Chapter 1
Introduction: Legal Pluralism and *Shari'a*

Bryan S. Turner and Adam Possamai

Legal pluralism may be simply defined as the development of a number of different legal traditions within a given sovereign territory. Legal pluralism is often held to be a challenge to legal centralism, a legal doctrine claiming that the state has a monopoly over law making in its sovereign space. Opponents of state centralism based on state sovereignty and a legal monopoly often regard it as an ideology rather than a legal doctrine. The modern critique of legal centralism is associated with an influential article ('What is Legal Pluralism?') by John Griffith (1986), but the origin of the theory of legal pluralism goes back to Eugen Ehrlich's *Fundamental Principles of the Sociology of Law* that was published in 1913. In many societies legal pluralism is now related to the recognition of indigenous traditional laws and, consequently, it is often referred to as 'Unofficial Law.' Studies of native traditions—such as Llewellyn and Hoebel's *The Cheyenne Way* (1941)—have influenced recognition of the importance of custom in the normative foundation of law and thence the legal order of society. The debate about legal pluralism is also closely associated with theories of multiculturalism and cosmopolitanism (de Sousa Santos and Rodriguez-Garavito 2005). These debates around pluralism raise a host of difficult conceptual issues, including the problem of defining law itself. Before turning to some of these vexed definitional issues, we should start with a brief consideration of the so-called 'legal centralism' position.

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The creation of the modern nation state typically involved an historical process establishing political sovereignty over territory and constructing political unity through the development of a unified legal system, a common framework of taxation, a national currency, the recognition of a national language and the development of a national army through male conscription. These processes lay at the core of the institution building that we now refer to as 'modernization.' These processes, both in Europe and in Asia, were typical of nineteenth century developmental strategies. In Asia, the construction of a centralized bureaucratic state was associated with the Meiji Restoration in Japan in 1868 that created a sound basis for state taxes, reformed the military and brought in legal changes based on western models. Similarly, in Turkey, the Early Republican Period (1923–1938) laid the foundation for secularism, cultural modernization and constitutional reform that followed aspects of French law and *laicité*. Turkish republicanism involved the termination of the caliphate and the partial exclusion of the *Shari'a* from public life.

In sociology, the principal theorist of this conceptual assembly of nation, state and law was Max Weber, in his *Economy and Society* (1978). Weber starts his account of law by making a distinction between 'legal dogmatics'—the question of the contents and validity of law—and the sociology of law, which is concerned with how law actually functions as an institution. For Weber, the enforcement of formal legal norms requires a coercive apparatus, but not an apparatus that primarily requires the exercise of physical violence. His famous definition of these conditions is as follows. Whether law exists "depends on the availability of an organized coercive apparatus for the nonviolent exercise of legal coercion. This apparatus must also possess such power that there is in fact a significant probability that the norm will be respected because of the possibility of recourse to such coercion. Today legal coercion by violence is the monopoly of the state" (Weber 1978 vol. 1: 314). In short, in a modern society with a sovereign state, the law is enforced through the courts with the ultimate guarantee of state enforcement. Weber was, of course, interested in the historical development of the law and at various points in his sociology of law he referred to the development of sacred law through revelation, such as the *Shari'a*, and he acknowledged early developments of customary law which were based on communal consensus. For example, he noted that in the late Roman Empire the jurists had to take note of the 'law of the land' in the case of the Common Law of the English provinces, and the distinction on the Continent between the Roman law and the 'indigenous bodies of law' (Weber 1978 vol. 2: 754). However the thrust of Weber's historical view was that, with legal 'rationalization' and the rise of the modern state, such customary laws disappeared under the impact of the monopolization of power by the bureaucratic state.

In the development of the sociology of law, an alternative to Weber's position can be found in the work of the Austrian sociologist Eugen Ehrlich (1862–1922). Ehrlich was born in Czernowitz (in present day Ukraine), which was the capital of Bukowina on the edge of the decaying Austro-Habsburg Empire, and died prematurely of tuberculosis before completing his trilogy in the sociology of law. His work on customary law in part reflects the status of his birthplace in the power structure of Austria. While being subject to the centralized system of Austrian law,

Bukowina also had a rich tradition of customary laws. Like most of the Austrian Empire, Bukowina was a multicultural society and, in fact, Ehrlich regarded it as a 'tribal society' in which diverse groups (Germans, Gipsies, Jews, Hungarians, Romanians, Russians, and more) lived side by side under the political and legal umbrella of the Austrian imperial state. As a baptized Roman Catholic of Jewish descent, Ehrlich was only too aware of the cultural diversity that lay beneath the outer shell of Austrian imperial institutions.

In this context, he became interested in the gap between the actual practice of law 'on the ground' and the formal doctrines of law that were embraced and developed by the legal professionals in the universities and the formal courts. In response to this gap and the fictions of the formal law, in 1913, in *Fundamental Principles of the Sociology of Law* (Ehrlich 2001), he coined the phrase 'living law,' to distinguish his approach from state-centred theories of law, which assume that law is created by the state to achieve a unified and coercive system of legal domination. Ehrlich argued that law is not exclusively produced by the state or the courts or by tribunals. He rejected the idea that is central to Weber, that law is a deductive system of legal propositions from general legal notions about contract, property, and sovereignty. He looked instead to how customary practices operated at the community level, as the living law of the land. Hence, he took the view that law is basically about establishing a social order and it is to be found everywhere; law is concerned with "ordering and upholding every human association" (Ehrlich 2001: 25). In the same passage he drew attention to the importance of sociology in the teaching of jurisprudence: "Since the law is a social phenomenon, every kind of legal science (*Jurisprudenz*) is a social science; but legal science in the proper sense of the term is a part of the theoretical science of society, of sociology" (Ehrlich 2001: 25). In focusing on what lawyers do, rather than on what they are supposed to do, he developed a battery of concepts: living law, the inner order of association, rules of conduct, and rules of decision. It is perhaps unsurprising that Ehrlich's ideas found a ready audience in the United States, where legal realism had turned its back on the formal jurisprudence of Europe. American pragmatism offered a fruitful context for his ideas on living law and his work was eventually supported by Roscoe Pound (1870–1964) at the Harvard Law School, who developed his own version of 'sociological jurisprudence.' Ehrlich's ideas prepared the way for theories of legal pluralism, which reject the idea that law is only state law (Neklen 1984).

In this framework, legal pluralism can be seen as a controversial sociological issue, because it can only exist in contrast to the notion that the state has a monopoly over the law. In other words, the idea of legal pluralism also functions as a critique of the state-centred or 'official' view of the law. We argue that, while this sociological interpretation of legal pluralism is important and plausible, there may be other arguments about the importance of a shared citizenship to guarantee equality (especially equality before the law) that must be taken into account. Ehrlich's view of living law made sense in a society of multiple and distinct ethno-cultural communities with their own customs of normative ordering, but, in societies where the majority shares a common culture and a unified citizenship, can legal pluralism find a place? Can legal pluralism add more fuel to the bonfire of civil unrest, especially where a

majority fears the impact of a minority? In modern societies, the revival of Islam and the demand for the *Shari'a* have become the principal testing ground for the operation of legal pluralism. Sub-Saharan Africa is an extreme illustration.

Legal pluralism can often be a spur to civil unrest rather than to social harmony. In November 2002, conflicts around the Miss World Competition plunged Nigeria into violent clashes between Christians and Muslims, thereby deepening the controversy surrounding the revival of the strict criminal code of the *Shari'a* in 12 of Nigeria's 36 administrative regions. In December, there were violent protests from Muslims in Abuja, where contestants awaited the opening of the pageant, and eventually Muslims attacked Christians in Kaduna, which is one of Nigeria's most volatile northern cities. The contemporary problem of Christian–Muslim relations is compounded by the fact that Nigeria is made up of 250 separate ethnic groups, with 400 linguistic groups. The struggle over the law is simply a manifestation of a deeper struggle over the unity of the sovereign state. While legal pluralism is an outcrop of a society that is already diverse and deeply divided, it becomes, in itself, a component of struggle and division, igniting further conflagration between social groups (Clarke 2009).

Before proceeding, we need to explore the complexity of the various definitions of the *Shari'a* that can be found around the world. This domain has become controversial because it is bound up, not just with the practice of law, but with the question of Muslim identity. It has also become associated with radical Muslim movements such as Boko Haram in Nigeria, where there is a political movement to establish *Shari'a* as the exclusive jurisdiction over Islamic territory. Critics have also drawn attention to the *Hudud* laws which contain draconian provisions for any transgression of laws relating to alcohol consumption or illegal sexual intercourse. After 9/11, many security agencies came to see the *Shari'a* as a threat to democracy, and perceptions of the criminal law components in the *Shari'a* emphasized those measures that appeared to re-enforce gender inequality.

In some US conservative states, Christian conservatives have responded to what they perceive as the spread of the *Shari'a* by arguing that the United States should develop its own Christian *Shari'a* in order to impose God's law on the country. One example of this response is the Kansas House of Representatives' introduction of a bill to permit individuals or businesses to refuse services to same sex couples, when the religious beliefs of these individuals or businesses are compromised. These developments are controversial because they are not consistent with the separation of church and state which is enshrined in the American constitution.

These negative views of the *Shari'a* are generally not accepted by scholars, who emphasize its internal variety and the fact that it is composed of law, a moral system, and a religious code. The *Shari'a* is thus a comprehensive system covering politics, economics, morality, and religious practices. In formal terms, the sources of the *Shari'a* are primarily the *Qur'an*—as the ultimate foundation of authority, being the divine revelation vouchsafed to the Prophet—and the *Sunnah* (or the ways of the Prophet). These formal sources have been, over time, supplemented by interpretations by judges [*qadis*], the consensus of legal scholars [*ulama*], and finally, legal reasoning. Given these diverse sources of authority, it is hardly surprising that

Muslim law is diverse and that it evolves constantly over time (Hallaq 2009: 27). Hence Weber was mistaken in believing that a legal system based ultimately on revelation could not change to meet new circumstances and that the gap between tradition and actual circumstances could only be bridged by arbitrary legal decisions [*fatwas*].

It is useful to distinguish different levels of the *Shari'a.* First, there are universal values relating to justice and equality. Second, there are the regulations that apply specifically to Muslims' personal behaviour, concerning aspects such as diet and modesty. Third, there is the *Shari'a* as practised by the various law schools. Many of these legal rulings, for example, those regarding veiling and diet, are subject to dispute among legal authorities. This is hardly surprising since all legal decisions—whether religious or secular—are subject to interpretation (Hosen 2007: 204).

Modern scholars, departing from Weber, see the *Shari'a* as a flexible and open system of law that can respond, and is responding, to modern circumstances. As is the case in secular legal systems, there are many versions of the *Shari'a* in terms of legal traditions and schools, and there are also differences between the forms of *Shari'a* practised by *Sunni* and *Shi'ite* communities, respectively. However, one immediate problem in defining the *Shari'a* as 'law' is that this downplays, or even ignores, the role of the *Shari'a* as a comprehensive system of ethics. Access to the *Shari'a* has become increasingly important for Muslim minorities in western societies, where they are faced with new questions about how they should behave piously in public spaces. If we are to think of *Shari'a* as law, we would be better advised to compare it with rabbinic law, because both these systems are devolved and local, dependent on the judgments of mullahs and rabbis regarding specific questions. In this sense *Shari'a* is not state law, but is closer, as Max Weber recognized, to common law. Like secular law, the *Shari'a* is constantly evolving and developing as Muslims face new challenges for which there are no definitive answers to be found in tradition.

Despite attempts by scholars to correct misunderstandings of the *Shari'a*, western critics (for example, in Republican dominated states in America) have been hostile towards its development (Turner and Richardson 2012). In attempting to come to a balanced judgment about these debates, it is important to keep in mind the differences between the role of *Shari'a* in societies where Muslims are a minority and in those where they are a majority. Even in some societies or states that do have a Muslim majority the introduction of strict and comprehensive *Shari'a* law has been controversial. For example, in 2014 the sultanate of Brunei introduced a harsh version of the *Shari'a* criminal law tradition, including punishment by flogging and death by stoning. There has been international condemnation of this development from human rights groups. In 2012, President Morsi of Egypt attempted to enforce *Shari'a* more widely and more intensely in the country, and was subsequently ousted in 2013 by a military coup. With respect to these controversial developments, for legal scholars, the merit of legal pluralism is that it can avoid civil conflict resulting from any attempt to impose a unified legal framework in a society which has distinctive minorities, each with their own cultural and legal traditions.

1.1 The Breakdown of Legal Centralism

It is widely held among social scientists, that the model of the unified sovereign state is breaking down under the impact of globalization, and one manifestation of this political transformation is the growing importance of legal pluralism. It is also argued by both sociologists and legal theorists, that, with globalization, there has been some erosion of state sovereignty and the emergence of porosity of state boundaries, requiring a revision of the traditional assumptions of national citizenship, such as 'flexible citizenship,' post-national national citizenship, and semi-citizenship. The corresponding growth of legal pluralism merely gives legal expression to these developments (Teubner 1997). In addition, with economic and financial globalization, there has been further growth in commercial law, which is not specific to state boundaries and can constrain government policies over economic issues (Twining 2000).

Legal pluralism is also associated with the role of law in regulating common resources such as access to sea routes for trade. Medieval trade was regulated by *lex mercatoria* and, in recent history, exploration rights for oil and gas, where state borders in coastal areas are contentious, often requires legal intervention. The United Nations Convention on the Law of the Sea (1982) would be one important illustration of this (Charney 2002). Within the European community, the growth of legally binding relations can also be seen as an important instance of legal internationalism and pluralism. In 1951, the Treaty Establishing the European Coal and Steel Community made provision for an independent court, the Court of Justice, to interpret and enforce the treaty's provisions. In global terms, the extension of human rights provisions over states is further evidence of legal measures that impinge on state sovereignty. International legal relations have multiplied in recognition of the need to develop a set of universal norms to address global concerns relating to major issues, especially concerning threats to the environment. As a result, citizens can find themselves at the intersection of diverse laws (international, national, and customary) that regulate their lives at both the national and local levels.

There is an international legal system that constrains and regulates the behaviour of nation states through consensual multilateral forums. These legal arrangements recognize a mutual interest in safe-guarding the environment and they have important consequences for the autonomy of the nation state. There is an emerging recognition among legal experts regarding "the enormous destructive potential of some activities and the precarious condition of some objects of international concern make full autonomy undesirable, if not potentially catastrophic" (Charney 1993: 530). Where there is some recognition that common resources are threatened, then there are compelling reasons for legally enforced co-operation between states. As a consequence, conventional legal boundaries between independent states become more porous. However, Jean Cohen (2012), in *Globalization and Sovereignty*, argues that there is no fundamental incompatibility between sovereignty and the participation of states in international legal agreements, and at the same time modifies what she defines as the 'monist' position of Hans Kelsen,

in order to promote the idea of constitutional pluralism. In short, it is not the case that arguments about state porosity have won the day.

Anthropological research played a significant role in recognizing the continuing importance of customary law in the lives of indigenous peoples. As a result, the idea of legal pluralism became significant in the 1970s in response to the research of social anthropologists on the role of 'living law' in post-colonial societies. In these anthropological studies, the notion typically referred to the continuity of customary law alongside the state system. The growth of legal pluralism in post-colonial societies has often involved the recognition of customary law among aboriginal communities, as for example, in Australia. With the decline of authoritarian states in Latin America and the expansion of democratic institutions, there was greater social inclusion and recognition of the rights of indigenous peoples. The result was also an expansion of legal pluralism (Sieder 2002).

The implications of the anthropology of law were subsequently recognized by legal theorists, often influenced by postmodernism, post-colonialism, and pragmatism, in describing the multiple legal systems of modern societies (Tamanaha 1997). However, it turns out that the problem in defining legal pluralism is simply a consequence of the more problematic issue of defining law itself (Turner and Arslan 2011). For Roscoe Pound (1966), who was in many respects sympathetic to Ehrlich, law can only exist where there are judges sitting in courts with the ultimate backing of the state. Pound (2009: lxvi), following the argument of Henry Maine that the judge precedes the law in historical evolution, held that the law is "a specialized form of social control through the systematic application of the force of the politically organized society that achieved paramountcy after the Reformation." Similarly in the legacy of John Austin and Hans Kelsen, law is ultimately a command backed up by the authority of the state through judges sitting in courts (Hart 1977). Without effective political and legitimate enforcement, how can any normative order function as law? In short, all forms of normative structure will require the ultimate sanction of a law court and finally of a state.

In some branches of contemporary jurisprudence, 'law' has come to be defined simply as any form of normative or regulatory pluralism (de Sousa Santos 1995). Whenever 'legal pluralism' is invoked "it is almost invariably the case that the social arena at issue has multiple active sources of normative ordering" such as official legal systems, folkways, religious traditions, economic or commercial regulations, "functional normative systems," and community or culturally normative systems (Tamanaha 2008: 397). In summary, it is claimed that modern legal systems are becoming pluralistic, either through the recognition of customary law in post-colonial and post-imperial societies or through the impact of globalization, for example, through the spread of human rights. In this volume we are concerned with tracing the development of the *Shari'a* as an example of legal pluralism in societies where typically secular law is the dominant tradition. At the same time, the potential for civil conflict over competing legal systems requires the preservation of a secular public sphere and the implicit, and occasionally explicit, management of religion by the state. While legal pluralism might be deemed inevitable and compatible with multiculturalism and liberal tolerance, state law may be necessary as a last

resort in societies where there is conflict between competing social groups with incommensurable demands about the law and general values.

1.2 *Shari'a* and Legal Pluralism

As we have already observed, in contemporary politics it is often the acceptance of the Muslim legal tradition, or *Shari'a*, that has occupied the key position in debates about legal pluralism. In many post-colonial societies in Africa and Asia, English common law traditions exist alongside the *Shari'a*. For example, in Singapore, where Muslims are a minority, *Shari'a* operates in domestic disputes, marriages, and divorce settlements under the general oversight of the Majlis Ugama Islam Singapura, or Muslim Council of Singapore (Kamaludeen et al. 2010). There is significant variation in the treatment of Islamic communities and *Shari'a* in Eastern Europe, Russia and parts of China, where 'legal pluralism' is an appropriate description for societies that combine customary law, secular constitutions and religious law (Kemper and Reinkowski 2005). Greece represents a case where *Shari'a* is practised by a Muslim minority as a relic of past international agreements. As a legacy of the Ottoman *millet* system and based on the Lausanne Treaty of 24 July 1923, the Greek government recognizes *Shari'a* as the law regulating family and civic issues for Muslims who live in Western Thrace. While it is estimated that 95 % of the population in Greece is identified as Greek Orthodox, a section of the Muslim minority living in Western Thrace enjoys a minority status that is recognized by the Lausanne Treaty.

Many different cases of *Shari'a* and legal pluralism are compared in this volume. In the West, acceptance of the *Shari'a* has been deeply controversial. Public opposition to Muslim tribunals in Ontario Canada in the 1990s has had a significant impact on developments elsewhere (Boyd 2004). Critics tend to believe that gender equality cannot be secured under the *Shari'a* and that there is little guarantee of transparency. The situation in the United States is somewhat different. The dominance of the Supreme Court in the Constitution in principle precludes the growth of legal pluralism, but even in the United States critics such as the Center for Security Policy have claimed that *Shari'a* has entered into state court decisions, reporting 50 appellate legal cases where there was a 'conflict of law.' The much disputed report (Turner and Richardson 2012) also documented 15 Trial Court cases and 12 Appellate Court cases where the *Shari'a* was found to be applicable at bar (Center for Security Policy 2011: 8). In anticipation of further evolution of the *Shari'a* in the United States, the American Public Policy Alliance has drafted the American Laws for American Courts Act to prevent any enforcement of foreign laws in American courts, and the Act has been passed in Tennessee, Louisiana, and Arizona. While right-wing elements in the Republican Party brought the debate about the *Shari'a* into the political debates around President Obama's second election, there was little public debate in 2013 about the spread of the *Shari'a*. Against these criticisms of the presence of the *Shari'a* in the United States, Christian Joppke and John Torpey, in

Legal Integration of Islam (2013), argue that Muslims have become part of the mainstream of American life and that, unlike in France and Germany, the *Shari'a* has not proved to be so deeply controversial. Islamic practices including the *Shari'a* have become acceptable under the provisions of freedom of religion in the Constitution, despite much widespread Islamophia amongst the general population.

1.3 The Structure of This Volume

This book, through a number of specific cases studies—of Bangladesh, Malaysia, Singapore, Philippines, Turkey, and so forth—explores these issues with a focus on the question of legal pluralism, state sovereignty, and social–religious divisions. Although the contributors of this volume are from various disciplines (such as law, anthropology, and sociology), the book has a strong sociological focus on the analysis of *Shari'a*.

This edited volume provides a comparative analysis of the application of *Shari'a* in countries with Muslim minorities (Part II) and in countries with Muslim majorities (Part I). It thus offers a global analysis of the phenomenon that goes beyond the usual dichotomy of the 'West versus the rest.' In addition, the case studies in Muslim minority countries are not located in the 'West' only, but include studies in South Africa and China.

The first part of this book, 'Case Studies from Muslim Majority Countries,' starts in Asia with a study of Malaysia. Shamsul, A. B., in his chapter 'One State, Three Legal Systems: Negotiating Justice in a Multi-ethnic and Multi-religious Malaysia,' first gives an historical analysis of how this country's legal system has dealt with religious diversity and legal pluralism over the last 600 years. He then assesses the social cohesion impact of this particular form of legal pluralism, which has been endorsed and accepted by the state's Federal Constitution. This legal process is closely linked to the long history of religious and ethnic diversity of this part of the world.

Habibul Haque Khondker's 'Modern Law, Traditional "*Shalish*" and Civil Society Activism in Bangladesh' explores the confrontation between the institutionalization of modern law and the practice of traditional arbitration, known as *shalish*. The author explores the relation between state and civil society, and between civil society and the country's traditional rural society. Through an analysis of the activities of some civil society organizations, and of the traditional mediation process in place in rural Bangladesh, Khondker underlines practices of gender inequality. To remedy discrimination against rural women, he proposes a balance between universal rights and local traditions through the implementation of a gender balanced *shalish* committee.

In Semi-official Turkish Muslim Legal Pluralism: Encounters Between Secular Official Law and Unofficial *Shari'a* Ihsan Yilmaz focuses on the construction of unofficial Muslim family law and explores the results of various surveys with regards to its application. He finds differences at the grassroots level between the

secular civil law of Turkey and the Muslim local law. Despite the efforts of the Kemalist hegemonic elite to secularize the Turkish society through a top-down use of law, he argues that Muslim law has continued to be unofficially influential in people's lives.

The second part of the book moves to case studies from Muslim minority countries and starts with Singapore, with Bryan S. Turner's contribution, 'Soft Authoritarianism, Social Diversity and Legal Pluralism: The Case of Singapore.' Through his analysis of the 'soft authoritarianism' of this city-state, Turner studies the interaction of Islam and the state within this post-colonial society and how, through a management of religious diversity, *Shari'a* is being modernized.

Isabelita Solamo-Antonio's 'The Philippine *Shari'a* Courts: Women, Men and the Code of Muslim Personal Laws' reviews, through the work of the PILIPINA Legal Resources Center, the issues the Muslim population has experienced when dealing with *Shari'a* in the south of the country. She also discusses how her NGO has been dealing with the legislative reform of the Code of Muslim Personal Laws.

Helen McCue and Ghena Kraven's '*Shari'a* and Muslim Women's Agency in a Multicultural Context: Recent Changes in Women's Culture' employs the theories of Will Kymlicka and Tariq Modood to assess multiculturalism in Australia. They use dress and sport as a case study to analyze how *Shari'a* is lived in a multicultural context. In this chapter, they demonstrate that Muslim women exercise agency, and challenge the dominant negative discourses about Islam.

Vito Breda's '*Shari'a* Law in Catholic Italy: A Non-agnostic Model of Accommodation' brings us to the home of the Roman Catholic faith and addresses the notion of positive secularism which, in the case of this country, is a distinctive pragmatic constitutional stance. Through the exploration of some court cases, which are grounded within this paradigm, Breda discovers an openness of the Italian judiciary towards *Shari'a* law.

In a further study in Europe, Wold D. Ahmed Aries and James T. Richardson explore, in 'Trial and Error: Muslims and *Shari'a* in the German Context,' the *Shari'a* controversies first introduced with the migration of Muslim workers to Western Europe soon after the Second World War. They observe that some accommodation to *Shari'a* is now slowly happening in the areas of finance, family matters, and food preparation.

Yuting Wang's 'Between the Sacred and Secular: Living Islam in China' brings us back to Asia, where she first explores briefly the history of Islam and then deals with the variations in acculturation and the practice of *Shari'a* among Chinese Muslim communities. Wang claims that despite some challenges that have their roots in a long history of tension between Islam and the state, the religious policy of this country is nevertheless maturing with time.

For the final chapter of this part, we move to another continent, with 'The Case of the Recognition of Muslim Personal Law in South Africa: Colonialism, Apartheid and Constitutional Democracy,' written by Wesahl Domingo. Contrary to the case in other countries represented in the second part of this book, this country has a constitutional commitment by the state to provide recognition to customary and religious law. Domingo quotes Nelson Mandela, the first democratic president of South Africa, who said in a public address to Muslims: "We (ANC) regard it highly insen-

sible and arrogant that the culture of other groups can be disregarded. The ANC has pledged itself to recognize Muslim Personal Law." In this chapter, she explores the pragmatic steps that are being taken to recognize Muslim personal law.

The third part of this book draws out from the case studies explored, and deals with, theoretical and comparative considerations. Arskal Salim's 'The Constitutionalization of *Shari'a* in Muslim Societies: Comparing Indonesia, Tunisia and Egypt' explores how the Islamic political parties of these countries have worked towards having *Shari'a* recognized in their country's constitution or, at least, being given a stronger status in the public sphere.

The chapter by Bryan S. Turner and Berna Zengin Arslan, 'Legal Pluralism and the *Shari'a*: A Comparison of Greece and Turkey,' comes back to the study of Turkish family law and can be read alongside the chapter by Ihsan Yilmaz. This contribution provides a comparison of *Shari'a* in Greece and Turkey. In 1923, the Lausanne Treaty gave legal protection to Muslims in Greece, following an exchange of populations between Greece and Turkey. Thus, Greece is the only EU country in which *Shari'a* is guaranteed by treaty arrangements. While the population of Greece, as a whole, is approximately 95 % Orthodox, the small Muslim community in Western Thrace has access to the *Shari'a*, and *muftis* provide legal services to the community in family law and civic issues. The independence of the *Shari'a* has been compromised over the years by pressure from the secular state. The Greek case study provides an interesting contrast to the situation in Turkey, which, while it is constitutionally secular, appears to be making concessions to religious interests, under the government of Prime Minister Tayyip Erdogan. The religious situation is complicated by delays in the process by which Turkey could become a member of the European community. While the country is officially secular, the majority of its population identifies with Islam, and minority religions do not enjoy the full provisions of the original Lausanne Treaty. In short, legal pluralism struggles to find full acceptance in both Greece and Turkey.

James T. Richardson's 'Contradictions, Conflicts, Dilemmas, and Temporary Resolutions: A Sociology of Law Analysis of *Shari'a* in Selected Western Societies' applies the sociology of law theories of William Chambliss in order to understand the processes of conflict resolution with regards to *Shari'a* in the United States, Canada, and Australia. In these cases, Richardson unpacks the resolutions effected by the relevant political structures, which appear to be strongly symbolic.

The chapter by Possamai, Turner, Roose, Degistanli and Voyce, 'Perception of *Shari'a* in Sydney and New York Newspapers,' analyses the way *Shari'a* is reported, and discovers a more neutral approach to the issue in New York than in Sydney. In this global city in the southern hemisphere, *Shari'a* is treated negatively, rather than neutrally, when it comes to family law issues, and positively when it comes to financial matters.

Salim Farrar's 'Profiting from *Shari'a*: Islamic Banking and Finance in Australia' studies how some countries, which do not have a Muslim majority, deal with *Shari'a*-compliant finance. Farrar further discusses how the changes involved take into account the various legal and cultural environments in these countries.

Adam Possamai's '*Shari'a* and Multiple Modernities in Western Countries: Toward a Multi-faith Pragmatic Modern Approach Rather than a Legal Pluralist

One?' uses Shmuel Eisenstadt's theory of multiple modernities to understand legal pluralism. The chapter offers an invitation to use this theory as a third way, in between the classical approach of 'universal' legalism and the more postmodern approach of legal pluralism.

The volume concludes with a discussion on the future of legal pluralism by Bryan S. Turner and James T. Richardson, which considers some of the tensions between the demand for equality in the evolution of citizenship and the demand for recognition of difference in multicultural societies that are exposed to legal pluralism. They consider three contexts in which legal pluralism is present. The first is legal pluralism in imperial systems before and during the consolidation of nation states. The second is the awareness of legal pluralism arising from the process of de-colonization and the slow and contested recognition of indigenous rights. The third situation is the recognition of different legal traditions in multicultural societies in which a majority agrees, possibly under considerable political and legal pressure, to recognize that a minority community has a claim to its own distinctive legal traditions, at least for the resolution of domestic conflicts. This third case is thought to be the consequence of the globalization of labour markets and the development of permanent diasporic communities.

1.4 Coda

While many conservative political movements see legal pluralism as a threat to national sovereignty, there is some general recognition that legal pluralism is an inevitable consequence of contemporary globalization, in which laws associated, for example, with the acceptance of human rights impinge on domestic legal affairs. Despite arguments about the decline of the nation state, it remains a necessary basis for the enforcement of the law. Controversy about the *Shari'a* will remain a feature of politics in western societies where the notion of a 'clash of civilizations' remains an aspect of the security debate. In North Africa and the Middle East, there is also growing controversy about the apparent spread of the *Shari'a* in the aftermath of the Arab Spring in Tunisia, Yemen and Egypt (Voorhoeve 2012), where feminists have complained about the intrusion of the *Shari'a* into areas of society that were previously secular. In 2013 the conflicts in major cities in Turkey were in part motivated by fear of the impact of religious norms in a secular society. It appears that controversy over the law will become a major feature of social and political conflicts between competing social groups in societies that are becoming diverse as a consequence of globalization, or in post-colonial societies with unresolved disputes over ethnic and religious boundaries.

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