Introduction
Applying Shariʿa in the West

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How can we make sense of the new phenomenon of shariʿa in the West? In 2003, a respectable institution such as the European Court of Human Rights ruled that 'sharia clearly diverges from [the European] Convention [of Human Rights] values'.[1] But equally respectable authorities, such as the Archbishop of Canterbury and the Lord Chief Justice of England and Wales, argued in 2008 that shariʿa does not necessarily have to contradict Western legal and political values.[2] Clearly, the presence of shariʿa in Western societies is of increasing concern among Europeans, North Americans and Australians. Crucial questions remain unanswered, however: what *is* shariʿa, especially in a Western context, and what are these Western values it is diverging from, and why is that so? Is shariʿa indeed applied in the West, and by whom? And if so, is shariʿa a static notion or does it adapt to Western values or structures?

A body of literature on the issue of shariʿa in the West is gradually emerging, focusing primarily on the ways private international law deals with shariʿa and on the compatibility (or lack of compatibility) between shariʿa and Western legal concepts.[3] This volume will contribute to this academic discussion by taking the *practice* of shariʿa by Muslims in the Western legal context as the basis for analysis. Two assumptions underlie this approach. First, it is futile to study shariʿa in the West as an autonomous and holistic notion, because this overlooks the realities of its practice on the ground. The fact is that while shariʿa as a concept of divine rules has developed over centuries of scholarship into an autonomous 'Islamic' legal system, the practice of this system has become fragmented in the Western context, and perhaps even distorted, because it has had to accommodate the dominant Western legal system. Second, we can only understand the interaction between these two legal systems if the notion of a Western 'legal system' is seen in the much wider context of the social, political and cultural values upheld by Western societies. These values, together with preconceived Western notions of shariʿa (the 'fears' mentioned in the subtitle of this volume) have an impact on the practice of shariʿa.

Based on these premises, the discussion in this volume is divided into three sections. The first section contains descriptions and analyses of, on the one hand, the practice of shariʿa and in particular that of Islamic family law within the legal frameworks of a selection of Western countries; and, on the other hand, national responses to these particular forms of shariʿa. In the second section, a number of thematic issues that recur in the country studies will be addressed. The third section contains contributions on the need and modalities for adaptation by either Western or Muslim legal systems, so as to accommodate each other.

Before we discuss these sections in more detail, however, we must first address a fundamental question: what do we mean by shariʿa?

What do Western Muslims Mean by Shariʿa?

Rather than defining shariʿa as a legal discipline of Islam,[4] or as a set of practices and laws applied in foreign countries,[5] our interest is primarily in what Muslims in the West mean and want in terms of rules prescribed by Islam. This starting point warrants two remarks. First, it explains why we prefer to use the term 'shariʿa', not 'Islamic law', in this volume: while the latter is confined to the domain of 'law' in the legal sense, which concerns certain relationships between people or between people and the state, 'shariʿa' denotes the much wider domain of rules pertaining to *all* relationships between people (including those of a social and moral nature), as well as the rules governing the relationship between man and God (such as prayer, burial, slaughter, and so forth). As we will see below, only by taking this wider perspective on 'shariʿa' can we obtain a clear view of what Muslims in the West do and want in terms of religious rules.

The second remark concerns the approach taken to assessing the nature and scope of shariʿa in the West. By posing the question, 'What do Muslims *do* in terms of shariʿa?' rather than 'What *is* shariʿa?', we adopt a legal-anthropological approach that takes Muslims as its reference point, rather than an abstract notion of shariʿa.[6] Such an approach is necessary if we want to develop a proper understanding of shariʿa in the West. To reflect upon whether shariʿa is a violation of European Convention principles or might be in compliance with English law may lead us into an empty academic discussion if the specific rules of shariʿa that are being discussed are not actually adhered to by Muslims in the West. It is clear that shariʿa punishments are contrary to Western values, as is the notion of a theocracy, but what is the use of discussing these legal notions if they deviate from what Muslims in the

West are striving for? We must therefore move away from shariʿa as a form of theological-legal scholarship, and first determine what rules are adhered to by, or otherwise relevant for, Muslims in the West.

From this perspective, it is striking that so little is known about what Muslims in the West mean by shariʿa. To my knowledge, only three surveys have been conducted among Muslims in European countries, and one among Muslims worldwide, in which Muslims were asked for their opinion on 'shariʿa'. The latter survey was a 2008 Gallup poll representing 90 per cent of Muslims worldwide, in which 'shariʿa' ranked highest – together with 'democracy', one should add – on the list of what Muslims wanted.[7] Of the other two surveys, one was conducted in 2004 in the Netherlands, and found that 51 per cent of the Dutch Muslims interviewed favoured a Muslim political party, and 29.5 per cent thought that its political programme should be based on shariʿa.[8] (The subsequent newspaper headlines that 'one third of Dutch Muslims favour sharia' were therefore entirely wrong). A British poll of 2006 found that 40 per cent of British Muslims support shariʿa law being introduced in pre-dominantly Muslim areas in Britain,[9] while a British study of 2007 found that 28 per cent of British Muslims would prefer to live under shariʿa law.[10] What is of interest to us here is that none of these surveys defined shariʿa, nor asked their respondents to do so, therefore leaving us ignorant of what Western Muslims mean by shariʿa. However, based on what we know from existing studies and from the following chapters, we can deduce three possible answers to this question, each leading us in a different direction:

Shariʿa: a virtuous abstraction

The first answer to what Muslims might mean by 'shariʿa' in a Western context is shariʿa as a slogan or an abstraction with a virtuous connotation. Shariʿa stands for 'the law of God', or 'all that Muslims need', and, effectively, for everything that is 'good' for Muslims. We might compare the use of this abstraction with that of 'justice': it is perceived as virtuous and necessary, but few people will be able to provide a full definition of the concept, particularly when it comes to putting it into practice. We can observe a similar attitude among devout Muslims towards shariʿa: it is something virtuous and they want it to be applied in their lives, even though they do not know exactly what shariʿa means in practice. Although this notion of shariʿa is thus of little use to those who want to define it as a set of rules, it is precisely this notion that makes shariʿa such a powerful force in the minds of many Western Muslims. Indeed, it might explain the high percentages in the abovementioned surveys:

when asked about shariʿa, what devout Muslim would give a negative response?

Shariʿa: foreign national laws

Muslims living in the West who are also nationals of their country of origin sometimes have the national family law of this latter country applied to them as a matter of private international law: a Pakistani couple in England might be divorced in accordance with Pakistani (Muslim) family law, a divorce pronounced in Iran in accordance with Iranian (Muslim) family law might be recognized in Germany, and a polygamous marriage that is legally concluded in Morocco might be recognized (but not enforced) in the Netherlands. While national Western courts are less and less inclined to apply foreign national laws to residents with a foreign nationality, these residents continue to navigate their way through a legal labyrinth for the practical reason that they often retain strong ties with their countries of origin.

Therefore, the Western Muslims who maintain that Western courts should apply 'shariʿa' or 'Islamic law' in their case are in fact referring to the Islamic nature of their national law, rather than to the complex system of Islamic scholarly jurisprudence. Strictly speaking, this is not 'shariʿa' as described in the vast corpus of Islamic legal jurisprudence, but national laws that have drawn upon that corpus and modelled the selected rules into a format – a legal code – that is unknown in shariʿa. Several of the following chapters will touch upon this particular application of shariʿa. However, our interest in this volume is not in shariʿa as foreign national law being applied in Western courts by virtue of private international law. Our focus is on indigenous practices of shariʿa in the West: what is it that Western Muslims do and want in terms of shariʿa? And that is the third notion of shariʿa, as we will see below.

Shariʿa: the practices and desires of Western Muslims

Only limited research has been undertaken into manifestations of shariʿa in the West, and that research which does exist mostly follows the conventions of the respective academic discipline: social scientists tend to look at social factors, including radicalization and religious ritual; lawyers tend to examine family law;[11] and Islamic finance has been the domain of practising lawyers and bankers, rather than scholars.[12] The study of *fatwa*s and the '*fiqh* for minorities' (*fiqh al-ʿaqalliyat*) might yield novel insights into changing concepts in Islamic jurisprudence,[13] but research has hitherto failed to indicate the extent to which

these changes are actually embraced by Muslims in the West. The overall picture of shariʿa in the West is therefore fragmented in qualitative terms (the interpretation and manifestations of shariʿa) and almost non-existent in quantitative terms (the actual practice of shariʿa and how many Muslims adhere to this).

However, based on the research that has been done so far, and as is confirmed in the following chapters, we may build up a general picture of shariʿa as practised in the West. Devout Muslims in the West are indeed committed to living in accordance with shariʿa, but this is limited to the following domains:

- religious rules, such as those pertaining to prayer, fasting, burial, and dress code;
- rules relating to family law, in particular those pertaining to marriage and divorce;
- rules relating to financial transactions, in particular the ban on interest or usury;
- social relations, in particular gender relations and relations with the non-Islamic environment.

Three observations can be made with regard to these four domains of shariʿa rules. First, this collection of rules appears quite haphazard, both in scope and in content. From an Islamic legal-theological perspective, however, this set of rules has an internal logic, because all of these rules share a high ranking in the hierarchy of Islamic rules prescribed by classical orthodoxy: they are explicitly mentioned in the Qur'an, by the Prophet, or by scholarly consensus, and are therefore the first to be followed by any devout Muslim.

The second observation is that of the abovementioned rules, only those related to family law and the prohibition of usury or interest can be considered 'law' or 'legal rules', according to modern standards. The other rules pertain to religious rituals or social conduct and, as such, are mostly outside the scope of legislation in Western countries (except, for instance, when national burial or slaughter laws seek to accommodate religious practices).

Finally, these domains of shariʿa pertain to Muslims' daily lives, and appear to have little to do with political views on the need for an Islamic restructuring of Western societies. Of course, such views do exist among some radical Muslims, just as there are Muslim extremists who interpret shariʿa as a call for militant action against alleged Western injustices. We must emphasize, however, that our goal here is to gain a general impression of what the majority of devout Muslims in the West desires and practises in terms of shariʿa.

Shariʿa Practices in a Western Legal Framework

We now come to the next step in our discussion, which is how Western legal systems respond to these shariʿa practices. This is the starting point of this volume. In the first chapter, Mathias Rohe provides the scope of the discussion by presenting a comprehensive overview of all the reasons that give rise to a need or obligation to apply rules of shariʿa. He distinguishes between the 'external reasons' produced by Western legal systems, such as private international law or the English legal accommodation of Islamic finance, and the 'internal reasons' produced by Muslims themselves, such as a religious, legal or cultural need to have shariʿa applied. We will see this dual perspective recurring in the subsequent country studies.

The next six chapters are country studies that give an impression of the scope and modalities of the religious legal needs of Muslims in the West, and Western legal possibilities and responses to these needs. The six studies demonstrate that we may, for a variety of reasons, divide what we have so far called 'the West' in three regions, namely America and Australia, North Western Europe, and South Eastern Europe. Each of these regions has a different historical, social-economical and legal relation with Islam and Muslims.

Three Western regions

Among the Western legal systems, those of America and Australia perhaps allow Muslims the most freedom to apply forms of shariʿa, particularly in family law. This can be partly attributed to the fact that the Muslim communities in these countries are often middle or upper class, and are therefore more prone to taking an intellectual and activist position regarding shariʿa. The responses, however, are quite different. In their chapter on America, Bryan S. Turner and James T. Richardson conclude that regardless of 'liberal' problems with religion and public concern vis-à-vis potential radicalism among Muslims in America, the vast majority of Muslims in America are finding ways to adjust to American secularism, while also expressing their religious identity in various ways. In the chapter on Australia, on the other hand, Jamila Hussain and Adam Possamai reflect on 'the new Australian conservative modernity,' which is a combination of resurgent social values of Christian conservatism, active government priorities of disengagement and a rapidly expanding culture of surveillance and obedience. In this new phase of modernity, the authors argue, a process of de-legitimization of diversity is occurring, especially with regard to Muslims.

The chapters on the North Western European countries of the Netherlands and the United Kingdom illustrate how different the circumstances of the Muslim communities in these countries are from those in America and Australia. While they all are migrants or of migrant origin, the Muslim communities in the Netherlands and the United Kingdom are mostly lower-class, and lack political or religious unity and leadership. In his chapter on the United Kingdom, Jørgen Nielsen describes how in their need for unified regulation of family law, Muslim communities in the United Kingdom have been hindered by internal divisions and disagreements on the interpretation of that law, resulting in the emergence of various 'Sharia councils.' Nielsen argues that these tensions among Muslims living in Europe can be attributed to Europe's imperial past, and that the arguments about the place of shariʿa in Europe therefore have a deep symbolic meaning that is associated with minority identity, and which can only be overcome after a long period of negotiation and trial and error. While this process has been going on in the United Kingdom for at least three decades, the development of any form of unified Islamic family law or of councils that might provide guidance or rulings on shariʿa is still in its infancy in the Netherlands, as becomes clear in Susan Rutten's chapter. Moreover, the Dutch political climate has become such in the past decade that any initiative is met with hostility and political, as well as legal, objections. Insofar as Dutch Muslims want to undertake initiatives in this direction, they will therefore do so mostly within the context of the Dutch legal system, which, according to Rutten, may be well equipped to cope with legal and religious pluralism and consequently with shariʿa, although some human rights issues remain to be resolved.

The chapters on the South East European countries of Albania, Kosovo and Greece bring us into an entirely different context. First and foremost, the Muslim communities in these countries have been living there for more than five centuries and have a long history of institutionalization. This history was cut short with the implementation of communist rule after 1945, but it has gradually re-emerged since the fall of communism and the Yugoslav wars of the 1990s. Remarkable in this respect are the cases of Albania and Kosovo, the only countries in the West with Muslim majority populations. Besnik Senani describes how these countries are struggling to accommodate secularism to Islamic identity, with the clear aim of being as 'European' as possible. In doing so, some political leaders in Kosovo and Albania have gone so far as to distance their national culture from Islam, sometimes even claiming more proximity to Christianity than to Islam. Angeliki Ziaki describes a very different situation in Greece, even though this coun-

try shares a historical Ottoman legacy with Albania and Kosovo. The Muslim minority lives in the most eastern part of Greece, where, as enshrined in the 1923 Lausanne Treaty, it has historically been allowed a high degree of religious autonomy. This includes having its own muftis, who preside over shariʿa courts that have exclusive jurisdiction in family law matters. Although some observers criticize this situation as 'neo-milletism', alluding to the *millet* system under Ottoman rule, Ziaki argues that it is possible to achieve a symbiosis between Greek secular and Islamic law.

Shariʿa in the West

When surveying these studies, one of the most noticeable findings is that practices of shariʿa are adapted to the legal, social, political and historical contexts of each Western country, creating a diverse picture of 'shariʿa in the West.' For example, the strict distinction between a civil and religious marriage, as is legally prescribed in most Western countries, can create a legal social and political grey zone where choices between the two are made: are the two marriages to be conducted separately and if so, in what order, and what is the status of a civil or religious marriage if only one has been concluded and not the other? These questions are not pertinent to Muslims, but to people of all faiths who want to marry religiously. In countries like the United States, Australia, United Kingdom, Spain or Sweden the conflict has been resolved by allowing the two ceremonies to converge. In countries like the Netherlands, France and Germany, on the other hand, the distinction between religious and civil marriage is strictly adhered to as a principal matter of separation of state and religion.

Another example where national context and history make a difference in the reception of shariʿa is that of the Islamic institutions where decisions regarding shariʿa are taken, in particular regarding family law matters. These institutions, known as Sharia boards, courts, councils or tribunals, may be integrated into the formal judiciary system (as is the case in Greece), or may operate in an informal manner (as is already the case in many Western countries with regard to Jewish and Catholic 'courts'), or may operate between formal and informal domains by means of arbitration (as in the United Kingdom and, until 2007, in Ontario, Canada).

And, as a final example, we might mention the allowances made for social conduct, in particular the use of religious dress. Here we see an interesting difference between the United States and Western European countries: while both regions adhere to similar notions of secularism

and liberty, the manifestation of religion – including that of Islam – in the public and political domain is much more accepted in American society than in European society. This particular form of secularism is clearly much stronger in Western Europe and consequently has its effects on the public manifestations of Islam. We will return to this subject below.

When we turn our view to the Muslims in the West, perhaps the most conspicuous commonality that emerges from the six chapters is that there is no enforcing agency with respect to shariʿa other than Muslims themselves. Applying and enforcing shariʿa is mostly a matter of voluntary willingness to submit to these rules, whereby social actors – one's peers, family, or the Muslim community – may add a degree of pressure or coercion. Enforcement of shariʿa may also result from Muslim communities having organized themselves, either to coordinate certain services for their community or to act as intermediates with the government. In the case of America and Australia, Muslims have established organizations that act as lobby groups, scholarly councils or advisory boards. Efforts to create similar unified initiatives have failed in the United Kingdom, resulting in a large number of councils that act primarily as tribunals aimed at solving marital and other disputes among Muslims. If we move to the European continent, the Netherlands serves as an example of a Western European country where such councils do not exist (and are considered undesirable from a political perspective), but where the government has been active in coaxing the Muslim community to organize itself as a representative community. This governmental engagement is representative for most North Western European countries where Muslim communities, until now, are still divided and therefore relatively powerless and without much of a representative constituency. In South East Europe, we see yet another form of organization: here, the Muslim community has historically been granted specific autonomous privileges by the state to regulate certain affairs internally, such as religious education, mosque construction, and family law, and often receives financial support by the state to do so. If we juxtapose all these Western practices of shariʿa in the West we may conclude that shariʿa mainly manifests itself within the boundaries set by the freedom of religion, and the state's involvement is therefore limited accordingly.

This brief overview might prompt the conclusion that there are many different forms of shariʿa in the West, due to the differences in Western legal systems. This is not entirely correct. In the first place, there are no different 'forms of shariʿa'; instead, within a single concept of shariʿa, we have identified four domains of rules practised by devout Muslims, and within each of these domains we observe modalities in the ways

they are practised. These modalities may be the result of internal differences regarding interpretations of sharīʿa, or the consequence of what a national legal system allows or disallows with respect to a particular Islamic practice. In the latter case, there may be differences between Western legal systems, but these differences lie in the details. In terms of legal principles, Western countries' legal systems hold a majority of their principles in common. The overriding principle is that of the freedom of religion, even though Western states may differ as to how they regulate their involvement with these institutions. Therefore it is not necessarily the principles of legal systems that have created the diversity of sharīʿa in Western countries, but the cultural and social context in which these principles are embedded. This is the subject of the second section of this volume.

Western Responses: Law Versus Culture

The country studies clearly show that the conflicts arising vis-à-vis practices of sharīʿa in the West are not only legal in nature. On the contrary, very few sharīʿa practices are a violation of the law; they are more often a violation of what we suggest to call 'culture', which we define as all norms relating to political, cultural, social or other normativity shared by the majority of society. While the legal response to sharīʿa practices is simply 'this is (not) allowed under law', the cultural response can be summarized with the maxim, 'this is (not) the way we do things here'.

Most cultural contestation occurs in the domain of religious behaviour, particularly in Western European countries. Examples include the headscarf, the face veil (*burqa* or *niqab*), religious dress, and the refusal to shake hands with the opposite sex. Sometimes such responses are brought to court or to the legislature and may, when accepted, then become part of the legal response: a behaviour that is considered 'not the way we do things here' is then turned into 'this is not allowed under law.' In the particular case of Islamic rules, however, the prohibition of a certain dress or behaviour that is culturally deemed undesirable may contradict fundamental legal freedoms. The French law of 2011 banning the face veil illustrates this dilemma: on the one hand, the State Council, adhering to the legal response, advised against such a ban on the basis of the principle of personal autonomy, which allows a woman to freely wear what she wishes;[14] and, on the other hand, the legislature, adhering to the cultural response, deemed open-faced encounters in public a matter of 'social contract' that warranted legislation.[15]

Another issue that gives rise to public indignation is that of Islamic family law. In her chapter on Islamic marriage in the Netherlands, Annelies Moors provides an interesting insight into how religious marriage – which is allowed in Western legal systems as a matter of personal freedom – has come under scrutiny for political and security reasons, because it has become associated with a deliberate attempt on the part of Muslims not to participate in Dutch society. On the other hand, in chapter 9, Nadjma Yassari demonstrates how and why German courts have been quite willing to hear cases on the issue of the bridal gift (*mahr*), which is one of the conditional elements of Islamic marriage.

All of the country studies provide additional examples of this dichotomy between 'bad shariʿa' and 'good shariʿa.' While Islamic dress, the building of mosques and the use of Islamic family law tend to give rise to controversy, Muslim initiatives to construct Islam-compliant financial instruments (banks, mortgages and insurance) are often applauded. The United Kingdom has been a European frontrunner in adapting national fiscal and financial laws to facilitate these new developments, partly to meet the needs of British Muslims, but also to remain compatible with the expanding international market of Islamic finance. To refer again to the ruling by the European Court of Human Rights: clearly not all 'shariʿa' conflicts with European human rights values, just as not all 'shariʿa' is considered undesirable in a Western context.

It is clear that a large part of the discussion on shariʿa is fuelled by pre-conceived notions about its nature and what Muslims might (secretly) want. The cultural bias vis-à-vis Muslim practices is highlighted in the contribution by Fournier and Reyes on honour crimes in Canada. Although honour crimes are not specifically 'Islamic' – a point frequently made by Muslim scholars – it is a practice that tends to take place among certain ethnic communities from Muslim countries and as such presents an interesting case study. Just like shariʿa, honour crimes are branded in the West as foreign and therefore different. While this may indeed be the case in quite some aspects, the authors point at the *a priori* rejection of these institutions as alien practices. The authors argue that the rulings by Canadian courts in honour crime cases focus on the cultural "Other" but fail – or refuse – to see the similarities, not only between these crimes and those committed in Canada with similar honour intentions, but also in the legal origins of these crimes in the national laws of both Western and Muslim countries.

The legal – cultural dichotomy perhaps provides the key to understanding the conflicting reactions to 'shariʿa': the West has produced legal systems that may allow for certain practices, Islamic practices included, but at the same time, the West has preserved a cultural her-

itage that may conflict strongly with these very same practices. This explains much of the confusion arising in discussions on shariʿa. For instance, the law may explicitly allow the building of mosques, even though there is nationwide opposition. Similarly, the law may protect people's freedom to meet and greet each other how they wish, but not joining mixed-gender social gatherings or refusing to shake hands may be considered an insult by local custom. On the other hand, legal and cultural responses may also concur: Western laws allow interest-free finance, and its Islamic version is accepted in most Western countries. No wonder that Muslims in the West are often bewildered about what they are allowed to do, and what not. Which brings us to the third section of this volume: do Muslims adapt their interpretations of shariʿa to the many Western legal and cultural responses, or is perhaps adaptation needed from the part of the Western legal systems?

Adaptation in Western or Muslim Legal Systems?

Some of the country studies in this volume touch upon the issue of Muslims adapting their Islamic rules to Western legal requirements, or the necessity of adapting Western legal systems to the needs of Muslims. In this third section of the volume, Marie-Claire Foblets explores the need for and potential of Western legal systems to accommodate Islamic rules: *should* Western legal systems do so and, if so, *can* they do so? She answers both questions with a cautious affirmative (compare Mathias Rohe in chapter 1, who holds the opposite view). Given the fact that religious demands are an emerging societal phenomenon in the West, Foblets argues, it is the state's duty to offer adequate responses. These responses should preferably embrace diversity from the perspective of freedom of religion or of thought, guaranteed as a fundamental right of individuals. Moreover, since these religious demands are very often visibly connected to those of identity, they must therefore be handled sympathetically and with respect for their significance to those concerned. In order for a Western legal system to make the necessary accommodation to religious diversity, the principle of the autonomy of the will should be taken as the starting point. This will allow for the incorporation of religious rules in civil law, more freedom of choice in private international law, and religious arbitration.

The two other contributions to the third section discuss the reverse situation, that is, the need for and potential of Islamic legal practices to adapt to the Western legal systems in which they operate. The two contributions take different positions. Zainab Alwani and Celene Ayat

Lizzio argue against providing a singular, comprehensive model for the integration of Islamic values within largely secular systems, but instead advocate the need to look for similarities in the aims of both (Islamic) religious and (Western) civil law. According to these authors, it is entirely counterproductive to advocate norms drawn directly from pre-modern Muslim legal discourses without a full consideration of their outcomes and effects in specific European contexts.

Abdullah Saeed continues this latter argument with his discussion of the novel development of shariʿa rules that are adapted to their Western context, the so-called '*fiqh* for minorities'. This new discipline of Islamic legal scholarship is based on the argument that living in accordance with shariʿa should improve a Muslim's life. If the strict application of shariʿa rules makes his life harder – for example, if the Muslim had to fast for a disproportionally long time somewhere in the far North of Europe, or was prevented from rising up the social ladder due to the prohibition of a mortgage, preventing him from buying a house – then, according to minority *fiqh*, shariʿa itself demands that its rules be adapted. Saeed argues that this new scholarship must be repositioned within the broader debate on the reform of classical Islamic law that applies to all Muslims, not only those in the West. According to Saeed, such repositioning requires that temporary and ad hoc solutions be replaced with a more principled discourse of reform, leading to real change and new understandings of how Muslims should practise Islam in today's world, regardless of where they are located.

Conclusion

This volume does not only provide new insights in the concept of shariʿa in the West, but also provides a framework of how shariʿa in the West can be studied. The premise of this volume is that one needs to focus on the question 'What do Muslims *do* in terms of shariʿa?' rather than 'What *is* shariʿa?' Taking this perspective provides us with two insights: first, the practice of shariʿa is limited to a limited set of rules (mainly related to religious rituals, family law and social interaction) and, second, most of these rules do not pertain to the Western definition of 'law.' The framework of this volume then continues to explore two more interactions: the Western responses to these practices of shariʿa and, in turn, the Muslim legal reaction to these responses.

On the Western side we see that there is unity on matters of legal principle but quite some diversity on the interpretation of these principles. This interpretation can be partly attributed to historical, social-

economical and legal differences among Western countries, whereby we might observe a general division into three Western regions: America and Australia, North Western Europe and South Western Europe. The diversity of Western responses to shari'a can be further explained by distinguishing between legal responses, on the one hand, and what we suggest to call the 'cultural response': while Western laws might provide general (religious) freedoms that allow Muslims to practise their shari'a rules, Western public and political discourse may oppose these practices because they allegedly contravene with cultural identity.

Muslims, in turn, react to the Western responses to the Muslim practices of shari'a rules. Some may stubbornly adhere to these rules as a matter of religious freedom, others may abandon them to avoid too much confrontation, and yet others may seek to find common ground between their religious rules and the rules of the Western societies where they live.

The framework and rich material provided in this volume will contribute to our understanding of shari'a in the West. It is a phenomenon that is relatively new and therefore still in flux. Developments succeed each other in rapid order, often highlighted by shrill debates in the public and political domain, whereby action and reaction are often hard to separate. In this respect it is important to note that much is still to be known about the actual practices and intentions of Muslims in the West with regard to shari'a before we can make final judgements about the (in)admissibility of shari'a in the West.

Notes

1 ECHR, Refah vs Turkey, 13 February 2003, Nos. 41340/98, 41342/98, 41343/98 and 41344/98. See for commentaries: D. McGoldrick, 'Accommodating Muslims in Europe: From Adopting shari'a Law to Religiously Based Opt Outs from Generally Applicable Laws', *Human Rights Law Review*, 2009 (Vol. 9, No. 4).

2 'Islam in Civil and Religious Law in England', lecture by the Archbishop of Canterbury, Dr Rowan Williams, Lambeth Palace, 7 February 2008; 'Equality before the Law', speech by Lord Chief Justice of England and Wales, East London Muslim Centre, 3 July 2008. See for commentaries: Rex Ahdar and Nicholas Aroney (eds.), *Shari'a in the West*, Oxford: Oxford University Press, 2011.

3 Ahdar and Aroney (eds.), *Shari'a in the West*; Andrea Büchler, *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws,* Burlington: Ashgate, 2011; Samia Bano, *Islamic Dispute Resolution and Family Law*, London: Palgrave, 2011; Robin Griffith-Jones (ed.), *Islam and English Law: Rights, Responsibilities and the Place of Shari'a*, Cambridge: Cambridge University Press, 2013; Mark E. Hanshaw, *The Unfamiliar Abode: Islamic Law in the United*

States and Britain, Oxford: Oxford University Press, 2010; Julie MacFarlane, *Islamic Divorce in North America: A Sharia Path in a Secular Society*, Oxford: Oxford University Press, 2012; Jørgen Nielsen and Lisbet Christiffersen (eds.), *Shari'a as a Discourse: Legal Traditions and the Encounter with Europe*, Burlington: Ashgate, 2010; Matthias Rohe, *Muslim Minorities and the Law in Europe: Chances and Challenges,* Global Media Publications, 2007.

4 See for recent publications, e.g. Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations*, Cambridge: Cambridge University Press, 2009; Muhammad Hashim Kamali, *Shari'ah Law: An Introduction*, Oxford: Oneworld Publications, 2008.

5 See, e.g. the twelve country studies in Jan-Michiel Otto, *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Amsterdam: Amsterdam University Press, 2011.

6 This legal-anthropological approach has been advocated by a few scholars, and mostly when discussing shari'a in Muslim-majority countries – see, e.g., Baudouin Dupret, 1996 'La *sharî'a* comme référent legislative. Du droit positif à l'anthropologie du droit,' *Egypte Monde Arabe* (25), pp. 121-175.

7 John L. Esposito and Dalia Mogahed, *Who speaks for Islam? What a Billion Muslims Really Think*, New York: Gallup Press, 2008.

8 To be more exact: to the question 'should the programme of this [Muslim] party be based on shari'a?', 10.2% answered 'Yes, entirely' and 19.3% 'Yes, to some extent' (Foquz Etnomarketing, *Onderzoeksresultaten 'Politieke Voorkeuren Moslims' t.b.v. Redactie Nova*, Nieuwegein: Foquz Etnomarketing, December 2004, pp. 10-12).

9 ICM Research, 'Muslim Poll – February 2006', prepared for the *Sunday Telegraph*, available on www.icmresearch.com.

10 There was a difference in age: 37% of 16-24 year olds preferred shari'a compared to 17% of 55+ year olds. See Munira Mirza *et al.*, *Living Apart Together. British Muslims and the Paradox of Multiculturalism,* London: Policy Exchange, 2007.

11 E.g., Natasha Bakht, 'Family Arbitration Using shari'a Law: Examining Ontario's Arbitration Act and its Impact on Women,' in *Muslim World Journal of Human Rights*, 2004 (Vol. 1, Issue 1); Samia Bano, 'Cultural Translations and Legal Conflict: Muslim Women and the shari'ah Councils in Britain' in A. Hellum, S. Ali and A. Griffiths (eds.), *Transnational Law and Transnational Relations*, Ashgate Publishing, 2011; Maurits S. Berger, 'Sharia in Canada. An example for the Netherlands?' in: *Crossing Borders*, The Hague: Kluwer Rechtswetenschappelijke Publicaties, 2005; John R. Bowen, 'How Could English Courts Recognize shari'ah?' *University of St. Thomas Law Journal*, 2010 (Vol. 7, No. 3), pp. 411-435.

12 E.g., Kilian Bälz, 'Islamic Finance for European Muslims: The Diversity Management of Shari'ah-Compliant Transactions', *Chicago Journal of International Law,* 2006 (Vol. 7).

13 E.g. Alexandre Caeiro, *Fatwas for European Muslims: The Minority Fiqh Project and the Integration of Islam in Europe* (PhD thesis), Utrecht: Utrecht University Press, 2011; Dilwar Hussain, 'Muslim Political Participation in Britain and the "Europeanisation" of Fiqh,' *Die Welt des Islams* 2004 (Vol. 44, No. 3), pp. 376-

40; Fiqh Council of the Muslim World League, 'A message from Muslim scholars to Muslim Minorities in the West', *Daawah*, 2002, (No. 4); Shammai Fishman, 'Fiqh al-Aqalliyyat: A Legal Theory for Muslim Minorities', Center on Islam, Democracy, and the Future of the Muslim World, Research Monograph, 2006 (No. 2).

14 Conseil d'Etat, *Etude relative aux possibilités juridiques d'interdiction du port du voile intégral*, 25 March 2010 (available online at: www.conseil-etat.fr/cde/media/document/avis/etude_vi_30032010.pdf.).

15 See the explanations of their respective law proposals by the Cabinet (*Projet de loi interdisant la dissimulation du visage dans l'espace public* (No. 2520, 19 May 2010)) and by the Socialist Party (*Proposition de loi visant à fixer le champ des interdictions de dissimuler son visage liées aux exigences des services publics, à la prévention des atteintes à l'ordre public* (No. 2544, 20 May 2010)).