of a constitution is used to argue that a legitimate system of governance in Islam can be constitutional. Additionally, the second caliph, Umar, established a representative body called the People Who Loosen and Bind, which comprised different communities of the Islamic state and had the power to make binding decisions enforced by everyone.

Consensus, or *ijma*, is another aspect considered in discussions about the compatibility of Islam and democracy. Moderate scholars define *ijma* as the existence of a single majority, which parallels the unity of will of the majority in democracy. It is seen as a form of consultation that results in decisions on specific issues. These scholars often argue that the will of the majority is important but should be constrained by constitutional boundaries.

Independent reasoning, or *ijtihad*, is also seen as essential in Islamic law (Yilmaz 2019; 2020). Some argue that *ijtihad* is more feasible in a democratic type of government compared to other forms, as democracy allows for critical problem-solving within the Muslim community.

Regarding sovereignty, Muslims generally agree that the ultimate sovereign is God. However, they differ in their understanding of the sovereignty granted to humans by God to manage their affairs. While God has the authority to punish or reward in the Hereafter, humans have been given the responsibility to make decisions concerning human laws, governance, and human relations based on the best knowledge they possess. Moderates argue that humans are sovereign in making human laws and legislation, while affairs with God are left to God. Critics may view this perspective as secular, as it distinguishes between human and divine domains.

The label of moderate Muslim scholars is broad and encompasses various viewpoints, some of which may conflict with each other. Some scholars accept the laws in the Qur'an as constitutional laws that should not be altered, while others argue that only certain parts of Shari'a law should be adopted, primarily as a moral and ethical guide. There are also scholars who advocate for a legislature that can pass any laws not

in conflict with basic moral standards inspired by the Shari'a, with a supreme court having veto powers over inconsistent legislation. These approaches generally reject theocratic governments and wide enforcement of divine laws, emphasizing the importance of allowing humans to make decisions. They argue that institutions or individuals should not intercept the relationship between humans and God, as God speaks directly to humans. Authoritarianism, where the state assumes the role of God, is seen as the most godless society, as associating someone with God (shirk) is considered the greatest sin in Islam.

Self-identified pious Muslims often oppose regimes that claim to be Islamic but may not necessarily act in accordance with Islamic principles. Islamist parties that win elections in Muslim-majority countries often face opposition from the Muslim population, leading to their eventual decline with a few exceptions (Yilmaz 2009; 2016; 2021; 2022). Democracy in countries with large Muslim populations does not necessarily need to be identical to Western democracy. Rather, it can be a self-developed Islamic democracy based on principles such as Shura, Ijma, and Ijtihad. Scholars argue that democracy is even required for the practice of Tawhid (oneness of God), as it allows people to choose and ultimately choose God. Moderate Muslim scholars emphasize the compatibility of Islam and democracy by highlighting concepts such as consensus, independent reasoning, sovereignty, and the rejection of theocratic governments. They propose the development of an Islamic democracy rooted in Islamic principles, tailored to the specific context of Muslim-majority countries.

Puritans, in contrast to moderate Muslim scholars, reject democracy as a Western invention and consider it unacceptable for Muslims. They advocate for the re-establishment of the caliphate as the only legitimate form of governance in Islam. However, it should be noted that throughout history, different caliphs adopted varying types of government, implementing different policies and institutions. Therefore, it is inaccurate to assume that there was a singular caliphate model that all caliphs followed.

While puritans recognize the institution of Shura and often consider it the preferred form of government, they provide limited explanation about its specifics. They advocate for a system where there is a single ruler who applies the laws of God. This ruler is expected to possess qualities of justice, piety, and benevolence. Although consultation with a shura body is mentioned, the ruler is not subjected to checks and accountability. The puritans argue that the ruler's decisions are final and correct.

In the puritan perspective, the government should enforce religious practices such as prayer, fasting, mosque attendance, and the veiling of women, as they consider divine law to be just. They view existing states as illegitimate because they implement Western laws and government systems, and therefore advocate for their overthrow.

Tariq Ramadan advocates for Muslims to actively engage in non-Muslim countries as a means of fulfilling their duty to diminish injustice and contribute to solving societal problems. He believes that democracies can be achieved through the full participation of citizens. Ramadan cites the example of the Prophet Yusuf, who held a position of political responsibility under the rule of Pharaoh, carrying out his duties with dignity, morality, and faithfulness. Ramadan argues that Muslims can draw inspiration from this historical example, demonstrating that responsibility and active participation can be seen as morally and religiously obligated. He also points to the example of American Muslims who are actively involved in civic and political life at both institutional and grassroots levels.

While the majority often views an Islamic legal system as a threat to liberal and democratic values, Ramadan suggests that Shari'a can contribute to the conception of moral citizenship. He argues that Shari'a can be a tool for Muslims to deepen their engagement with Western societies, building strong civic and social bonds based on a shared commitment to humanity, social justice, and human rights.

Contrary to the perception of Shari'a as a threat in the West, Ramadan believes that it can actually enhance the citizenship of Muslims in non-Muslim countries. He argues that religious practice and adherence to Shari'a principles can positively contribute to the active participation of Muslims in democratic spheres and their loyalty to the legal rules of their host states.

## POLITICAL ENGAGEMENT AND PARTICIPATION

The issue of political engagement among Muslim immigrants in the West has led to various viewpoints. One perspective, known as pan-Islamic orientation, encourages Muslims to participate in political activities if it benefits the Muslim ummah (AMJA 2007). However, it is often suggested that Muslims seek advice from local Muslim scholars and respect their guidance when it comes to voting. (AMJA 2007)

When it comes to Muslim women holding positions in political offices, there are certain conditions outlined by some scholars. They state that

women can occupy such positions if they adhere to Islamic principles, including guarding their chastity, observing hijab, maintaining proper Islamic etiquette, refraining from beautifying themselves or speaking publicly, and avoiding free mixing with men or being alone with them (AMJA 2006).

In the context of elections, Muslim Americans have sought guidance from online fatwa websites. Main Khalidi Al-Qudah from AMJA, residing in Houston, Texas, stated that it is not only permissible but highly recommended for Muslims worldwide to be politically aware and participate in any positive changes in their country, including voting in presidential elections. Salah Al-Sawy from the same organization echoed similar sentiments, emphasizing that Muslim participation in elections is encouraged for the greater good of the community (AMJA 2008).

On the other hand, IslamQA.info (2006 2008) has issued several fatwas cautioning against participating in elections and methods of governance considered “man-made.” However, an exception is made if participation aims to prevent evil and corruption.

While other fatwa websites have abstained from the discussion on Islam and democracy, IslamQA.info remains more forthcoming. Their views on democracy are somewhat limited. For example, one scholar from IslamQA.info denounces democracy as a “system that is contrary to Islam” (IslamQA.info 2006). The scholar argues that democracies confer a power of legislation to the people as opposed to the *Shari’a*. After focusing on literal extractions of the Qur’an to substantiate God’s divine authority over man-made laws, the scholar insists a democratic system endangers core Islamic practices:

In these systems legislation has been promulgated allowing abortion, same-sex marriage and usurious interest (*riba*); the rulings of sharee‘ah (*Shari’a*) have been abolished; and fornication/adultery and the drinking of alcohol are permitted. In fact, this system is at war with Islam and its followers. (IslamQA.info 2006)

These varying opinions reflect the diversity within the Muslim community regarding political engagement in Western countries. It is important for individuals to seek guidance from trusted scholars and consult reputable sources to navigate these complex issues. Muslim scholars and political scientists have taken a broader methodological and contextual approach when addressing the issue of political engagement in Western

countries. They have developed consultative forms of government and argued that Western democracies align with core Islamic principles such as religious freedom, constitutionalism, elections, and equal treatment of citizens. This perspective highlights the compatibility between Islamic values and the principles upheld by Western democratic systems (Hussain 2016: 365).

## HUMAN RIGHTS

Islamic law recognizes the importance of human rights for both individuals and minority groups. The Qur'an emphasizes the honour bestowed upon all human beings, regardless of their background, stating that God has honoured the children of Adam and provided them with provisions and advantages. This verse (Qur'an 17:70) serves as a testimony to the significance of human rights in Islam.

While there may be differing interpretations among Muslim scholars regarding the granting of human rights to Muslims and non-Muslims, another verse in the Qur'an (Qur'an 49:13) challenges such differentiation. It highlights the common origin of humanity and the purpose of recognizing and appreciating one another's diversity. According to this verse, the best among people in the sight of God is the most righteous, regardless of their specific religious or ethnic background.

These verses, along with others in the Qur'an, serve as reminders and warnings against the violation of human rights. Islamic law, drawing from the Qur'an as its primary source, emphasizes the importance of upholding and protecting the rights of all individuals and minority groups. It recognizes their inherent dignity and affirms the principle of equal treatment and respect for human rights within the Islamic framework. Some of these verses are:

We reserve the abode of the Hereafter for those who do not seek exaltation on earth, nor corruption. The ultimate victory belongs to the righteous. (Qur'an 28:83)

O you who believe, do not place your opinion above that of God and His messenger. You shall reverence God. God is Hearer, Omniscient. (Qur'an 49:1)

Pharaoh turned into a tyrant on earth, and discriminated against some people. He persecuted a helpless group of them, slaughtering their sons, while sparing their daughters. He was indeed wicked. (Qur'an 28:4)

There is no compulsion in religion. (Qur'an: 2:256)  
 Your duty (O Prophet) is only the delivery of the message, and Ours  
 (God's) is to call (people) to account. (Qur'an 13:40)  
 And you (O Prophet) are not one to compel them. (Qur'an 50:45)  
 We sent you no, but as Mercy for all creatures. (Qur'an 21:107)

As far as the Sunnah, the Prophetic tradition, is concerned, there are many Prophetic sayings, hadith, that profess human rights for everyone, but one of the most quoted is the Last Sermon of the prophet, where he calls upon all people as "O People" instead of only Muslims, and he lays down the rights and obligations of people towards each other (Saritoprak 2013; 2015).

The argument that the principles of Shari'a have an "organic relationship" with the liberal values of the Western system can be understood in the context of the impact of Western values on Muslims living in the West. It is believed that exposure to liberal values and the principles of democracy in Western societies can influence the interpretation and application of Shari'a among Muslims. The Quran itself includes verses that reject duress, corruption, and despotism, promoting the protection of human rights and prohibiting oppressive rule.

One historical example of human rights can be found in the declaration of Caliph Umar, who recognized the freedom of individuals as granted by God. This demonstrates a recognition of individual freedoms within an Islamic framework.

Despotism is seen as breeding hypocrisy and false religiosity. Some argue that certain fatwas issued in Muslim states promoting blind obedience to despotic rulers may be tools used by those rulers to maintain control. The differences in fatwas can be attributed to this context.

While some radical scholars may issue strict fatwas against democratic values, claiming that they undermine Muslims' obedience to God by inciting revolutionary actions, other scholars argue that constitutionalism, if aimed at establishing good governance and holding power accountable, can be in harmony with Shari'a.

## CITIZENSHIP

The concept of "transnational citizenship" refers to the situation where Muslims hold citizenship in one country but also adhere to and follow the laws and principles of another nation-state. This can create challenges of

loyalty and allegiance to the country of residence and citizenship. Some Muslims who strictly follow fatwas that prioritize loyalty to Shari'a may view obedience to the Western legal system as a form of disloyalty to God.

However, scholars like Tariq Ramadan argue that loyalty to the secular legal system is not a betrayal since Islam and Western legal systems are not inherently incompatible. According to Ramadan, there is a common ground between Islam and Western values of human rights, equality, and social justice, which can create inclusive public spaces. He emphasizes the need for Muslims to shift from private spiritual reflection to active engagement in civic and political relationships, fostering friendly interactions with non-Muslims and promoting active citizenship in Western countries.

Historical examples are also cited to support the idea of Muslims being full citizens under non-Muslim governance. Sheikh Ali Gomaa highlights the example of Muslims migrating to Abyssinia (modern-day Ethiopia) during the time of the Prophet Muhammad. The Muslim minority in Abyssinia was protected and granted rights and freedoms, demonstrating a case of full citizenship under a non-Muslim government, with loyalty to the laws of the country.

Islamic scholars, however, hold differing opinions on the issue of citizenship for Muslims in non-Muslim countries. Those who object to citizenship in non-Muslim countries raise concerns about preserving the religion of their children, loyalty to a country that may engage in hostilities against an Islamic state, and the *dar al-Harb* (abode of war) versus *dar al-Islam* (abode of Islam) debate. On the other hand, proponents of citizenship argue based on factors such as residence, *da'wah* (Islamic outreach), and loyalty to the community.

In the context of American Muslims, questions often arise regarding whether Muslims can take the oath of allegiance and become citizens of the United States. While some answers may be straightforward and affirm that Muslims can indeed take the oath of allegiance, many Muslim scholars provide more nuanced explanations with certain exceptions. For example, the Assembly of Muslim Jurists in America (AMJA) states that seeking citizenship in the US should not be solely for personal reasons or interests but should be driven by a benefit or service to the Muslim community or for *da'wah* purposes.

In summary, the issue of citizenship for Muslims in non-Muslim countries is a complex and debated topic among Islamic scholars, with different perspectives based on considerations of loyalty, preservation of religious

identity, community needs, and the compatibility of Islamic principles with the legal systems of the host countries.

The Australian oath of allegiance includes a declaration of loyalty to the country, its democratic beliefs, respect for rights and liberties, and adherence to its laws. Some Muslim scholars argue that by taking this oath, Muslims are religiously bound to uphold and obey these principles, making it permissible for them to take Australian citizenship.

Regarding the issue of practising their faith in a new country, it is recommended for Muslims who are uncertain about their family's ability to practice Islam to consider returning to their country of origin. This is seen as a way to ensure the preservation of their religious identity and the ability to practice their faith freely.

Different fatwas provide guidance on taking foreign citizenship. IslamQA.info, a conservative Salafi-based website, states that it is permissible to seek foreign citizenship if a person's life is in danger. However, priority is given to seeking refuge in a safe Muslim country, and seeking citizenship for worldly reasons is discouraged.

The question of Muslim participation in Western militaries, particularly in conflicts involving other Muslims, is a contentious issue. Traditional-leaning jurists argue that Muslims in non-Muslim countries should remain neutral during military conflicts of their host countries, especially if the conflicts involve other Muslims. Joining forces against fellow Muslims may be viewed as a betrayal of the *aman* (safe conduct) granted by the host country. However, there is an exception when a Muslim's life is threatened by other Muslims, allowing for self-defence.

Some scholars, like al-Qaradawi, issued fatwas allowing American Muslims to participate in military operations after the 9/11 attacks, citing the principle of allegiance to their countries of citizenship. The stance is that Muslims can serve their country but should not engage in hostile activities against other Muslims. However, not all scholars agree with this viewpoint, and some argue that it is not permissible to serve in the military of non-Muslim countries, as they are seen as constantly waging war against Muslims and Islam.

In summary, the issue of Muslim participation in Western societies, including taking oaths of allegiance, seeking citizenship, and serving in the military, is a topic that elicits varied opinions among Muslim scholars. Different fatwas provide different perspectives based on considerations of religious obligation, loyalty, preservation of faith, and the perceived

nature of conflicts involving Muslims.<sup>1</sup> But others argue that one can serve as a physician, for example, because they do not participate in direct combat.<sup>2</sup> According to research conducted by Bleuer, in three different military conflicts: Soviet military attacking in Afghanistan, American military in Iraq, and Indian military in Kashmir, the Muslim minorities of these countries decided to fight against Muslims due to their “citizenship and above any potential complicating ties of Muslim solidarity” (2012: 492).

According to the ruling today, Muslims who migrate to other countries are expected to abide by the rules and laws of those countries. It is emphasized that living in a country does not exempt individuals from following its legal system, and Muslims are urged to refrain from engaging in any illegal activities. When it comes to refugees and asylum seekers, they are advised to present their case to the authorities and follow the legal procedures for seeking protection.

Muslims who are granted citizenship in Western or non-Muslim countries are required to obey the laws of both the country of citizenship and the Islamic laws. However, conflicts may arise if there are clashes between the two legal systems. In such cases, Muslims are expected to navigate these situations with wisdom and integrity.

It is important for Muslims living in non-Muslim countries to uphold the principles of loyalty, honesty, and respect towards the host community. Acts of treachery, betrayal, deceit, or fraud are strongly discouraged, and Muslims are prohibited from violating the honour or property of non-Muslims.

The concept of citizenship, referred to as “ahd” or agreement between the citizen and the state, is highlighted by scholars like Zelic. This agreement is seen as a form of protection for the citizen in exchange for their loyalty to the laws and regulations of the host country.

Although some scholars might not agree on where Muslim should migrate, they all agree that Muslims are allowed (some claim that they are supposed) to migrate. And most of the discussions about citizenship are given to and supported by lessons from the time of the Prophet. The opposers of citizenships in non-Muslim countries claim that the only place that can be justly ruled by the Shari'a is the territory of Islam: dar al-Islam.

<sup>1</sup> <https://IslamQA.info.info/en/3885>.

<sup>2</sup> Fatwa Center of America. <http://askamufti.com/question-details.aspx?qstID=7004>.

Whatever is outside of that territory is *dar al-Harb*, or the territory of war (El Fadl 1994a: 141–142; March 2009b: 104). They use two Qur’anic verses to back up their claims:

As for those whom the angels gather in that while in a state of sin against themselves the Angels will ask: “God’s earth vast enough for you to migrate within it?” they will have their refuge in hell and how evil is such a destiny, except for those truly oppressed, those men, women and children who cannot find any means and have not been shown the way. For these there is hope that God will forgive them, for God is Forgiving and Merciful. Anyone who migrates in the path of God will find in the Earth many an abundant refuge. Whoever leaves his home in migration towards God and his Messenger, and death overtakes him, his reward with God is guaranteed, for God is Forgiving and Merciful. (Qur’an 4:97-100)

Those who believed and migrated and struggled in the path of God with their property and their soul and those who sheltered and supported them, are friends and supporters of one another. Those who believed and did not migrate, you have no duty of protection towards them until they migrate. But if they seek your support in religion, you owe them this support, except against a people with whom you have a treaty. God sees all that you do. (Qur’an 8:72)

These scholars claim that Muslims have the obligation to migrate to the Islamic state, Hijra, and they base their claim on the above verses from the Qur’an and the following Hadith, as well as other similar ones:

The hijra will not come to an end until repentance comes to an end and repentance will not come to an end until sun rises from its place of setting.

I am innocent of (I disown) any Muslim who lives with the polytheists, for you will not be able to tell the two apart.

Do not live with and associate with the polytheists. Whosoever lives with them and associates with them is like them.

The hijra will not come to an end as long as the enemy is fought.<sup>3</sup>

An old-time fatwa, about this issue, that is commonly used by a group of Muslim scholars who oppose the citizenship of Muslims in a non-Muslim country, is one by an Andalusian Maliki scholar, al-Wansharisi, who says: “Hijra from the land of disbelief to the land of Islam is a duty

<sup>3</sup> Quoted from March’s book “Islam and Liberal Citizenship: The Search for an Overlapping Consensus” 105.

until the Day of Resurrection, as is hijra from lands of sin and those tainted by injustice or sedition. (...) Except for those truly oppressed, those man, women and children who cannot find any means and have not been shown the way. For these there is hope that God will forgive them, for God is Forgiving and Merciful.” He argues that under a non-Muslim ruler one cannot perform the five pillars of Islam, and therefore they cannot live there (March 2009b: 105–106).

A Hanafi jurist, al-Sarakhsi, advises Muslims not to have intercourse with their wives when they are on trade journeys in non-Muslim lands, because the child might be born in a non-Muslim state. Until nineteenth century, this law was crucial in Hanafi jurisprudence (March 2009b: 106). Sayyid Qutb also opposes citizenship of a foreign country:

Once there is a place on earth, any place, which belongs to Islam and where one can feel secure declaring one’s faith and fulfilling one’s religious duties, then one must migrate in order to live under the banner of Islam and enjoy the sublime standard of life Islam affords. (Qutb 2001: 286)

The Saudi Standing Committee for Scientific Research and Religious Guidance issued a call prohibiting Muslims from becoming citizens of non-Muslim states based on the belief that these states do not have Islamic law or Islamic political authority (March 2009b: 110). This viewpoint reflects the perspective that Muslims should prioritize residing in countries where Islamic law and governance are established.

Another argument against serving a foreign country is the concern that it may strengthen that country, potentially leading to future aggression against Islamic states. Advocates of this argument highlight historical examples, such as Muslims who remained in Mecca when the Prophet Muhammad migrated, claiming that they reverted to paganism and bolstered the Meccan army against the Prophet’s forces. They also argue that paying taxes to a non-Muslim country contributes to its military capabilities and dominance (March 2009b: 110–111).

Qutb, a prominent Islamic scholar, criticizes this behaviour as hypocrisy, suggesting that declaring the Shahada (Islamic testimony of faith) and then showing loyalty to a non-Muslim state contradicts one’s professed beliefs (Qutb 2001: 264). This viewpoint highlights the tension between loyalty to Islam and loyalty to a non-Muslim political authority. Establishing friendship and close ties with Muslims is another problem

that these scholars bring up. They base their arguments on two main Qur'anic verses:

Oh, you who believe! Do not take for your intimates other than your own kind. They will continually cause you turmoil and love anything that will distress you. Loathing has already come forth from their mouths and what is concealed in their breasts is even greater. We have made the signs clear to you if you will use your reason. (Qur'an. 3:118)

O you who believe, do not take Jews and Christians as friends for they are friends to each other. And who becomes friends with them becomes one of them. Verily God does not guide a wrongdoing people. (Qur'an. 5:51)

The opposers of foreign citizenship deal less with Islamic law and solving the problems of the people. Instead, they are more concerned with the political authority and how because it is not an Islamic political authority, Muslims should not live there. Furthermore, a common argument they bring up is about raising children in a non-Muslim country, risking their piety as Muslims. They claim there are temptations that are permitted by their laws, but not by Islam. As such, Western land is deemed sinful and because Muslims are a minority, they cannot change the system, so they must leave (March 2009b: 112–113; Al-Qaradawi 2001: 25). There is a risk that the Muslim children will lose their religion and accept the moral and ethical conducts of the non-Muslims. The freedom of choosing the religion is particularly problematic for them, because this means that the Muslim children can choose to live as pious Muslims or as non-Muslims (ECFR 1999: 25; March 2009b: 113; Nadwi 1983: 113–114). Alternatively, some of them suggest seclusion and not interfering with non-Muslims in that country.

For Muslims, according to these scholars, a good Islamic life is not only one of which a Muslim only worships God and commits no sins; a Muslim is also obliged to revive the Islamic community and go to war for Islam (March 2009b: 114). They base their claims on the verse 4:95 of the Qur'an:

Not equal are those believers who sit (at home) and receive no hurt, and those who strive and fight in the cause of God with their goods and their persons. God has granted a grade higher to those who strive and fight with their goods and persons than to those who sit (at home). Unto all has God

promised good, but those who strive, and fight has He distinguished above those who sit (at home) by a special reward.

The ban on Muslims killing other Muslims, as stated in Quranic verse 4:92–93 and similar verses, hadiths, and fatwas, is often cited by scholars who oppose citizenship in non-Muslim countries. They argue that Muslims should not be involved in killing fellow believers, and intentionally slaying a believer is condemned with severe punishment. This perspective suggests that Muslims may eventually be forced to choose sides between their country of residence and Muslim states, and they should prioritize supporting Muslims who are oppressed, killed, or threatened anywhere in the world (Peters 1979: 90–94; March 2009b: 114–115).

The distinction between dar al-Harb (territory of war) and dar al-Islam (territory of Islam) is another argument against allowing citizenship in non-Muslim states. This debate is rooted in Islamic jurisprudence and has various interpretations among scholars. Some argue that Muslims cannot participate in wars that are not fought solely for the sake of God, even if they are not fighting against Muslims but against non-Muslims. They believe that such wars do not serve the purpose of God (Al-Shaybani 1966: 193; March 2009b: 122–123).

Others take a stricter view, asserting that any relationship between Muslims and non-Muslims is inherently a state of war. They argue that non-Muslims must either convert to Islam or submit to Muslim authority. From this perspective, becoming a citizen of a non-Muslim state is not considered an option (Crone 2004: 358–385; Khadduri 1955: 75 145; March 2009b: 125; Tibi 2002: 176; Sachedina 1990: 44).

These arguments reflect differing interpretations and understandings among scholars regarding the relationship between Muslims and non-Muslim states, the obligations of Muslims, and the concept of loyalty in the context of citizenship.

The scholars who advocate for Muslims in non-Muslim countries to take citizenship in those countries emphasize the responsibility of Muslims to be good citizens and positive examples, even in non-Muslim states. They argue that Muslims should become citizens, fulfil their obligations, and contribute positively to society.

To support their stance, these scholars also refer to the time of the Prophet Muhammad. They claim that when the Prophet returned to

Mecca, migration (hijra) became a recommendation rather than an obligation. They quote Umar and Aisha, who allegedly stated that hijra ceased with the death of the Prophet because it was meant to continue after him. They argue that with the absence of an Islamic Caliphate, there is no designated place for Muslims to make hijra (Al-Shaybani 1966: 187; Al-Qaradawi 2001: 38; March 2009b: 166). While hijra remains recommended, the obligation to migrate has ceased.

These scholars also acknowledge the presence of democratic Western countries where Muslims can live and freely practice their religion. They argue that Muslims can manifest their faith, publicly practice Islamic rituals, and fulfil their religious duties better in some Western countries than in certain Muslim-majority countries (Al-Qaradawi 2001: 33–34; March 2009b: 168–169; El Fadl 1994b: 159).

Their perspective highlights the potential benefits of Muslims living in non-Muslim countries, as well as the evolving dynamics and circumstances that shape the understanding of migration and citizenship in contemporary times. Some codified fatwas about this issue exist in modern times and after the collapse of the Ottoman caliphate:

If you do not take full care to safeguard your religious life and arrange for the religious education and upbringing of your children and make sure that your future generations remain true to Islam, then your living in this country is a sin and you are in grave danger. For us Muslims it is permitted to live only in a country where we can live with our distinctive qualities and observe our duties. If it is not possible in this environment or you feel you cannot carry your religious obligations, it is not possible for you to stay. It is your duty to see that you live here distinctly as Muslims. You should build your own society and ensure that your children will remain Muslims after you. (Nadwi 1983: 113–114)

Hijra is not required for those who are able to practice their religion (*iqamat dinibi*) free from seduction away from it; that is coerced abandonment of religion or the prohibition on performing religious duties. This is akin to what A'isha is reported to have said in (the *hadith* collection of) al-Bukhari when she was asked about *hijra*:

There is no *hijra* today. Before a believer fled with his religion to God and His Messenger out of fear of temptation away from it, but today God

has made Islam manifest and a believer may worship his Lord wherever he may be.<sup>4</sup> (Shadid and van Koningsveld 1996: 87; March 2009b: 171)

Da'wa, which some explain as the promotion of Allah's word, meaning the religion of Islam, the Qur'an, and the Sunnah, is an obligation for Muslims. Some argue that this means even the slightest manifestation of good values and being a good example, whereas others contend that hardcore promotion and explanation of Islamic is real da'wa. For this reason, the scholars who promote citizenship in non-Muslim countries claim that Muslims should be there and should promote Islam, even if it means by example. Residing in those countries is a worship according to this mentality, as Islam has always spread through trade routes and through people showcasing Islam in their own life (March 2009b: 173; Al-Qaradawi 2001: 33–34). Tariq Ramadan claimed that da'wa should not be confused with conversion:

...must not be confused with either proselytism or efforts to convert: the duty of the Muslims is to spread the Message and to take it known, no more no less. Whether someone accepts Islam or not is not the Muslim's concern for the Inclination of every individual heart depends on God's will. The notion of *da'wa* is based on one principle which is the right of every human being to make a choice based on knowledge and this is why Muslims are asked to spread the knowledge of Islam among Muslims as well as non-Muslims. (Ramadan 2015: 134)

Tariq Ramadan holds the view that da'wa (the act of inviting others to Islam) is not an obligatory duty for Muslims. Instead, he argues that the primary obligation for Muslims is the shahada, which is the testimony of faith in the oneness of God. According to Ramadan, in the West, Muslims have the freedom to openly bear witness to the belief in one God, and thus the West becomes a place where Muslims can and should live as a "space of testimony" or dar al-Shahada (Ramadan 2015: 150).

Additionally, the concept of loyalty is emphasized in the Qur'an, as expressed in verses such as "Fulfil the Covenant of God when you have entered into it and do not break your oath after you have affirmed them

<sup>4</sup> The original source of this story is published in 1909 by Rashid Rida in his journal "Al-Manar". The issue concerning the Bosnian Muslims is published with title: Al-Hijra wa-kuhum muslimi al-Busna fiha or Rashid Rida. 1970. *al-Fatwa*. Beirut: al-Kitab al-Jadid. 773–774.

for you have made God your guarantor and God knows all that you do” (Qur’an 16:91) and “It is not righteousness to turn your faces towards East or West, but rather righteousness is ... to fulfil the contracts which you make” (Qur’an 2:177). These verses highlight the importance of fulfilling contractual obligations and being loyal to agreements. Muslims living in a non-Muslim country have entered into a contract or agreement with that country, and therefore they are obligated to protect it, abide by the terms of the contract, and live according to its laws and regulations.

In summary, according to Ramadan’s perspective, *da’wa* is not an obligatory duty for Muslims, and the primary obligation is to bear witness to the oneness of God. He also emphasizes the importance of loyalty to the contractual agreements made with non-Muslim countries, arguing that Muslims should fulfil their obligations and live in accordance with the laws of their host countries.

The discourse surrounding Shari’a and its interpretation within the Muslim community often reflects a division between different Islamic sects or schools of thought. Two prominent perspectives in this discourse can be characterized as the strict interpretation of Shari’a, often associated with Salafi sects, and the moderate interpretation, often associated with Sufi sects. This division is not limited to these specific sects and may exist among various other groups within the Muslim community (Adamson 2011: 816).

The differing interpretations of Shari’a, particularly regarding *fiqh al-aqalliyyat* (jurisprudence for Muslim minorities), are significant in understanding the diverse perspectives on political participation and citizenship in non-Muslim countries. The Muslim community has observed a distinction between the positivist or puritan conception and the naturalist or moderate conception of political engagement in these countries (Adamson 2011: 900).

For instance, the Muslim Council of Britain (MCB) is an organization that engages in collective claims-making, lobbying, and interest representation within the context of the liberal state. It operates on behalf of British Muslims while participating in the institutions of the liberal state. On the other hand, groups like Hizb ut-Tahrir (HT) adopt an oppositional identity towards the liberal state, rejecting liberalism and disengaging from institutionalized participation in British politics (Adamson 2011: 900).

This division is reflected in the Muslim community itself, as individuals align themselves with either puritan or moderate perspectives. An example

can be seen in the criticism by some Australian Muslims of the Australian Federation of Islamic Councils (AFIC) for inviting then Prime Minister John Howard. The debate on the Muslim Village website highlighted the binary divide within the Muslim community, with one participant referring to “peace-loving moderate Muslims” and perceiving certain Muslim organizations as politically gullible (Bahfen 2008: 101–102).

However, not all Muslims align themselves with institutionalized Islamic organizations. There are individuals without any institutional affiliation who hold diverse perspectives on Shari'a. For example, Khan (2015: 32) discusses the split among American Muslims between isolationist Muslims and democratic Muslims. Isolationist Muslims tend to isolate themselves from political participation, driven by concerns about anti-Islamic sentiments and fears of assimilation. On the other hand, democratic Muslims are politically engaged and active, hoping to contribute to American society (Khan 2015).

These divisions within the Muslim community reflect the complex and nature of the discourse on Shari'a and political participation, with varying interpretations and approaches among different sects, organizations, and individuals.

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These divisions within the Muslim community reflect the complex and nature of the discourse on Shari’a and political participation, with varying interpretations and approaches among different sects, organizations, and individuals. Indeed, there are debates and differing interpretations within the Wasati and Salafi sects regarding certain practices and obligations. One such area of debate revolves around the celebration of non-Muslim holidays. Salafis strictly forbid Muslims from participating in or celebrating non-Muslim holidays, while Wasatis hold the belief that Muslims can participate in the celebration of Christmas as a means of proselytizing and building bridges with the wider community (2012: 432).

Another point of contention is mortgages. Wasatis consider the permissibility of mortgages based on the principle of *baja* (need) and emphasize the importance of considering the hardship and necessity of the individual. They may allow Muslims to engage in mortgages in certain circumstances. On the other hand, Salafis take a stricter stance and categorically deny any allowance for mortgages, adhering to a puritanical interpretation of Shari’a (2012: 448).

When it comes to military service, Wasatis allow Muslims to combat alongside non-Muslims against non-Muslim adversaries, especially in cases

where citizenship obligations are involved. However, they stress the importance of not fighting against Muslims and strive to be exempted from or avoid killing Muslims during war. Salafis, on the other hand, oppose the idea of Muslims fighting alongside non-Muslims under any circumstances (2012: 452).

In summary, Wasatis tend to adopt a more flexible approach, allowing for the adaptation of certain religious laws to promote integration into the society they live in. They endorse a pragmatic application of Shari'a that takes into account the needs and circumstances of Muslim minorities. On the contrary, Salafis advocate for a strict and uncompromising adherence to religious laws, promoting segregation from non-Muslims (2012: 456). These differences in approach reflect the contrasting viewpoints within the Muslim community regarding engagement with non-Muslim societies and the interpretation of religious obligations.

## CONCLUSION

The compatibility of the Shari'a legal system with Western secular systems is a topic of ongoing debate between Western politicians, Muslim scholars, and within Muslim communities themselves. Different perspectives exist regarding the perceived incompatibility, with some viewing it as an inherent clash between the two systems, others attributing it to prejudice against Muslim communities in Western societies, and still others highlighting the influence of certain superficial interpretations of Shari'a that lead to exclusionary behaviour among some Muslims.

While Shari'a allows Muslims to migrate and live in non-Muslim countries, the strict interpretation of Shari'a rules by certain puritanical jurists can significantly impact the perspectives and way of life of Muslim minorities. This can contribute to the divergence of opinions and behavioural patterns among Muslims, with some adopting isolationist tendencies and others actively engaging as citizens in their respective societies.

The Muslim community itself is not homogeneous, and there are diverse interpretations and understandings of Shari'a and its application. This internal debate within the Muslim society often results in divergent views on specific rules and practices, which can lead to distinct behavioural patterns among those who identify as puritanical or moderate, and between those who adopt isolationist or active citizenship tendencies.

## REFERENCES

- “What does Islam say about illegal immigration?,” Assembly of Muslims Jurists of America 28 January 2007. <http://www.amjaonline.org/fatwa-2581/info>. Accessed 27 July 2017.
- “Working in the US army,” Assembly of Muslims Jurists of America 2008–04–07. <http://www.amjaonline.org/fatwa-21571/info>. Accessed 25 July 2017.
- Adamson, Fiona B. 2011. “Engaging or Contesting the Liberal State? ‘Muslim’ as a Politicised Identity Category in Europe.” *Journal of Ethnic and Migration Studies* 37.6: 899–915.
- al-Qaradawi Yusuf. 2001. *Fi fiqh al-aqalliyat al-muslima*. Cairo: Dar al-Shuruq.
- al-Shaybani, Abu’Abd Allah. 1966. “The Islamic Law of Nations: Shaybani’s Siyar. Translated by Majid Khadduri.”
- Bahfen, Nasya Yadi. 2008. “Online Islamic Identity and Community in Australia and Three Neighbouring Countries.” PhD diss.
- Bleuer, Christian. 2012. “Muslim Soldiers in Non-Muslim Militaries at War in Muslim Lands: The Soviet, American and Indian experience.” *Journal of Muslim Minority Affairs* 32.4: 492–506.
- Cesari, Jocelyne. 2006. “Securitization and Religious Divides in Europe: Muslims in Western Europe after 9/11: Why the Term Islamophobia is More a Predicament than an Explanation.” Paris: Challenge. <http://www.libertysecurity.org/article1167.html>. Accessed 15 April 2011.
- Cesari, Jocelyne. 2010. “Muslims in the West After 9/11: Religion, Law and Politics.”
- Crone, Patricia. 2004. *God’s Rule: Government and Islam*. New York: Columbia University Press.
- El Fadl, Khaled Abou. 1994a. “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/eighth to the Eleventh/seventeenth Centuries.” *Islamic Law and Society* 1.2: 141–187.
- El Fadl, Khaled Abou. 1994b. “Legal Debates on Muslim Minorities: Between Rejection and Accommodation.” *The Journal of Religious Ethics* 127–162.
- El Fadl, Khaled Abou. 2007. *The Great Theft: Wrestling Islam from the Extremists*. New York: HarperOne.
- European Council for Fatwa and Research. 1999. *Fatawa al-majmu’u’ al-ula*. Cairo: Islamic Publishing
- Hussain, Shahrul. 2016. “Ribā-Based Mortgages in Dār al-Harb: An Issue of Modernist Application of Fiqh al-Aqalliyāt for Muslim Minorities.” *Journal of Muslim Minority Affairs* 36.3: 364–382.
- Jamal, Amaney. 2005. “The Political Participation and Engagement of Muslim Americans: Mosque Involvement and Group Consciousness.” *American Politics Research* 33.4: 521–544.
- Khadduri, Majid. 1955. *War and Peace in the Law of Islam*. Baltimore: Johns Hopkins Press.

- Khan, MA Muqtedar. 2015. "Political Muslims in America: From Islamism to Exceptionalism." *Middle East Policy* 22.1: 32–40.
- March, Andrew F. 2009a. "Sources of Moral Obligation to non-Muslims in the Jurisprudence of Muslim Minorities(Fiqh al-aqalliyāt) Discourse." *Islamic Law and Society* 16.1: 34–94.
- March, Andrew F. 2009b. *Islam and Liberal Citizenship: The Search for an Overlapping Consensus*. New York: Oxford University Press.
- Nadwi, Syed Abul Hasan Ali. 1983. *Muslims in the West: The Message and Mission*. Leicester, UK: The Islamic Foundation.
- Peters R. 1979. "Colonialism: The Doctrine of Jihad in Modern Islam." *The Hague*, Netherlands: Mouton.
- Qutb, Sayyid. 2001. "In the Shade of the Qur'an, trans. and ed." *Adil Salabi and Ashur Shamis*. Leicester: The Islamic Foundation.
- Ramadan, Tariq. 1999. *To Be a European Muslim*. UK: Islamic Foundation.
- Ramadan, Tariq. 2015. "The Paris Attackers Hijacked Islam but there is no war between Islam and the West." *The Guardian* 127–146.
- Rane, Halim, Adis Duderija, Riyad H. Rahimullah, Paul Mitchell, Jessica Mamone, and Shane Satterley. 2020. "Islam in Australia: A National Survey of Muslim Australian Citizens and Permanent Residents." *Religions* 11 (8): Article No. 419. <https://doi.org/10.3390/rel11080419>.
- Sachedina, Abdulaziz. 1990. "The Development of Jihad in Islamic Revelation and History." In *Cross, Crescent and Sword: The Justification and Limitation of war in Western and Islamic Tradition*, edited by James Turner Johnson and John Kelsay. London: Greenwood.
- Saritoprak, Zeki. 2013. "The Universal Message of the Prophet Muhammad." *Islam.ru*. March 16. <http://islam.ru/en/content/story/universal-message-prophet-muhammad>. Lat accessed 6 May 2016.
- Saritoprak, Zeki. 2015. "Migration, Feelings of Belonging to a Land, and the Universality of Islam." *Islam and Citizenship Education*, 45–54. Springer VS, Wiesbaden.
- Shadid, Wasif AR, and P. Sj van Koningsveld. 1996. *Political Participation and Identities of Muslims in Non-Muslim States*. Belgium: Peeters Publishers.
- Tibi, Bassam. 2002. "War and Peace in Islam." In *Islamic Political Ethics*, edited by Sohail Hashmi. Princeton: Princeton University Press.
- Yilmaz, I. 2002. The challenge of post-modern legality and Muslim legal pluralism in England. *Journal of Ethnic and Migration Studies*, Vol. 28, No. 2, pp. 343–354.
- Yilmaz, I. 2003. Muslim Alternative Dispute Resolution and Neo-Ijtihad in England. *Alternatives: Turkish Journal of International Relations*, Vol. 2, No. 1, Dec. 2003, pp. 1–24.
- Yilmaz, I. 2005. Inter-Madhhab Surfing, Neo-Ijtihad, and Faith-Based Movement Leaders. In Peri Bearman, Rudolph Peters and Frank E. Vogel (eds) *The*

- Islamic School of Law: Evolution, Devolution and Progress*, Harvard University Press. 191–206.
- Yilmaz, I. 2009. “Muslim Democrats in Turkey and Egypt: Participatory Politics as a catalyst.” *Insight Turkey*, 93–112.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Reprint. London and New York: Routledge.
- Yilmaz, I. 2019. Nation Building, Islamic Law and Unofficial Legal Pluralism: the Cases of Turkey and Pakistan. In Norbert Oberauer, Yvonne Prief, Ulrike Qubaja (eds) *Legal Legal Pluralism in Muslim Contexts*, pp. 109–138. Leiden, The Netherlands: Brill.
- Yilmaz, I. 2020. Muslims, Sacred Texts, and Laws in the Modern World. In: Woodward M., Lukens-Bull R. (eds) *Handbook of Contemporary Islam and Muslim Lives*, 1–18. Cham: Springer.
- Yilmaz, I. 2021. *Creating the Desired Citizens: State, Islam and Ideology in Turkey*. Cambridge and New York: Cambridge University Press.
- Yilmaz, I. 2022. *Authoritarianism, Informal Law, and Legal Hybridity: The Islamisation of the State in Turkey*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.



# Shari'a on Multiple Belongings, Transnational Loyalties, and Calls for Jihad

## INTRODUCTION

Belonging, acceptance, and inclusion represent crucial elements of social integration and have garnered significant attention from psychologists and social scientists. Scholars have highlighted the need for affection, while they emphasized the importance of positive regard from others. The concept of belonging has been described as the need to establish connections with others or something tangible, and numerous studies have linked a sense of belonging to individual well-being (Baumeister and Leary 1995; Goodenow 1993; Maslow 1954).

However, our sense of belonging is not always under our control and is influenced by various factors such as historical background, personal experiences, and societal influences. Calhoun (2003) explains that individuals inherently belong to certain groups, cultures, or identities, often not of their choosing. This perspective challenges the notion of a dichotomy between belonging and not belonging, suggesting instead that it is a matter of belonging to one particular group, country, or identity, or facing rejection from them (Sokolova-Shipoli 2020).

Therefore, claims that certain groups like Muslims do not belong in specific countries do not necessarily imply a lack of belonging altogether. Rather, they reflect a lack of belonging to that particular context while affirming belonging to another identity or background elsewhere. The interaction between individuals and society shapes the concept of

belonging, emphasizing that it is constructed through daily interactions with people, institutions, policies, and circumstances (Halse 2018).

The absence of belonging can lead to isolation, loneliness, and psychological challenges, especially for Western-born Muslims navigating questions of identity and acceptance (Yilmaz 2005; 2016; 2023; 2024). Baumeister and Leary (1995) highlight belonging as a fundamental human need, emphasizing lasting, positive relationships for overall well-being. This extends beyond mere social interactions to stable and meaningful emotional connections.

Belonging involves shared transformative emotions like patriotism and faith, contributing to solidarity and attachment within communities. It's not just a feeling but a crucial aspect of social, psychological, and physical well-being. The quality and satisfaction of social interactions play a significant role, impacting one's sense of belonging and potential emotional distress (Maslow 1954).

Belonging significantly impacts institutions, language practices, values, and cultural norms (Halse 2018). It influences social and political structures, shaping rules, laws, and processes. While belonging is often viewed positively, it can also lead to negative outcomes such as increased stigma against marginalized groups. This exclusionary belonging, associated with differentiation and hatred, contributes to prejudices, racism, and xenophobia, affecting communities like immigrants, the LGBTQ individuals, and various religious groups (Sokolova-Shipoli 2020).

## TRANSNATIONAL MULTIPLE LOYALTIES AND BELONGINGS

Discourses surrounding “Muslim integration,” “Muslim loyalty to a non-Muslim country,” or “Muslim belonging” continue to cycle without end, illustrating the complexity and interconnectedness of the various perspectives within the discourse. The construction of identity, level of loyalty, and sense of belonging are influenced by multiple factors, including a country's migration policies, political discourses about the Muslim community, the engagement of Muslims in civic and political activities, and the type of Shari'a system in place (John et al. 2015: 171–172).

Following the events of 9/11, the loyalty and sense of belonging of Muslims in their countries of settlement came under scrutiny and doubt. Politicians began instrumentalizing anti-Islamic sentiment by questioning the loyalty of Muslim citizens to the government (Bahfen 2008). For

example, former Australian Prime Minister John Howard frequently questioned the “allegiance of Australian Muslims to the country” (2008: 122). This subject was further perpetuated in radio programmes where the loyalty of Muslims was questioned, specifically whether their loyalties were more towards their country or their faith (2008: 122). Muslims faced intense scrutiny during the United States’ military operation in Afghanistan, with concerns about their potential “dual loyalty” and broader discourses of disloyalty to the state (Shavit 2012: 451). Although their allegiances and loyalties were called into question, the majority of Muslims were able to reconcile their multiple identities by participating in the military operation against other Muslims (Bleuer 2012: 506).

As a result of 9/11, many Muslims living in non-Muslim countries found themselves compelled to “prove” their commitment to their civic duties in exchange for the protection of their religious freedom by the state (Vergani et al. 2017: 75). This governmental stance has been described as “disciplinary inclusion,” although for some, it amounts to nothing more than “negative incorporation,” whereby the government exacerbates Muslim insecurities instead of fostering a sense of inclusion (2017: 75). The “pushing” stance of political discourses, which perpetuate the idea of an “immutable essence” or an ideological opposition between Islamic and Western values, the promotion of new anti-terror legislation, and the construction of “archetypal suspect citizens,” contributes to increased marginalization and a decreased sense of belonging among Muslim communities in their countries of residence (John et al. 2015: 171–172).

Research conducted in 2015 revealed that Muslim youth experience high levels of exclusion and frustration, influenced by political anti-Islamic sentiments that question their loyalties and perceive them as potential “terror suspects” (Akbarzadeh 2016: 328). The prevalence of Islamophobic discourses and the portrayal of young Muslims as “violent fanatics, ISIS-loyalists, and misogynists” directly contribute to their marginalization, isolation, and the creation of Muslim “ghettos” separate from the broader community (Akbarzadeh 2016: 328; Ramadan 2005: 66). Consequently, the government’s doubt regarding the loyalty and belonging of Muslims to the wider community leads young Muslims to form counter-identities in opposition to the dominant identity (Akbarzadeh 2016: 329).

In addition to the Islamophobic stance of governments, a generation gap and insufficient support from religious leaders exacerbate the sense

of alienation among Muslim youth and contribute to their radicalization (Akbarzadeh 2016: 329). Kuranda Seyit, the secretary of the Islamic Council of Victoria, described an incident in which a police officer shot an Afghan youth as a reflection of “distrust” (2016: 328). The distinction between different Muslim generations is evident, with the first generation seen as embodying a “lived Islam” experience, while the second and third generations are seen as navigating a “constructed Islam” (Sisler 2011: 54). These young Muslims are searching for a “true Islamic identity” that they cannot find through the assistance of imams and community leaders (Yilmaz 2023; 2024). As a result, many turn to the Internet, where they find a variety of fatwas (religious rulings), which become their source of religious authority (Sisler 2011: 54).

Barton (2015) argues that there exists a causal relationship between the alienation and marginalization experienced by Muslim youth and their susceptibility to radicalization. When these young Muslims fail to find a sense of inclusion within their respective countries, they may turn to more radicalized spheres where they feel welcomed. In some cases, the sending country of the emigrant Muslims export its radical Islamist ideology abroad and try to radicalise young Muslims (Yilmaz 2019; 2021; 2022). For example, the high unemployment rates among young Muslims in France have been identified as a contributing factor to their radicalization, whereas in Australia, economic growth has mitigated this issue to some extent. However, the suspicious stance of the Australian government acts as a push factor, leading to the radicalization of Muslim youth (Barton 2015: 107).

Thus, we observe a dynamic where, on one hand, certain Muslim youth do not feel a sense of belonging to the broader community due to push factors exerted by the government. On the other hand, groups like ISIS or al-Nusra strategically exploit the vulnerabilities of alienated and easily influenced young Muslims, offering them a sense of belonging and purpose. Positioned between the state’s push factors and the pull factors of jihadi groups, marginalized and alienated Muslim youth often choose the side that welcomes them (Barton 2015: 107).

Barton (2015: 108) identifies a pattern or scheme by which jihadis are successful in recruiting young Muslims worldwide. Skilled individuals within these groups excel at identifying, radicalizing, and recruiting young Muslims. They disseminate propaganda videos and messages through social media platforms, targeting vulnerable individuals. Some young Muslims become self-radicalized, while others are radicalized

through peer networks or new online acquaintances (Barton 2015: 108). The transformation of these recruited Muslims is marked by significant behavioural changes, often expressed through the posting of hate messages against non-Muslims.

Ramadan also highlights the fact that marginalized Muslims who feel isolated from broader society due to marginalization do not develop a sense of belonging to their country of settlement (Ali 2011: 365). This sense of isolation and marginalization further reinforces their vulnerability to radicalization.

Indeed, the radicalization of Muslim youth is not representative of the entire Muslim population. There are many young Muslims who are successfully integrated into the host society and have a strong sense of belonging to their country of residence. Recognizing the diversity of experiences and identity constructions within the Muslim community is crucial.

Research conducted in Australia sheds light on the aspirations of Muslim communities to cultivate a sense of belonging within the broader societal framework. The desire to forge connections with the wider community emerges as a prominent theme among Muslim respondents, with many expressing their intention to bridge cultural divides and foster mutual understanding (Peucker 2017: 46). Organizations like the Australian Intercultural Society (AIS) actively promote cross-cultural dialogue and cooperation, striving to cultivate harmony and cohesion among citizens (Peucker 2017: 46).

Similarly, studies conducted in the UK underscore the positive correlation between mosque attendance and political engagement within Muslim communities. Those who regularly attend mosques tend to have a more expansive social network and are more likely to participate in civic activities (Peucker 2017: 47). The research by Underabi also indicates widespread support among British Muslims for active involvement in political processes (2014: 44), a sentiment echoed in studies by McAndrew and Sobolewska, which link mosque attendance to increased civic engagement (2015: 69).

In Australia, research by Vergani et al. (2017: 63) reinforces the idea that organized religious practice serves as a significant predictor of civic participation among Muslims. Contrary to misconceptions that associate Islam with radicalization, active engagement in political and civic spheres contributes positively to social cohesion (Peucker 2017: 48). Muslim community organizations in Australia champion the integration of Islam

within the multi-ethnic and multi-faith fabric of society, rejecting exclusionary narratives and advocating for Muslim participation in all aspects of public life (Peucker 2017: 49).

A survey conducted by Rane et al. (2020) on the Australian Muslims compared the social connections and sense of belonging among Muslim Australians with the general Australian population. Survey respondents were asked about their level of involvement and belonging to various social groups and institutions. The results show that the highest sense of connection and belonging was reported in relation to family and friends, followed by the Muslim community, school, university, or workplace (Rane et al. 2020). This aligns with findings from the general Australian population, where family connections were strongest, but connections to neighbours were weaker (Rane et al. 2020). Similar to the general population, Muslim Australians also reported strong connections with friends, indicating that social relationships play a significant role in their lives (Rane et al. 2020). The survey highlights the importance of social connections for Muslim Australians and underscores their integration into various social networks and institutions within Australian society.

Turning to Canada, the discourse on Muslim integration offers valuable insights into the complexities of belonging and identity formation within Western societies. While some Muslims express concerns about marginalization and discrimination post-9/11, others embrace Canada as a place where they can fully realize their dual identity as Muslims and Canadians (Khelifa 2017). The Environics Institute's survey highlights a strong sense of belonging among Canadian Muslims, with a majority expressing pride in their Canadian identity (The Environics Institute 9).

Navigating the integration process involves a two-fold approach: adapting Islamic principles to align with Canadian values where possible and fostering a distinct Canadian-Islamic identity that embraces cultural diversity (Khelifa 2017: 3). The politics of recognition and multicultural policies play a pivotal role in creating an inclusive environment where Muslims can thrive as active and valued members of society (Kazempur 5–6).

The influence on approaches and perspectives among Muslims is a phenomenon, shaped by a myriad of factors. It is essential to acknowledge the broader context when examining the impact of adhering to Shari'a and participating in mosque activities on a Muslim's sense of belonging and subsequent civic engagement within society. Shari'a, beyond serving as a comprehensive legal framework and religious way of life, also serves as

a defining parameter for Muslims' self-identification. For instance, while certain Muslim community organizations endeavour to foster dialogue and relationships between Muslims and non-Muslims, the Salafi ideology advocates for strict segregation from the wider non-Muslim society (March 2008: 2825). Shavit (2012) highlights the contrasting interpretations of Shari'a along the spectrum between Wasati and Salafi lines, particularly in the issuance of fatwas concerning *fiqh al-aqalliyyat al-muslima* (Law of Muslim Minorities). Wasati lines adopt a relatively flexible and moderate approach towards issuing fatwas for Muslim minorities, whereas the Salafi line adopts an unwaveringly strict and puritanical stance, prohibiting any form of integration or interaction with the "infidel wider society." Nonetheless, both perspectives share the common objective of promoting Islam through proselytization as an integral religious duty (Shavit 2012: 421).

The puritan Salafi ideology introduces the concept of "al-wala' wa'l-bara" (loyalty and disavowal), emphasizing unwavering allegiance to God and co-religionists while categorically rejecting anything associated with non-Islam and non-Muslims, including "innovation, imitations of infidels, and cooperation with them" (Wagemakers 2008: 3; Shavit 2012: 416). Salafis identify two perceived threats that undermine the strength of Islam. Firstly, they caution Muslims against resembling non-Muslims in any way, advocating for a complete rejection of their practices and way of life. Secondly, they discourage Muslim leaders from engaging in diplomatic relationships or agreements with non-Muslim countries (Wagemakers 2008: 5). Some puritanical Salafi jurists even argue that residing in non-Muslim lands may lead Muslims to disloyalty to God. Al-Shuaybi expresses concerns regarding Muslims seeking assistance from Christians and Jews, suggesting that such actions divert loyalty away from God and towards "infidels" (Wagemakers 2008: 7–8). Salafis prohibit any form of interaction with non-Muslims, including greetings, meetings, and general social interactions. Similarly, diplomatic relations between Muslim and non-Muslim states are deemed impermissible. This sentiment is evident in the criticism levelled by Abu Muhammed al-Maqsisi, a Salafi scholar, towards Saudi Arabia for its international relations with non-Muslim states. Al-Maqsisi argues that Saudi Arabia has deviated from the religion of Islam by adhering to un-Islamic laws and aligning with infidel enemies of God (Wagemakers 2008: 7). Furthermore, Salafis' discourse concerning non-Muslims' military operations against Muslims often incorporates a victimization narrative.

By critically examining the complex dynamics and ideologies within the Muslim community, we can gain a deeper understanding of the diverse perspectives and motivations that shape Muslims' engagement with the wider society. Al-Jarbu, another Salafi scholar, defines those that pose as threats towards Islam by the term "infidels,"

They (the infidels) are the ones who have launched Crusader wars (*al-hurub al-salibiyya*) on the Muslims for more than 200 years... They are the ones who have chased the Muslims out of Palestine... and they are the ones now chasing the Muslims out of Ethiopia, Somalia, Algeria, Eritrea, Yugoslavia, China, Turkistan, India, Kashmir, the Philippines and every other place. (Wagemaker 2008: 10)

Furthermore, the propagation of Salafist ideals contributes to the vulnerability of Muslim youth residing in Western societies, potentially leading them to join radical extremist groups. Various social media platforms, such as Twitter and Reddit, host numerous threads featuring popular accounts that emphasize the imperative for Muslims to maintain their unity and refrain from befriending non-Muslims, thereby perpetuating an "us vs. them" narrative. Consequently, these online discussions can foster a violent mindset regarding the ideal state of the Ummah (Muslim community). Conversely, other accounts advocate for harmony and interconnectedness between Muslims and non-Muslims. Both factions selectively interpret doctrinal sources to validate their respective positions, seeking religious legitimacy for their viewpoints.

Therefore, the contrasting conceptualizations of loyalty held by Wasati and Salafi followers of Islam are starkly divergent. By comparing these two perspectives, one can argue that while Wasatis strive to promote the integration of Muslim minorities within non-Muslim societies, Salafis vehemently oppose any form of contact or assimilation, considering it a betrayal of God. The "anti-integration agenda" adopted by Salafis underscores their perception of humanity as a binary division between "Muslims, who embrace God's truth, and non-Muslims, who reject it" (Shavit 2014a, b: 68–72). In contrast, Wasatis embrace and encourage interaction and integration of Muslims into non-Muslim society, while Salafis advocate for an "enmity towards all non-Muslims" (2014: 82). As an illustrative example, a Muslim individual queries a scholar on a Question/Answer website about their stance towards their non-Muslim family

members, highlighting the complexities and dilemmas faced by individuals navigating the intersection of faith and familial relationships.

By examining the divergent perspectives within the Muslim community, we can discern the impact of these ideologies on Muslims' attitudes towards social integration and engagement with non-Muslims in Western societies. The jurist answers,

By Allah, it is extremely astonishing how a Muslim man that believes in Allah and (in) the last day (day of judgment) can love people who are non-believers that don't believe in Allah and (in) the last day and don't forbid what Allah forbids and don't practice the religion of truth and refuse the religion of Islam. (Shavit 2014a, b: 73)

Indeed, the behaviour and attitudes of Muslims in non-Muslim states are influenced by a multitude of variables. Attempting to isolate a single aspect would fail to capture the intricacies and interconnected nature of the factors that shape the construction of belonging, loyalty, and identity within this context.

The most common topics amplified by the media in the right-wing groups in the West, to argue the non-loyalty of Muslims in their countries, are the notion of Jihad, or holy war. Similarly, extremist Islamic groups also (mis)use the notion of jihad to argue against Muslims' integration in the West. That is why it is of utmost importance to tackle that notion of Jihad next, as a discussion of loyalty and belonging of Muslim in the West, before we look at the narrative.

## DUTY OF MUSLIMS TOWARDS PALESTINE

A significant but often overlooked issue is the confusion experienced by Muslim Westerners themselves regarding various aspects of their faith is their attitude towards Palestine. Muslims residing in Western countries often find themselves grappling with questions such as, "What does Islam say about this?" This query is commonly raised by both moderate and puritanical propagators within the Muslim community.

The confusion among Muslim Westerners extends beyond the well-known topics of suicide bombing, hostage-taking, women's rights, human rights, treatment of minorities, and relationships with non-Muslims. It encompasses a broader range of concerns, including the legality of secret marriages, divorce procedures, the permissibility of interest on bank

loans, as well as car leases and house mortgages. Muslims residing in Western societies often seek guidance on what constitutes the “correct” Islamic approach towards Americans in Iraq and Afghanistan. They ponder whether it is their duty to voice opposition against American military interventions, and they grapple with their responsibilities towards fellow Muslims enduring hardships in regions such as Chechnya, Kashmir, and Palestine.

One of the contributing factors to this confusion is the existence of diverse and sometimes contradictory interpretations within the Muslim community. It can be challenging for individuals to navigate through the multitude of opinions and find a unified voice on these matters. The absence of a cohesive and authoritative source of guidance further adds to the complexity of the situation.

Recent contemporary events have served as stark reminders of the perplexities faced by Muslim Westerners in their quest to make sense of certain practices and events within Islam. For instance, the treatment of women under Taliban rule has raised numerous questions and sparked internal debates. Likewise, the condemnation of author Salman Rushdie for his controversial writings has led to divergent opinions within the Muslim community.

In the light of these complexities, it becomes evident that the task of understanding and navigating Islamic teachings is not limited to non-Muslim Westerners. Muslims find themselves grappling with a plethora of questions, seeking clarity, and striving to reconcile their faith with the societal and cultural norms of their Western host countries.

Muslims often face the pressure of peer influence and the lack of comprehensive knowledge, which can lead them to take positions on various issues without a deep understanding of the complexities involved. This phenomenon is particularly evident in cases where Muslims are expected to show solidarity with individuals and communities facing hardships in distant regions, such as Chechnya, Bosnia, Kashmir, and Palestine. While it is not to suggest that Muslims should refrain from expressing support or that these causes lack significance, that at times, individuals may feel compelled to take a stance even when they possess limited knowledge about the events unfolding in these remote locations.

The Israeli-Palestinian conflict is a prime example of an issue that holds great significance for Muslim Westerners. However, this conflict is not an obligatory subject of study in Islamic law or an inherent component of Islamic teachings. Treating it as such runs the risk of instrumentalizing

Islamic knowledge and traditions to serve nationalist agendas and political objectives. The exploitation of Islamic law and tradition for nationalist purposes often leads to their manipulation, adapting them to fit shifting political realities.

Some Muslims feel that Islamic law directly tackles this conflict, as explained by El Fadl at Columbia University:

I often encounter this problem in teaching Islamic law. Many of my students enrol in the class thinking that a course in Islamic jurisprudence will inevitably focus on the Israeli/Palestinian conflict. When I announce that alas the course will not address this conflict at all, a considerable number of students politely withdraw from the class. (2007: 43–44)

Political Islamist movements, such as Salafists and Wahhabists, exploit these kinds of political issues, integrating them with the common Islamic beliefs (El Fadl 2007: 43–44). This motion extends to many others including contemporary Islamist movements and groups, where they discuss these issues to rally people around them. They contribute to this chaotic situation, where Muslims ask what part of the Islamic belief is, what is part of the Islamic law, and what do they say about them (El Fadl 2007: 43–44).

Another issue that Muslims are faced with on a daily basis surrounds the concepts of self-defence, just and unjust wars. Some groups preach self-defence, but do not really define the extent of what is allowable in the name of self-defence, attaching a meaning of “righting the wrongs,” justifying revenges for historical grievances and injustices that happened centuries ago. This is relevant in conflicts where Muslims are involved, from Iraq and Afghanistan, to Chechnya and Kashmir. Self-defence in Islamic law is limited to being proportional and restrained, to repel further danger and suffering, without inflicting more danger and suffering for anyone (El Fadl 2007: 241–242). For example, it is not self-defence to retaliate armed attacks with bombs and missiles. Similarly, the principle of self-defence is not an excuse to open war to the whole world because there is a conflict in a Muslim land. Self-defence should be limited to where that conflict takes place and be focused on eliminating the danger and the suffering there (El Fadl 2007: 241–242). And certainly, the purpose of self-defence is not to kill innocent people.

To address these complexities, it is important to promote education and understanding within Muslim communities. Providing accurate interpretations of Islamic teachings can help individuals navigate these issues with clarity. Moreover, fostering open dialogue and encouraging critical thinking can contribute to a more nuanced understanding of self-defence, just wars, and the ethical principles that underpin Islamic teachings (El Fadl 2007: 43–44). By engaging in thoughtful discussions and examining diverse perspectives, Muslims can develop a more comprehensive understanding of their faith and its teachings.

### GLOBAL FATWAS AND CALLS FOR JIHAD

The arguments that the ring-wing groups in the West bring up against Muslims' integration and belonging in the West are some of the justifications used by jihadists to support their enmity towards the West. These arguments do not represent the views or beliefs of the majority of Muslims, but rather the extremist ideology held by a small minority. Additionally, these arguments are highly contentious and widely criticized within the broader Muslim community. However, both right-wing Westerners and jihadists use the same arguments against Muslims' belonging in the West. The majority of Muslims reject these extremist ideologies and promote peaceful coexistence, respect for human life, and adherence to the principles of justice and fairness. Andrew March (2009: 127) has compiled a list of the five main arguments:

1. A Muslim may never combat another Muslim in service of unbelievers, regardless of the cause.
2. A war for the sole purpose of expanding the space ruled by Islam and Islamic law is a just war, a legitimate form of jihad
3. It may be the duty of every individual Muslim, even those residing outside the Islamic polity to contribute to a legitimate jihad, if so called by a legitimate Imam.
4. A Muslim may not advance the cause of unbelievers or uphold non-Islamic rulings and truth-claims.
5. A Muslim may not sacrifice his life for the other than certain causes, of which defending a non-Muslim is not one.

The idea that the only interaction between Muslims and non-Muslims should be warfare and that Muslims should not befriend or enter into contracts with non-Muslims stems from a narrow and extremist interpretation of Islamic teachings. It disregards the principles of tolerance, coexistence, and peaceful interaction that are emphasized in mainstream Islamic thought.

Reciprocity is also an argument often used by jihadists to justify violence against the West as retaliation for perceived aggression against Muslims in the Middle East. They view their actions as a form of self-defence and believe that killing non-Muslims is an appropriate response to the perceived killing of Muslims. The argument relating to Muslim victims of terrorist attacks is often used selectively by extremists. They claim that if Muslims are elected or work under governments that they perceive as attacking Muslims, then they are not to be sympathized with. However, this argument overlooks the fact that the vast majority of victims of terrorism are innocent civilians, including Muslims.

Regarding the concept of aman, jihadists may argue that individuals born after the establishment of a security pact between Muslims and non-Muslim states are not bound by it and therefore have no obligation to uphold it. However, this perspective is not widely accepted within Islamic scholarship, as the concept of aman is understood as a broader agreement of peace and security that applies to both past and present generations.

This being said, these extremist ideologies still find an audience in the West among Muslims, and it should be addressed as such, not to be underestimated but also not overestimated, so we can address this question correctly. And the formation of narrative is the most important issue here. These narratives play a significant role in shaping the actions and motivations of individuals and groups, including terrorist organizations.

It is true that groups like ISIS have been successful in promoting their narrative and attracting individuals to join them, including Western converts. Their appeal often lies in offering an alternative and enticing vision that resonates with certain mindsets, particularly among marginalized or disillusioned individuals. Their narrative is not simply a reaction to the Western narrative but has its own distinct elements that attract certain individuals.

Developing a counter-narrative against ISIS alone may not be sufficient or productive. Merely reacting to their narrative can unintentionally amplify their influence. Instead, a more comprehensive approach that involves a combination of strategies, including addressing socio-economic

factors, promoting inclusion and positive identity formation, countering extremist ideologies, and providing alternative narratives, is necessary.

While apocalyptic claims may be present in the rhetoric of ISIS and other extremist groups, it is not the primary factor that lures individuals to join them. The sense of nostalgia for an Islamic state and a strong Islamic leader, rooted in Islamic literature and historical references, has a more significant influence. The desire for a state based on Islamic principles and the longing for a strong Muslim leader are key drivers for some Western Muslims, including converts, who may choose to support or join jihadist organizations.

The nostalgia for an Islamic state and a strong Muslim leader is not limited to jihadist groups but can also be observed among some Muslim intellectuals and academics who may support leaders like Sisi, Morsi, Erdogan, and others despite their undemocratic actions or actions that contradict Islamic teachings. This highlights the complexity of the issue and the various factors that contribute to individuals' support for or attraction to different narratives.

The distinction highlighted by William McCants between al-Qaeda and ISIS regarding their approach to declaring a caliphate is indeed significant. Al-Qaeda aimed to build popular support before establishing a caliphate, while ISIS sought to impose a caliphate regardless of popular opinion. This difference can be observed not only between these two groups but also between older and newer terrorist organizations in general. Such organizations often share personnel but may develop variations in ideology, claims, or goals to attract different individuals or respond to internal questioning.

It is common for terrorist organizations to undergo changes in their ideology, alliances, or goals over time. They may evolve into new organizations, merge with other groups to form larger alliances, or further develop their ideology if they manage to survive for an extended period. The example of the Kurdistan Workers' Party (PKK) in Turkey is cited, which originally had a more socialist and revolutionary ideology but gradually transformed into a Kurdish ethnic terrorist group. These shifts occur when the organization fails to find sufficient support for its original ideology or receives greater financial backing from other sources with different ideologies.

Al-Qaeda relied primarily on member contributions, including from individuals like bin Laden, for financial support. In contrast, ISIS emerged as a self-sustaining entity with significant control over resources and

wealth. Analysing the early months or years of ISIS reveals its relative immaturity compared to al-Qaeda. Its initial discourse centred on declaring a “state” as a reaction to perceived lack of conservatism and the spread of corruption within al-Qaeda.

While ISIS employs apocalyptic prophecies more prominently in its discourse compared to al-Qaeda, it is also apparent that al-Qaeda’s rhetoric was more religious in nature. Al-Qaeda justified its actions using Islamic claims, albeit in distorted ways, while ISIS relies more on apocalyptic explanations even for matters that do not necessarily align with an apocalyptic narrative. This suggests that ideologies and discourses of terrorist groups can evolve and change over time. Apocalyptic prophecies are employed as tools and may be subject to modification rather than representing fixed beliefs or long-term goals.

It is true that many groups initially joined al-Qaeda but later diverged and pursued their own paths due to differences in vision and strategies. According to accounts from former al-Qaeda officials, including bin Laden’s chief of staff, there were frustrations with bin Laden’s single-minded focus on the United States and missed opportunities to establish an Islamic state. This lack of creativity and forward-thinking may have contributed to the departure of ISIS founders from al-Qaeda.

Regarding the link between the flag of ISIS and the final battle at the End of Days, many actions of Muslims can be connected to eschatological beliefs. In Islam, it is encouraged to consider every action as if it were the last, ensuring that it is carried out with sincerity and without regret. While historical Islamic dynasties may have had claims extending until the End of Times, they did not necessarily assert that the End of Times was imminent. It is a common practice among Muslims to have a consciousness of the End of Times and to approach their actions with the awareness of its potential significance.

End of Times prophecies and eschatological beliefs exist not only among Muslims but also within various religious and political communities. This does not make ISIS fundamentally different from others in terms of their engagement with these beliefs. Apocalyptic claims and narratives can be found in different contexts and are not exclusive to any particular group or ideology. Talking to France’s Chirac, George W. Bush used apocalyptic claims to gain Chirac’s support to invade Iraq,

Jacques you and I share a common faith. You’re Roman Catholic, I’m Methodist, but we are both Christians committed to the teachings of the

bible. We share one common Lord... Gog and Magog are at work in the Middle East. Biblical prophecies are being fulfilled... This confrontation is willed by God, who wants to use this conflict to erase His people's enemies before a new age begins. <sup>(1)</sup>

Within Islam, there are diverse and often conflicting interpretations and claims about the prophecies related to the End of Times. There is no consensus or structure regarding when specific signs leading to the end will occur or how they will unfold. Organizations that use these prophecies in their discourse often switch between different signs without a consistent narrative.

The restoration of a caliphate is indeed a more prominent goal pursued by groups like ISIS than the apocalyptic war itself. The use of apocalyptic prophecies, in this case, serves to legitimize their claims for a caliphate and consolidate power under a single ruler. This can be seen not only among terrorist leaders but also among certain allegedly democratic Muslim leaders who assert their leadership over the Muslim Ummah.

While religious claims may be initially associated with these groups, many individuals within these organizations become weaponized for political gain or defence. Political actors have been known to manipulate and exploit these individuals, such as releasing jihadists from prisons to suppress protests or releasing criminals to create room for alleged coup plotters. It highlights the need to address and prevent the emergence of various ideological groups, not solely those claiming religious motivations.

## CONCLUSION

The experiences and perspectives of Muslims in non-Muslim states are shaped by a range of interplaying elements, including historical, cultural, social, and political factors. Historical legacies, such as colonization and migration patterns, can significantly impact the formation of Muslim communities and their subsequent interactions with the wider society. Cultural dynamics, such as religious practices, language, and traditions, contribute to the sense of identity and belonging among Muslims. Social factors, such as community organizations, social networks, and

<sup>1</sup> Quoted in Eichenwald, Kurt. 2012. *500 Days: Secrets and Lies in the Terror Wars*. New York: Touchstone Book.

family structures, play a pivotal role in shaping individuals' attitudes and behaviours. Additionally, political climate, policies, and discourses can significantly influence the relationship between Muslim minorities and the broader society. Indeed, scholars have examined various factors that contribute to the alienation of Muslims from the broader society in which they reside. Some researchers focus on policy implementations and political anti-Islamic sentiments as significant influences, pointing to how these factors contribute to the marginalization of Muslims. On the other hand, there are scholars who attribute the radicalization of Muslims and increased animosity towards non-Muslims to the strict interpretation of Shari'a.

In contrast to these perspectives, other scholars emphasize the agency of Muslims who actively participate in society and successfully integrate into the general community. They highlight examples of Muslims who are able to navigate the challenges and find a sense of belonging through their engagement and contribution. However, these arguments only provide a partial view of the complex dynamics at play. To gain an understanding of the factors impacting Muslim communities, it is necessary to explore and analyse additional potential influences. For instance, socio-economic factors such as educational opportunities, employment prospects, and access to resources can significantly shape the experiences and integration of Muslims. Cultural factors, including religious and ethnic diversity within the Muslim community, can also play a role in shaping identities and interactions with the broader society. Furthermore, the role of media and public discourse in shaping perceptions of Islam and Muslims cannot be overlooked. Additionally, historical and geopolitical factors, such as international conflicts and migration patterns, contribute to the experiences and attitudes of Muslims living in non-Muslim states. These influences can shape perceptions of identity, loyalty, and belonging within the Muslim community.

## REFERENCES

- Akbarzadeh, Shahram. 2016. "The Muslim Question in Australia: Islamophobia and Muslim Alienation." *Journal of Muslim Minority Affairs* 36 (3): 323–333.
- Ali, Jan A. 2011. "A Dual Legal System in Australia: The Formalization of Shari'a." *Democracy and Security* 7 (4): 354–373.

- Bahfen, Nasya Yadi. 2008. "Online Islamic Identity and Community in Australia and Three Neighbouring Countries." PhD diss.
- Barton, Greg. 2015. "Islamic State, Radicalisation and the Recruitment of Foreign Fighters in Australia: The Pull to Make Hijrah from the Lucky Country to God's Nation." *Panorama: Insights into Asian and European Affairs*, 105–123.
- Baumeister, R. F. & Leary, M. R. (1995). The need to belong: Desire for interpersonal attachments as a fundamental human motivation. *Psychological Bulletin*, 117 (3), 497–529. <https://doi.org/10.1037/0033-2909.117.3.497>
- Bleuer, Christian. 2012. "Muslim Soldiers in non-Muslim Militaries at War in Muslim Lands: The Soviet, American and Indian experience." *Journal of Muslim Minority Affairs* 32 (4): 492–506.
- Calhoun, C. (2003). Imagining Solidarity: Cosmopolitanism, Constitutional Patriotism, and the Public Sphere. *Public Culture*, 14(1), 147–171. <https://doi.org/10.1215/08992363-14-1-147>
- Eichenwald, Kurt. 2012. *500 Days: Secrets and Lies in the Terror Wars*. New York: Touchstone Book.
- El Fadl, Khaled Abou. 2007. *The Great Theft*. New York: HarperCollins.
- Goodenow, C. (1993). The psychological sense of school membership among adolescents: Scale development and educational correlates. *Psychology in the Schools*, 30(1), 79–90. [https://doi.org/10.1002/1520-6807\(199301\)30:1<79::AID-PITS2310300113>3.0.CO;2-X](https://doi.org/10.1002/1520-6807(199301)30:1<79::AID-PITS2310300113>3.0.CO;2-X)
- Halse, C. (2018). *Interrogating Belonging for Young People in Schools*. New York: Springer.
- John, Amelia, Fethi Mansouri, and Michele Lobo. 2015. "Religiosity, Citizenship and Belonging: The Everyday Experiences of Young Australian Muslims." *Journal of Muslim Minority Affairs* 35 (2): 171–190.
- Khelifa, S. (2017). A Delicate Mosaic: The Future of Muslims in Canada. *University of Saskatchewan Undergraduate Research Journal*, 3(2), 1–14.
- March, Andrew F. 2008. "Are Secularism and Neutrality Attractive to Religious Minorities-Islamic Discussions of Western Secularism in the Jurisprudence of Muslim Minorities (Fiqh Al-Aqalliyyat) Discourse." *Cardozo Law Review* 30: 2821.
- March, Andrew F. 2009. "Sources of Moral Obligation to Non-Muslims in the 'Jurisprudence of Muslim Minorities' (Fiqh al-aqalliyyāt) Discourse." *Islamic Law and Society* 16 (1): 34–94.
- Maslow, A. H. (1954). *Motivation and Personality*. New York: Harper and Row.
- McAndrew, S. and Sobolewska, M. 2015. McAndrew, S. and Sobolewska, M. 2015. "Mosques and Political Engagement in Britain. Participation or Segregation?" In *Muslims and Political Participation in Britain*, edited by T. Peace, 53–81. London: Routledge.

- Peucker, Mario. 2017. *The Civic Potential of Muslim Community Organisations for Promoting Social Cohesion in Victoria*. Melbourne: Victoria University.
- Ramadan, Tariq. 2005. *Western Muslims and the Future of Islam*. UK: Oxford University Press
- Rane, Halim, Adis Duderija, Riyad H. Rahimullah, Paul Mitchell, Jessica Mamone, and Shane Satterley. 2020. "Islam in Australia: A National Survey of Muslim Australian Citizens and Permanent Residents." *Religions* 11 (8): 419. <https://doi.org/10.3390/rel11080419>
- Shavit, Uriya. 2012. "The Wasatī and Salafī Approaches to the Religious Law of Muslim Minorities." *Islamic Law and Society* 19 (4): 416–457.
- Shavit, Uriya. 2014. "Can Muslims Befriend Non-Muslims? Debating Al-Walā' Wa-Al-Barā' (Loyalty and Disavowal) in Theory and Practice." *Islam and Christian-Muslim Relations* 25 (1): 67–88.
- Shavit, Uriya. 2014. "'The Lesser of Two Evils': Islamic Law and the Emergence of a Broad Agreement on Muslim Participation in Western Political Systems." *Contemporary Islam* 8 (3): 239–259.
- Šisler, Vít. 2011. "The Internet, New Media, and Islam: Production of Islamic Knowledge and Construction of Muslim Identity in the Digital Age."
- Sokolova-Shipoli, D. P. (2020). *Fiqh al-aqalliyat in the Sense of Belonging for Muslim Minorities in Contemporary America*. Unpublished PhD Thesis. Deakin University, Melbourne, Australia.
- Vergani, Matteo, et al. 2017. "Examining Islamic Religiosity and Civic Engagement in Melbourne." *Journal of Sociology* 53 (1): 63–78.
- Wagemakers, Joas. 2008. "Framing the "Threat to Islam": Al-Wala' Wa Al-Bara' in Salafi Discourse." *Arab Studies Quarterly* 30 (4): 1–22.
- Yilmaz, I. 2005. Inter-Madhhab Surfing, Neo-Ijtihad, and Faith-Based Movement Leaders. In Peri Bearman, Rudolph Peters and Frank E. Vogel (eds) *The Islamic School of Law: Evolution, Devolution and Progress*, Harvard University Press. 191–206.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Reprint. London and New York: Routledge.
- Yilmaz, I. 2019. Nation Building, Islamic Law and Unofficial Legal Pluralism: the Cases of Turkey and Pakistan. In Norbert Oberauer, Yvonne Prief, Ulrike Qubaja (eds) *Legal Legal Pluralism in Muslim Contexts*, pp. 109–138. Leiden, The Netherlands: Brill.
- Yilmaz, I. 2021. *Creating the Desired Citizens: State, Islam and Ideology in Turkey*. Cambridge and New York: Cambridge University Press.
- Yilmaz, I. 2022. *Authoritarianism, Informal Law, and Legal Hybridity: The Islamisation of the State in Turkey*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.

Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.

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## Shari'a, Muslims, and Legal Pluralism in the West

### SHARI'A, MUSLIMS, AND LEGAL PLURALISM IN THE WEST

The complex debate around “Muslim integration,” “Muslim loyalty to a non-Muslim country,” and “Muslim belonging” reflects the complex interplay between cultural perceptions and identity building. The way Muslims navigate their sense of identity, allegiance, and belonging inside non-Muslim nations is shaped by various factors, including immigration laws, political discourses, civic engagement, and religious frameworks (John et al. 2015: 171–172; Yilmaz 2023; 2024). These dynamics saw a dramatic change in the wake of 9/11, with Muslims coming under more scrutiny and suspicion for their allegiance to their Western nations. By casting doubt on Muslim residents’ devotion and promoting the idea of dual loyalty or betrayal to the state, political personalities and media outlets fuelled anti-Islamic sentiments (Bahfen 2008; Shavit 2012; Bleuer 2012; Shipoli 2018). In this regard, Muslim legal pluralism presents challenges within the framework of secular jurisprudence in Western societies, making the implementation of Shari’a law a complex and potentially unfeasible process (Yilmaz 2001; 2002; 2003). Navigating the complexities of Muslim legal pluralism within Western societies poses significant challenges. Nonetheless, adopting inclusive policies and promoting a more nuanced understanding of Muslim experiences can contribute to the process of integration, multiculturalism, and the construction of dual Muslim-Western identities.

The diversity of Muslim minorities in the West encompasses various ethnic, cultural, and theological perspectives, making it difficult to establish a unified Shari'a legal system that can adequately represent all Muslims, regardless of their backgrounds. Furthermore, the presence of conflicting theological interpretations further complicates the matter.

Muslim legal pluralism also leads to the construction of different Muslim identities, with varying perspectives on how to navigate life in Western societies and diverse attitudes and behaviours among Muslims. This highlights the need to consider the multidimensionality of Muslim communities and their experiences.

Muslim migration to the West began long ago, but the need to clarify their position in Western societies and navigate their religious obligations within non-Muslim-majority countries became apparent in the 1990s. Islamic jurists who were familiar with the Western way of life and secular legal systems recognized the need for a reformist approach. Consequently, a few Islamic jurists established minority fiqh, a branch of jurisprudence that addresses the needs of Muslims as a religious-minority group in the West. Within this context, two main theological lines emerged: the wasati (moderate) and salafi (puritanical) sects, each approaching minority fiqh differently (Duderija 2018). Saeed (2007) categorizes Muslims based on political, legal, and theological differences, with political divisions primarily along Sunni and Shia lines, and theological divisions corresponding to these two major lines. These theological differences lead to contrasting interpretations of Shari'a in the Western context and result in distinct identity constructions and integration processes. While the wasati line allows and even promotes political and active participation of Muslims in the West, fostering integration, the salafi line adopts rigid, strict, puritanical, and isolationist interpretations of minority fiqh, leading to disintegration and isolation from the broader society (Shavit 2012).

Another contentious aspect of the Shari'a debate in Western states revolves around gender issues. Western politicians have long criticized the gender inequality within the Shari'a legal system and Islam as a whole. However, there has been a noticeable shift in this discourse with the rise of women activists advocating for gender consciousness and an increasing number of female preachers working towards non-patriarchal interpretations of Islam. These developments present potential solutions to the gender-related debates (Duderija 2018; Sakai and Yasmeen 2016: 376). Additionally, Muslims voluntarily accept minority fiqh, particularly women, as they find that the legal systems of Western countries

offer adequate protection and meet their needs. Many women's non-governmental organizations in Western countries have taken a stand against the implementation of Shari'a due to various reasons, but primarily because they believe that the existing legal systems provide sufficient protection (Ghobadzdeh and Akbarzadeh 2015).

What this research has shown is that Muslims in the West have multiple legal affiliations, navigating multiple identities. Rather than sacrificing one identity for the sake of another, a concept of "joint governance" could be considered, encouraging deeper integration (Shachar 1999).

When questioning if Shari'a can act as a source of legal pluralism in the lives of Western Muslims, the book has analysed the complex interplay between legal modernity, legal pluralism, and the concept of Sharia within the Western societies. It covers the main discussions about Shari'a in the West, as well as the main discussions around legal pluralism in the West. The centre of these discussions were the practical manifestation of the Shari'a and the Western laws in the lives of Muslims in the West. It is obvious that Muslims in the West want to bridge their belief into divine law, with the law of the land, in matters regarding family, personal life practices, social norms, and individual legal obligations (Yilmaz 2002; 2003; 2020; Nielsen 1999). This challenges the monolithic narrative around both the Western legal system as well as Shari'a, and since the beginning, the book fosters a dialogue between diverse scholars, and empirical data, to debunk misconceptions raining the media discussions around this topic (Griffiths 1986).

There is a considerable number of scholarly publicans in this topic that we referenced in the first chapter and went through them to include them in the main discussions. What is obvious is that Shari'a is not merely a legal system based on Islam. It encompasses legal regulations together with ethical perceptions, spiritual guidelines, and individual matters that shape the lives of Muslims. One aspect of the Shari'a is the need to be constantly revised as new matters come to being, especially for the Muslims in the West. That's why it is necessary that Islamic scholars answer the questions of Muslims, which come out of need in adjusting their personal life, and their daily matters, into the contemporary West. This fact alone challenges the misconception of Shari'a being an outdated, strict, rule of conduct that doesn't get updated. As was discussed in the second chapter, Shari'a basis itself in multiple sources, starting from the foundations of the Qur'an and the Sunna, which serves as a compass for diverse matters such as the family law, inheritance, social matters. While

the Qur'an serves as the divine source, the Sunna (the actions of the Prophet Mohammed) serve as noble examples that align with Shari'a (Kamali 2008; Coulson 1964; Goitein 1960; Esposito 2001; Dutton 2000; Yilmaz 2005, 2016, 2020).

The debate around Islam in Western societies and the status of Muslims as minorities within those societies also involves historical debates and contemporary challenges within Islamic scholarship and Muslim communities. Muslim scholars have long debated the issue of renewal of the Islamic laws and the reinterpretation of Islam for Muslims residing outside traditional Muslim territories (*dar al-Islam*) and their interactions with non-Muslim lands (*dar al-harb*), incorporating concepts like duress (*ikrah*), necessity (*darura*), and public welfare (*maslaha*) into Islamic jurisprudence to address diverse circumstances (Al-Fadl 1994; Masud 1989; Yilmaz 2003: 234). With the increase in Muslim migration to Western countries, the necessity for independent legal reasoning (*ijtihad*) led to the development of minority *fiqh* (*fiqh al-aqalliyat*), accommodating Muslims as religious minorities in Western societies (Duderija 2018; Shavit 2012). Scholarly works on *fiqh al-aqalliyat* have contributed significantly to discussions on resolving religious, social, and legal challenges faced by Muslim minorities in Western societies, highlighting the importance of adapting Islamic jurisprudence to minority contexts (El Fadl 2001: 57; Taha 2012: 7). Terms like *fiqh al-mahjar* and *fiqh al-muhājir* further enrich these discussions, addressing contemporary challenges faced by Muslim minorities (Sokolova-Shipoli 2020: 202–203) and which have been detailed in the second chapter.

Significant distinctions can be seen between the experiences of Muslim integration and legal adjustments in the US, Europe, UK, Canada, and Australia. In contrast to Europe's discussions on accepting Islamic courts and legal pluralism, the United States presents a diversified Muslim community navigating post-9/11 attitudes without widespread calls for official Shari'a implementation (Cesari 2004; Fetzer and Soper 2005). This has also to do, in big part, with the origin of the Muslim immigrants in the US and in Europe. Compared to several European countries where discussions about the acceptance of Shari'a and cultural rights continue, Great Britain's historical linkages and inclusive political rights help to explain why Muslims have a more integrated political presence there (Danso 2000; Fetzer and Soper 2005; Jan 2023) and the calls for the implementation of the Shari'a law are more present. Great Britain has also had a similar experience with Beth Din courts for its

Jewish population. While Australia's approach involves active multiculturalism but questions the compatibility of Islamic values, including aspects related to Shari'a law, with Western values and harshly opposing such policies in political discourse, Canada's multicultural model emphasizes adaptation and a distinct Canadian-Muslim identity, balancing religious freedoms with secular principles (Ramadan 2005; Hassan 2018; Saeed 2007). In general, these analogies draw attention to the various paths and difficulties that Muslim communities encounter in Western environments, highlighting the significance of policies tailored to the local context, community involvement, and mutual understanding in fostering inclusivity and respect for religious diversity in contemporary societies.

## REFERENCES

- Al-Fadl, K.A. 1994. "Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries." *Islamic Law and Society* 1: 141–187.
- Bahfen, Nasya Yadi. 2008. "Online Islamic Identity and Community in Australia and Three Neighbouring Countries." PhD diss.
- Bleuer, Christian. 2012. "Muslim Soldiers in Non-Muslim Militaries at War in Muslim Lands: The Soviet, American and Indian experience." *Journal of Muslim Minority Affairs* 32 (4): 492–506.
- Cesari, Jocelyne. 2004. *When Islam and Democracy Meet: Muslims in Europe and in the United States*. Springer.
- Coulson, N.J. 1964. *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Danso, Iketina. 2000. "The Commission for Racial Equality." *European Union*. [https://ec.europa.eu/employment\\_social/social\\_situation/responses/a24277\\_en.pdf](https://ec.europa.eu/employment_social/social_situation/responses/a24277_en.pdf). Accessed 24 January 2024.
- Duderija, Adis. 2018. "Islam and the West: How Muslims are Constructing a New Identity." ABC Religion & Ethics 26 August 2018. <http://www.abc.net.au/religion/islam-and-the-west-how-muslims-are-constructing-a-new-identity/10214294>. Accessed 28 September.
- Dutton, Y. 2000. *The Origins of Islamic Law: The Qur'an, the Muwatta and Medinan 'Amal*. New Delhi: Lawman (India) Private Limited.
- El Fadl, Khaled Abou. 2001. *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourses*. Lanham, MD: University Press of America.
- Esposito, J.L. 2001. *Women in Muslim Family Law*, 2nd ed. (Contemporary Issues in the Middle East). New York: Syracuse University Press.

- Fetzer, Joel S., and Soper, J. Christopher. 2005. *Muslims and the State in Britain, France, and Germany*. Cambridge: Cambridge University Press.
- Ghobadzdeh, N., and Akbarzadeh, S. 2015. "Sectarianism and the Prevalence of 'Othering' in Islamic Thought." *Third World Quarterly* 36 (4): 691–704. <https://doi.org/10.1080/01436597.2015.1024433>
- Goitein, S.D. 1960. "The Birth-Hour of Muslim Law?" *The Muslim World*, 50: 23–29.
- Griffiths, John. 1986. "What Is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18: 1–55.
- Hassan, Riaz. 2018. "Australian Muslims: The Challenge of Islamophobia and Social Distance," 1–127. <https://www.unisa.edu.au/contentassets/4f85e84d01014997a99bb4f89ba32488/australian-muslims-final-report-web-nov-26.pdf>. Accessed 25 January 2024.
- Jan, Einat. 2023. "The Political Influence of an Interest Group: A Comparative Study on the Muslim Minority in the United States and Britain." *Humanities and Social Science Communications* 10 (113): 1–11.
- John, Amelia, Fethi Mansouri, and Michele Lobo. 2015. "Religiosity, Citizenship and Belonging: The Everyday Experiences of Young Australian Muslims." *Journal of Muslim Minority Affairs* 35 (2): 171–190.
- Kamali, Mohammad Hashim. 2008. *Shari'ah Law: An Introduction*. Oxford: One World Publications.
- Masud, Muhammad Khalid. 1989. "Being Muslim in a Non-Muslim Polity: Three Alternate Models." *Institute of Muslim Minority Affairs. Journal* 10 (1): 118–128.
- Nielsen, Jorgen S. 1999. *Toward a European Islam: Migration, Minorities and Citizenship*. London: Macmillan.
- Ramadan, Tariq. 2005. *Western Muslims and the Future of Islam*. Oxford, UK: Oxford University Press.
- Saeed, Abdullah. 2007. "Trends in Contemporary Islam: A Preliminary Attempt at a Classification." *The Muslim World* 97 (3): 395–404.
- Sakai, Minako, and Samina Yasmeen. 2016. "Narratives of Muslim Womanhood and Women's Agency." *Islam and Christian-Muslim Relations* 27 (4): 371–377.
- Shachar, Ayelet. 1999. "The Paradox of Multicultural Vulnerability: Individual Rights, Identity Groups, and the State." *Multicultural Questions*, 87–111.
- Shavit, U. 2012. "The Wasafī and Salafī Approaches to the Religious Law of Muslim Minorities." *Islamic Law and Society* 19 (4), 416–457.
- Shipoli, E. 2018. *Islam, Securitization, and US Foreign Policy*. New York: Palgrave Macmillan.
- Sokolova-Shipoli, Denitsa Pirinova. 2020. "Fiqh al-Aqalliyyat in the Sense of Belonging for Muslim Minorities in Contemporary America" (thesis, Deakin University), 4–243.

- Taha, Dina M. 2012. "Fiqh of Minorities and the Integration of Muslim Minorities in the West." *The IISES International Interdisciplinary Conference*, 1–11, April.
- Yilmaz, I. 2001. Law as Chameleon: The Question of Incorporation of Muslim Personal Law into the English Law. *Journal of Muslim Minority Affairs*, Vol. 21, No. 2, pp. 297–308.
- Yilmaz, I. 2002. The challenge of post-modern legality and Muslim legal pluralism in England. *Journal of Ethnic and Migration Studies*, Vol. 28, No. 2, pp. 343–354.
- Yilmaz, I. 2003. Muslim Alternative Dispute Resolution and Neo-Ijtihad in England. *Alternatives: Turkish Journal of International Relations*, Vol. 2, No. 1, pp. 1–24.
- Yilmaz, I. 2005. Inter-Madhhab Surfing, Neo-Ijtihad, and Faith-Based Movement Leaders. In Peri Bearman, Rudolph Peters and Frank E. Vogel (eds) *The Islamic School of Law: Evolution, Devolution and Progress*, Harvard University Press. 191–206.
- Yilmaz, I. 2016. *Muslim Laws, Politics and Society in Modern Nation States: Dynamic Legal Pluralisms in England, Turkey and Pakistan*. Reprint. London and New York: Routledge.
- Yilmaz, I. 2020. Muslims, Sacred Texts, and Laws in the Modern World. In: Woodward M., Lukens-Bull R. (eds) *Handbook of Contemporary Islam and Muslim Lives*, 1–18. Cham: Springer.
- Yilmaz, I. 2023. *Islam in the Anglosphere: Perspectives of Young Muslims in Australia, the UK and the USA*. Singapore: Palgrave Macmillan.
- Yilmaz, I. 2024. *Sharia as Informal Law: Lived Experiences of Young Muslims in Western Societies*. London and New York: Routledge.

# INDEX

## A

About El Fadl, Khaled, 9, 129  
Abullahi An-Na'im, 9, 26, 34  
Afghanistan, 65, 68, 76, 157, 173,  
180, 181  
Africa, 4, 63, 72, 76, 83  
African Americans, 64, 65, 107, 145  
almsgiving, 20, 45  
    Bosnia and Herzegovina, 28  
al-Qaeda, 60, 184, 185  
angrezi Shari'at, 61  
Arab Muslim, 75, 145  
Arab Spring, 60  
arbitration tribunals, 80, 81, 105,  
106, 108  
Asia, 4, 72, 83

## B

Bangladesh, 49, 71, 107  
Bayat, Asef, 9  
belonging, 5, 9, 15, 44, 47, 70,  
77–79, 135, 171–176, 179, 186,  
187, 191  
Bernardi, Senator, 61

Beth Din, 112, 194  
black-letter law, 3  
bloggers  
    *dar al-Cyber*, 132  
    Diyamet, 129  
    Diyamet Islam, 129  
    Ebrahim Moosa, 128, 130  
    Egypt, 129  
    fertilization, 132  
    *fugaha*, 128  
    genetic engineering, 132  
    Khaled Abou El Fadl, 129  
Bosnia, 76, 180  
Buddhists, 63  
Büchler, Andrea, 11

## C

Chechnya, 180, 181  
Christians, 21, 63, 81, 83, 92, 109,  
111, 140, 160, 177, 185  
    Constitution of Medina, 32  
citizenship rights, 9, 30  
civic engagement, 14, 145, 146, 175,  
176, 191

cultural racism, 59

## D

dar al-harb, 36, 38, 85, 155, 158, 161, 194  
 dar al-Islam, 36–38, 40, 67, 155, 157, 161, 194  
 darura, 36, 194

## E

England, 10, 12, 61, 66, 73, 115, 117  
 English Muslim law, 61, 73

## F

family law, 11, 12, 21, 61, 67, 70, 80–82, 86, 89–91, 93, 106, 108, 113, 114, 118, 119, 121, 193  
 fasting, 20, 32, 45, 151  
 fiqh, 26  
 Fiqh al-Aqalliyat, 15, 37, 39–44, 46–50, 164, 165, 177, 194  
 First World War, 63  
 France, 10, 12, 62, 69, 174, 185

## G

Gaffney, Frank, 107  
 Galler, Pamela, 107, 108  
 gender, 9, 82, 89, 112, 117, 120, 192  
 gender equality  
 Ihsan Yilmaz, 10  
 Joseph Massad, 8  
 judiciary, 3, 34  
 Julie Macfarlane, 11, 108  
 Kruiniger, Pauline M., 11  
 legal centralism, 3  
 legal hybridity, 7  
 legal modernity, 3, 58, 193  
 legal porosity, 7

legal positivism, 3  
 local customs, 3, 27  
*millet* system, 5  
 multiple belongings, 2  
 Najeeba Syeed-Miller, 11  
 non-Muslims, 5, 7  
 normative frameworks, 3  
 Ottomans, 5  
 Pacific, 4  
 Pakistan, 10, 27, 28, 71, 107  
 political participation, 2, 14, 146, 164–166  
 religious agency, 8  
 Saba Mahmood, 8  
 Gingrich, Newt, 61  
 Greece, 68, 109, 110

## H

hadith  
 Hanafi, 159  
 Hanbali, 26  
 ijma, 23  
 ijtihad, 23  
 Indonesia, 28  
 istihsan, 25

## I

Infidels, 177, 178  
 integration, 9, 36, 38, 40, 43, 44, 46, 47, 57, 59, 66, 68–74, 77, 78, 92, 110, 146, 167, 171, 176, 178, 179, 182, 191–193  
 Iraq, 65, 68, 72, 157, 180, 181, 185  
 ISIS, 60, 148, 173, 183–186  
 Islamic Revolution, 107  
 Islamophobia, 22, 59, 66, 70, 79, 88  
 Italy, 62

## J

Jews

- madhhab, 26  
 Maliki, 26  
 Maqasid, 34  
 masalaha mursala, 25  
 Muhammad Iqbal, 30  
 Muhammed Abduh, 30  
 mujtahid, 26  
*jihad*  
 John Howard, 173  
 Kashmir, 178  
 Palestine, 178, 179  
 Salman Rushdie, 180  
 Saudi Arabia, 177  
 Taliban, 180  
 Ummah, 186
- K**
- Khomeini, Ayatollah, 107  
 Kuru, Ahmet, 127  
 Al-Azhar, 129
- L**
- Lambie, Jacqui, 62  
 limping marriage, 90, 113  
 Lord Philips, 112, 113
- M**
- maslaha, 36, 42, 43, 194  
 May, Theresa, 115  
 Middle East, 8, 9, 71, 76, 83, 107,  
 110, 112, 137, 146, 183, 186  
 minority fiqh, 13, 36, 37, 41–43, 47,  
 192, 194  
 Muslim integration, 9, 78, 110, 172,  
 176, 191, 194
- N**
- Netherlands, 12, 62, 69, 70, 106  
 non-Caucasian, 58  
 non-liberal, 59  
 Norway, 62
- P**
- Palestinian-Israeli conflict, 146  
 pilgrimage, 20, 45, 139  
 Prophet Muhammad, 21–23, 33, 38,  
 43, 45, 50, 120, 155, 159, 161  
 qiyas, 50
- Q**
- Qur'an, 21, 22, 48, 49, 120, 137,  
 152, 154, 158, 160, 163, 194  
 Shafi'i, 26  
 Quraishi, Asifa, 11
- R**
- Ramadan, Tariq, 39, 47, 51, 67,  
 77–79, 139, 146, 151, 155, 163,  
 173, 195
- S**
- Salafi, 36, 38, 39, 42, 43, 51, 130,  
 135, 146, 164–167, 177, 178,  
 192  
 Scotland, 74, 115  
 Second World War, 63  
 secularism  
 sujet de droits, 6  
 Talal Asad, 7  
 transnational loyalties, 2  
 Turkey, 10, 63  
 Yvonne Haddad, 9  
 Ziba Mir-Hosseini, 9  
 Shah, Reza, 107  
 Shia, 75, 76, 132, 192  
 Soroush, Abdolkarim, 30  
 South Asia, 63, 76  
 South Asian, 63, 75, 145

Spencer, Robert, 107  
straight path, 21  
Sunna, 6, 21–23, 25, 26, 38, 193,  
194  
*Tajdid*, 42  
Sunni, 26, 38, 65, 75, 76, 83, 130,  
132, 192  
Switzerland, 10, 62

**U**

ulama, 13, 20, 27, 127–130  
urf, 25

**W**

Wahhabi, 146

Wales, 73, 84, 115, 117  
wasati, 36, 38, 42, 43, 166, 177, 178,  
192  
Williams, Rowan, 112  
World War I, 63  
World War II, 63

**Z**

Zaman, Muhammad Qasim  
organ transplantation, 132  
Peter Mandaville, 131  
Shaheen Whyte, 129, 131  
soap operas, 132  
Turkey, 129

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