

Presented by the University of Western Sydney

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

**THE RELIGION AND SOCIETY RESEARCH CENTRE
AND THE SCHOOL OF LAW**

**14 & 15 SEPTEMBER, 2015
UWS BANKSTOWN CAMPUS, BUILDING 5, ROOM LG15**

FURTHER INFORMATION AND REGISTRATION
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SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

Day 1: Diversity and Dispute Resolution: Beyond accommodation?

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| 9:00 | Welcome & Opening Professor Michael Adams , Dean, School of Law | |
| 9:15 – 10:30 Session 1: Muslim Family Law in North America and the UK | | |
| 9:15 | Professor Julie Macfarlane , University of Windsor, Canada | <i>Divorce Practice among North American Muslims, and its Implications for Private Ordering and Public Adjudication in a Secular State</i> |
| 10:00 | Dr Samia Bano , University of London, UK | <i>The Politics of Culture and Muslim Family Law in the UK: Analysing the role of 'Cultural Experts' and the rise of 'Islamic Legal Services'</i> |
| 10:30 | Morning tea | |
| 11:00 – 12:30 Session 2: Beyond Accommodation of Cultural Diversity | | |
| 11:00 | Dr Morgan Brigg , University of Queensland, Australia | <i>Beyond Accommodation of Cultural Diversity: The politics of recognition and relationality in dispute resolution</i> |
| 11:30 | Associate Professor Sue Armstrong , UWS, Australia | <i>Beyond Accommodation: Recognition of and relationality with vulnerable parties in family mediation</i> |
| 12:00 | Dr Lola Akin Ojelabi , La Trobe University, Australia | <i>Adopting cultural/religious dispute resolution processes in Australia: Which way forward for access to justice?</i> |
| 12:30 | Lunch | |
| 1:30 – 2:30 Session 3: Australian Muslims and Family Law | | |
| 1:30 | Dr Ghena Krayem , University of Sydney, Australia | <i>Islamic Family Law in Australia: to Recognise or Not to Recognise?</i> |
| 2:00 | Ms Anisa Buckley , Melbourne University, Australia | <i>Muslim Identity and the 'Religious Market': Challenges facing Muslim women seeking religious divorce in Australia</i> |
| 2:30 | Afternoon tea | |
| 3:00 – 4:00 Session 4: Legal Pluralism and Personal Laws | | |
| 3:00 | Dr Farrah Ahmed , Melbourne University, Australia | <i>Religious ADR and personal laws in India</i> |
| 3:30 | Associate Professor Ann Black , University of Queensland, Australia | <i>The way forward: legal pluralism, dualism or keeping 'one law for all'?</i> |
| 4:00 | Concluding Comments & Discussion | |
| 4:30 | Conclude | |

Day 2: Shari'a in the everyday life of Muslims

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| 9:00 | Welcome & Opening Professor Kevin Dunn, School of Social Science and Psychology | |
| 9:15 – 10:30 Session 5: Views of American and Australian Muslims on Law | | |
| 9:15 | Professor James T Richardson , Dr Victoria Springer, and Dr Peter Martin, University of Reno, Nevada, USA | <i>Views of American Civil and Immigration Law among a Crowdsourced Sample of American Muslims</i> |
| 10:00 | Dr Jan A Ali , UWS, Australia | <i>A Sociology Analysis of the Understanding and Application of Shari'ah in Muslim Everyday Living in Australia</i> |
| 10:30 | Morning Tea | |
| 11:00 – 12:30 Session 6: Legal System and the everyday life of Muslims | | |
| 11:00 | Associate Professor Malcolm Joyce , Macquarie University | <i>Inheritance and Family Provision Law: A Contrast between Australian law and Islamic ideals as Regards Family Property</i> |
| 11:30 | Dr. Arskal Salim , Syarif Hidayatullah State Islamic University of Jakarta, Indonesia and UWS | <i>Disputing Women's Property Rights in Contemporary Indonesia</i> |
| 12:00 | Ms Ashleigh Barbe-Winter , UWS | <i>Religious Accommodation in the Australian legal System</i> |
| 12:30 | Lunch | |
| 1:30 – 2:30 Session 7: Plurality in the application and Understanding of Shari'a | | |
| 1:30 | Dr Arif A Jamal , National University of Singapore, Singapore | Plurality, legal pluralism and Islamic law: the case of Ismaili law |
| 2:00 | Professor Adam Possamai , UWS. | Plurality and Shari'a in the everyday life of Muslims in Sydney |
| 2:30 – 3:30 Session 8: Book Launch | | |
| 2:30 | Book Launch of Possamai, A., J. Richardson, and B. Turner eds. (2015) <i>The Sociology of Shari'a: Case Studies from Around the World</i> , Springer, Leiden. Salim, A. (2015) <i>Contemporary Islamic Law in Indonesia</i> , Edinburgh, Edinburgh University Press | |
| 3:30 | Conclude | |

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

RELIGION, CULTURE AND LEGAL PLURALISM SYMPOSIUM

SCHOOL OF LAW AND RELIGION & SOCIETY RESEARCH CENTRE

UNIVERSITY OF WESTERN SYDNEY 14 & 15 SEPTEMBER 2015

Western liberalism is increasingly challenged by the tensions of respecting diversity, protecting human rights and ensuring civic harmony. Although we better understand the significance of culture, religion and ethnicity in our lives and conflicts, we are less clear about the operation, role and response to informal dispute resolution processes in minority cultural and faith communities. There has been much debate internationally about this issue, particularly whether recognition of religious alternative dispute resolution processes such as Muslim or Jewish arbitration tribunals would perpetuate inequalities, especially for women. This discussion has only just begun in Australia. Further, we know very little about how people live with their religious laws in their everyday life.

The first day of this symposium seeks to contribute to these debates by bringing together scholars of international repute from a range of disciplinary backgrounds to critically examine the dispute resolution experiences of people from culturally and religiously diverse backgrounds, and what this tells us about the interplay between identities, laws and lives. The second day will focus more specifically on how Shari'a is lived, understood, and practiced in the everyday life of Muslims and will also provide the opportunity to launch two recent books on the sociology and anthropology of Shari'a.

DAY 1: DIVERSITY AND DISPUTE RESOLUTION: BEYOND ACCOMMODATION?

PROFESSOR JULIE MACFARLANE

Faculty of Law, University of Windsor, Canada

Divorce Practice among North American Muslims, and its Implications for Private Ordering and Public Adjudication in a Secular State

My 2006-2010 empirical study of divorce practices among contemporary North American Muslims found an attachment to an "Islamic" approach – encompassing process, values, and outcomes – among both devout and secular respondents. The findings of this study raise many questions about how we understand one another, and the relationship of private ordering (or private dispute resolution), and public adjudication. This paper will explore just two of these questions: (1) How far do decisions about dealing with marital conflict and divorce reflect a distinctive "Islamic" approach that is different from other faith and faithless communities? (2) When the courts (in Canada, the US) adjudicate on "religious contracts" (marriage, divorce) are they applying the right criteria to distinguish among religious and cultural practices and how in particular is this affecting the Muslim community? In conclusion, what does this discussion suggest about how we think in practical terms about both political and legal strategies regarding religious/cultural practices in a secular state?

Professor Macfarlane has published widely in the area of conflict resolution, mediation, and legal practice. She is the author of a four year empirical study of Islamic divorce Islamic Divorce in North America: A Shari'a Path in a Secular Society (Oxford University Press, 2012).

DR SAMIA BANO

School of Law, Centre of Islamic and Middle Eastern Law, SOAS, University of London, UK

The Politics of Culture and Muslim Family Law in the UK: Analysing the role of 'Cultural Experts' and the rise of 'Islamic Legal Services'

New methods of dispute resolution in English family law have led to an unprecedented rise in the number of scholarly and policy critiques questioning their effectiveness and the challenge to liberal legal principles of 'equality before the law', 'justice' and 'common citizenship'. As part of these contemporary developments, issues of cultural and religious diversity are addressed including demands for the accommodation of religious dispute mechanisms as part of new dispute resolution initiatives. What we see then, is not only the emergence of new forms of legal cultures but also the ways in which new forms of informal and formal adjudication in all their complexity emerge and develop within groups, communities and networks. In this paper I begin with an overview of the new types of Muslim dispute resolution emerging in Britain within British Muslim communities (Shari'ah councils, the Muslim Arbitration Tribunal and the rise of Islamic legal services by specialist Muslim legal practitioners). The second part of the paper analyses more closely the role of 'cultural experts' in matrimonial disputes in English Law. Drawing upon critical legal scholarship, empirical research and feminist theory my work raises a number of key questions relating to citizenship, personhood and agency and liberal legality to examines whether the privatization of ADR mechanisms and the role of cultural experts in matters of Muslim family law undermine liberal conceptions of justice, 'equality before the law' and 'common citizenship'.

Dr Bano has published widely on the practice of Muslim family law in the UK and Europe, multiculturalism, citizenship, Islamic jurisprudence and human rights and issues concerning the rights of Muslim women and gender equality. She is the author of Muslim women and Shariah Councils: Transcending the boundaries of Community and Law (Palgrave MacMillan, 2012).

DR MORGAN BRIGG

School of Political Science and International Studies, University of Queensland, Australia

Beyond Accommodation of Cultural Diversity: The politics of recognition and relationality in dispute resolution

In dispute resolution as in other arenas, the relationship between Western liberalism and minority cultural and faith communities has taken the form of, and been circumscribed by, a politics of recognition. Recognition politics involves the prosecution of a majoritarian political agenda against minorities under the cover of liberal toleration and multiculturalism. Relationality, in contrast, affirms that each of us is, before all else, fundamentally in relation with others. Because we need each other, being is relational rather than substantive in the way that liberal conceptions of sovereign individualism hold. Relationality thus provides a platform for exchange across difference in place of one-sided accommodation. Within a relational frame, substantive exchange among culturally diverse dispute processing mechanisms would speak to questions of welfare, well-being, values and cosmology rather than the usual vocabulary of individual rights, non-threatening diversity, and existing politico-legal institutional arrangements. By sidestepping the liberal multicultural imperative for "politically correct" toleration of cultural difference, relationality suggests robust discussion of diverse cultural claims and hence workable policy outcomes and effective dispute processing practices that maintain a constantly evolving foundation for law and order while passing into substantive relationships beyond the limitations of the politics of recognition.

Dr Brigg's research considers questions of culture, governance and selfhood in conflict resolution, peacebuilding and development studies. His most recent book was edited with Roland Bleiker, Mediating Across Difference: Oceanic and Asian Approaches to Conflict Resolution published by University of Hawai'i Press in 2011.

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

ASSOCIATE PROFESSOR SUSAN ARMSTRONG

School of Law, University of Western Sydney, Australia

Beyond Accommodation: Recognition of and relationality with vulnerable parties in family mediation

This paper responds to the challenge issued by Morgan Brigg's assessment of recognition politics in the context of Australian family mediation. I argue that both recognition and relationality are necessary. Whilst the proportion of separated couples from minority cultural contexts involved in family mediation is small, many have no choice but to be involved, and some choose to do so. Children of these couples have no direct involvement at all, but it is their futures that are generally decided in such mediations. The mediator responds to these parties and their children require acute awareness of and capacity to support party self-hood in mediation in the context of cultural and relational networks. They also demand conscious attention to the web of relationships and the broader cultural contexts within which children are raised, and the importance of sustaining these to children's wellbeing and their right to develop an authentic self-constructed identity, including a cultural identity. Such recognition and the capacity to respond constructively in mediations is grounded on a relational approach – both the relationship the mediator has and builds with the parties, and the steps taken and processes engaged with to support the relationships and 'real lives' of children and their parents. This paper will explore this contention focusing on vulnerable parties in Australian family mediation, particularly children.

Associate Professor Armstrong's research and publication focus includes family law, dispute resolution, legal responses to culture, domestic violence and legal education. She is Director, Research at the UWS School of Law.

DR LOLA AKIN OJELABI

**College of Arts, Social Sciences and Commerce,
La Trobe University, Australia**

Adopting cultural/religious dispute resolution processes in Australia: Which way forward for access to justice?

For some culturally and linguistically diverse communities (CALD), the fundamental values of mainstream mediation, and in particular, neutrality, may cause some concern if in their culture or religion, the third party is required to play a more active role in the process, including advising the parties as to the best course of action and determining who is right or wrong. Another point of difference between mainstream processes and cultural processes relates to the aim of the process. Research shows that CALD members are reluctant to access Family Dispute Resolution (FDR) processes because of the perception that FDR encourages divorce rather than assists the couple to reconcile their differences. While there is a plethora of literature on the cultural appropriateness of services in Australia, research is yet to be conducted as to the type of process or model of family dispute resolution that will be appropriate for CALD groups. Some have suggested the adoption or adaptation of cultural and religious dispute resolution processes by justice institutions. This paper will examine the pros and cons of such an approach drawing insight from the views of Turkish, Lebanese and Iraqi women in the Northern suburbs of Victoria. It will then discuss a model of dispute resolution which takes into consideration expressed concerns while also seeking to achieve culturally appropriateness and improve access to justice.

Dr Akin Ojelabi researches and publishes in the field of conflict/dispute resolution including on DR processes and access to justice for disadvantaged groups and individuals and ethics in mediation practice.

DR GHENA KRAYEM

Faculty of Law, University of Sydney, Australia

Beyond Accommodation – Understanding the Needs of Australian Muslims in the Family Law context

One of the most contentious issues facing many western legal systems is the question of the accommodation of Muslims, and more specifically what recognition, if any at all, should be given to shariah. This has led to sensationalised debates all over the western world and more often than not these debates have focused on the family law context. The paper will explore these debates and in particular seek to clarify what is meant by accommodation? Who is asking for it, Why are they asking and How have states responded to this issue? It will be argued that the question of accommodation or recognition of shariah is actually an unhelpful one – rather the focus should be on considering what the needs are of all Australians, including Australian Muslims, and how the family law system can serve the needs of all Australians. This paper is based on the first empirical study to be published about how Australian Muslims resolve their family law disputes. In particular the paper will explore the potential of family dispute resolution as a means by which Muslims can better navigate their way through the intersection of the official legal system and Islamic principles.

Dr Krayem has researched and published on aspects of Islam in Australia, particularly focusing on Muslim women and Islamic family law. Her most recent book Islamic Family Law in Australia (MUP, 2014) was the first empirical study exploring how Australian Muslims resolve their family law disputes.

ANISA BUCKLEY

University of Melbourne, Australia

Muslim Identity and the 'Religious Market': Challenges facing Muslim women seeking religious divorce in Australia

This paper details how identity among Muslim communities in Australia is intertwined with family law, with a particular focus on local religious authorities and their role in Muslim marriage and divorce practices. The first section presents an overview of the various Muslim community actors involved in the 'internal' and 'external' dimensions of the religious market involving discussions about Muslim family laws and legal pluralism in Australia. It explores the issues that arise when these – primarily male – Muslim community actors give prominence to issues regarding family law and Muslim women above other community concerns, causing these issues to become an ossified part of communal Muslim values and 'heritage', to be protected and maintained at all costs. This poses a problem for Muslim women who seek to question such values when making decisions about marriage and divorce. The second section investigates how local religious authorities interviewed for my research approach dispute resolution and negotiation in religious divorce procedures, by presenting their views regarding Muslim and civil legal rulings, and the types of access to divorce available to Muslim women, particularly those in situations of 'limping marriages'.

Ms Buckley is a committee member of the Australian Muslim Women's Centre for Human Rights, a community welfare organisation established and managed by Muslim women for Muslim women, and a founding board member of the Islamic Museum of Australia. She is also a PhD candidate in Islamic Studies.

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

DR FARRAH AHMED

Melbourne Law School, University of Melbourne, Australia

Religious ADR and personal laws in India

The debates about the accommodation of religious norms in Indian family law have focussed on 'personal laws'. These laws raise several concerns, particularly relating to their effects on women. While several proposals for the reform of these laws have been considered over the last few decades, this paper argues religious alternate dispute settlement (particularly mediation and arbitration) represents a promising reform option for India. The paper highlights features of the Indian experience with religious alternative dispute settlement that are relevant to these debates in other jurisdictions.

Dr Ahmed's research embraces Legal Theory, Public Law, Multiculturalism, Law and Religion, Family Law and South Asian Law. She is Associate Director (India) at the Asian Law Centre, Melbourne Law School. Her book Religious Freedom under Personal Laws will be published in 2015 by OUP.

ASSOCIATE PROFESSOR ANN BLACK

TC Beirne School of Law, University of Queensland, Australia

The way forward: legal pluralism, dualism or keeping 'one law for all'?

Like other western nations with a Muslim minority, Australia has been debating the extent to which our government should re-think the 'one law for all' by formally recognizing some aspects of Islamic family law that are being informally employed by a small, but strong and growing, Australian Muslim population. However, whilst Australia formally remains a 'one law for all' nation, at the private and personal level, there is freedom to voluntarily comply with many aspects of Islamic law family. This has advantages but also gives rise to certain challenges both for Muslims trying to comply with two legal regimes and also for Australian judges tasked with resolving family disputes brought to their court by Muslims married in accordance with Islamic family law, or matters brought by Muslim/non-Muslim spouses. This paper will present a lawyer's perspective on the challenges and options which arise when Islamic law operates in the informal and unregulated realm and reflect on the extent to which it is either practically or ideologically possible for formal recognition to be given either to Sharia tenets or to decisions of Islamic tribunals and Imams applying Sharia principles to legal issues of marriage, divorce and custody.

Associate Professor Black researches in the field of comparative law and legal pluralism, with particular interest in the law and legal cultures of Asia and in Islamic law. She is a co-author with Gary Bell, of Law and Legal Institutions of Asia: Traditions, adaptations and innovations (Cambridge University Press, 2011) and Modern Perspectives on Islamic Law, with Hossein Esmaeili and Nadirsyah Hosen, (Edward Elgar, 2013).

DAY 2: SHARI'A IN THE EVERYDAY LIFE OF MUSLIMS

JAMES T. RICHARDSON

Victoria A. Springer, and Peter J. Martini, University of Nevada, Reno, USA

Views of American Civil and Immigration Law among a Crowdsourced Sample of American Muslims

The destruction of the World Trade Center towers, the attack on the Pentagon, and the downing of United flight 93 in Pennsylvania on September 11, 2001 (9/11) forever changed life for Muslims living in the United States. As the minority population of Muslims has continued to grow, an ongoing era of debate and conflict has developed about the role of Muslims in the U.S. This research is intended to advance our understanding of the perceptions of Muslims living in post-9/11 America. For the purposes of this paper, we have examined how Muslims living in the United States view two sources of American law: civil law and immigration law.

The results of this research indicate that Muslims with stronger religious beliefs have more favorable views of American civil law. Muslims who favored assimilation (preferring to identify solely with culture of larger society) also held more positive attitudes toward American civil law. Regarding American immigration law, those who favored integration (a strong identification and involvement with their own ethnic culture as well as that of the U.S.) held more positive attitudes. No other factors were related to their views on civil or immigration law. Implications for the topic of legal pluralism, social cohesion, and concepts of citizenship will be discussed.

James T. Richardson, J.D., Ph.D. is Professor of Sociology and Judicial Studies at the University of Nevada, Reno, where he directs the Judicial Studies graduate degree program for trial judges which is offered in conjunction with the National Judicial College and the National Council of Juvenile and Family Court Judges. He has published over 275 articles and book chapters in his career, as well as authored or edited twelve books. He specializes in social and behavioral science evidence and how religious groups are dealt with in the justice system.

Victoria Springer is an Associate Research Manager for Adobe Systems, Inc. She received her PhD in Interdisciplinary Social Psychology from the University of Nevada, Reno in 2014. Her research interests include advancing the methodological techniques used to identify and access hidden or hard-to-reach populations, with a specific focus on understanding motivations, values, and beliefs of marginalized groups.

Pete Martini is an Assistant Professor of Sociology and Criminal Justice at Heidelberg University and doctoral candidate in Interdisciplinary Social Psychology at the University of Nevada, Reno. His research deals primarily with the influence and intersection of minority identities, and the application, examination, and extension of digital methodologies in the social sciences.

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

DR JAN A. ALI

University of Western Sydney, Australia

A sociology Analysis of the Understanding and Application of Shari'ah in Muslim Everyday Living in Australia

Shari'ah (Islam law) is a composite of rules and a system of guidance. Unlike the common law or the civil law, which governs various aspects of public and private living, Shari'ah has a more comprehensive coverage traversing the complete cross-section of living and provide guidance relation to shaping and living life in the context of Islam as a complete way of life. Shari'ah is a path to salvation and felicity. It is guidance for all that is permissible and against all that is forbidden in Islam. However, not all Muslims understand this about Shari'ah and as a consequence the application of Shari'ah in Muslim everyday living is selective and haphazard. At an existential level, the comprehensiveness and pervasiveness of Shari'ah are something that needs investigation.

In this paper I utilise the survey data collected in Sydney, Australia to discuss the nature and level of understanding of Shari'ah and the degree to which it is implemented among Australian Muslims. The data is only small and in no way representative. Its use is to generate discussion and develop the argument in this paper. The paper argues that the lack of comprehensive and pervasive implementations of shari'ah among Australian Muslims is, in essence, due to the fragmentary and diverse nature of the Muslim community and scholarship. The question, who and how, shari'ah is defined, designed, developed, and implemented is not considered and given much attention to the institution level in Australian Muslim community. The understanding of shari'ah in the Australian Muslim community is subjective and this subjectivity impacts on the religious rituals and practices in Muslim everyday living.

Dr Jan A. Ali is a Religious Sociologist specialising in Islam. He holds a joint appointment as a Senior Lecturer in Islam and Modernity in the School of Humanities and Communication Arts and as the Community and Research Analyst in the Religion and Society Research Centre at the University of Western Sydney. His main sociological focus is the study of existential Islam.

MALCOLM VOYCE

Macquarie University, Australia

Inheritance and Family Provision Law: A Contrast between Australian law and Islamic ideals as Regards Family Property

The Australian view of family property is connected to the idea of testamentary freedom, that each individual may devolve their property to whom they select. This nineteenth century view of property has been modified by Family Provision law, which requires testators to leave a sufficient share to needy family members. This paper seeks to describe Islamic views of inheritance and how the ideal of keeping the family property intact for male members' contrasts with other cultural patterns of inheritance such as that found in Australia.

The paper proceeds with a discussion of *Omari v Omari* [2012] ACTSC 33. While this case was decided on the issue of capacity, the case is of importance as it illustrates Islamic views on family property. Secondly, the paper discusses *Hicken v Carroll* [2014] NSWSC 1059 and how the courts will not intervene into a family disposition of property where a testator chooses one group of relatives against another on the grounds of religion. The paper then shows that while courts will not intervene with a disposition based on a religious perspective they will not allow where there is need for provision for religious factors to trump needs. The article concludes that this may mean that wills made in compliance of Sharia law may not be valid.

Malcolm Voyce is an Associate Professor at the Macquarie Law School. He teaches in the areas of taxation law, law and religion and jurisprudence. He has recently published in the areas of Sharia law, Buddhism and Succession Law.

ARSKAL SALIM

Syarif Hidayatullah State Islamic University of Jakarta, Indonesia, University of Western Sydney, Australia

Disputing Women: Property Rights in Contemporary Indonesia

This paper will look at how Muslim women in Indonesia dispute their property rights at different legal fora. It will firstly discuss all kinds of property rights that women may be entitled to and examine why all these can turn into disputes. The paper will present some cases to show how these disputes are being resolved within and beyond courtrooms and will explain why female disputants are (un)able to have access to their property rights. This paper seeks to argue that despite increasing needs of female disputants to bring their cases into courtrooms, thus making legal processes less plural and centralised at the state religious court in particular, legal reasoning of multiple actors, including judges and lawyers who are involved in any given dispute, remains plural.

*Dr. Arskal Salim is Adjunct Fellow at Religion and Society Research Center, University of Western Sydney (UWS) Australia. Currently he is PVC Research and Community Outreach of Syarif Hidayatullah State Islamic University (UIN) Jakarta, Indonesia. After receiving his PhD from Melbourne Law School, University of Melbourne, he took up a postdoctoral research fellowship at the Max Planck Institute for Social Anthropology, Germany, which then led to the publication of his recent book entitled *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh University Press, 2015).*

ASHLEIGH BARBE-WINTER

University of Western Sydney, Australia

Religious Accommodation in the Australian legal system

Modern states hold varying stances on the legal accommodation of minority cultural groups. In Australia, there is a constant narrative about the strength of Australia as a multicultural society. However, there is also bipartisan political rejection of the incorporation of any form of Islamic law into state-sanctioned legal institutions. This rejection is expressed vehemently with regards to criminal law, but its impact also quietly extends to personal and financial law. In the Muslim Australian community, this political rejection has become synonymous with a community view that the official legal system is not accommodating of personal laws that have a grounding in religious beliefs. In order to meet the need to live according to religious law, various Muslim Australian communities have begun to build unofficial legal structures. Australian research has focused on how these unofficial legal structures are being implemented and used.

Absent from this conversation is a close historical analysis of instances where Muslim Australians have been involved with the official legal system in matters of personal law. This presentation is based on an ongoing analysis of legal decisions that incorporate evidence of Islamic family law. It will review the Australian social security concepts of "marriage" and "marriage-like relationships" as they have been exercised in historical tribunal decisions. For Muslim Australians whose marital traditions differ from the majoritarian cultural norms upon which Australian laws are based, does the exercise of these concepts impact on this particular minority group in a way that is measurably disadvantageous?

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

This presentation will be theoretically grounded in an analysis of Ayelet Shachar's 'transformative accommodation' approach within her model of 'joint governance', as a response to the 'paradox of multicultural vulnerability', which sees multicultural accommodation impinge on individual rights. The 'transformative accommodation' approach addresses the space between the state and a minority culture as an opportunity for the state to develop its accommodation of all cultural groups within its boundaries, while recognizing the multiple identities contiguously maintained within a single individual. Looking to the Australian context, this presentation will focus on the extent to which existing legal structures such as 'cultural assessment' and 'special consideration' can be accommodating of group identity rights without impinging on rights of the individual.

Ms Barbe-Winter's employment background in the public service, inspired an interest in social security law and the responsibility of the State to citizens in minority groups. Combined with an interest in religious studies and Islamic law, this is culminating in research into the role of the judiciary in multicultural accommodation in the area of family law.

DR ARIF A. JAMAL

**Assistant Professor, Faculty of Law,
National University of Singapore**

Plurality, legal pluralism and Islamic law: the case of Ismaili law

The plurality of Islamic law – or perhaps better, Muslim legal traditions – is well known and well documented. As part of its historical development, several major 'schools of law' emerged, each of which is the site of a variety of opinions. One Muslim community whose legal traditions reflect an alternative pattern to others, is the contemporary Shia Imami Nizari Ismailis ('the Ismailis'). A numerically small minority among the world's Muslims, the Ismailis recognise as their spiritual leader and guide (Imam), the Aga Khan. The Ismaili Imam's roles include acting as the interpreter of the faith and in this context as the primary articulator of the law for the community. Since they have an Imam to fulfil these roles, the Ismailis do not rely upon contemporary jurist-theologians or on their work product (fiqh) as their main legal references. Rather they look to the authority of the Imam generally especially as today expressed in the Constitution of the Shia Imami Ismaili Muslims that the Imam ordained for the community in 1986. As a result, the contemporary Ismaili tradition expresses an alternative normative foundation for the development of law in Muslim contexts.

To some, the Ismaili system may seem too out of step with the traditions of Islamic law and thus not an expression of Muslim legal traditions at all. However, such a conclusion would have to rest on a restricted definition of the bases of Islamic law. Applying a legal pluralist perspective instead would enable one to see that within Muslim legal traditions there exist different normative and cultural narratives of law.

This paper will use the theoretical insights of legal pluralism and the case-study of Ismaili law to make two arguments. In the context of Muslim legal traditions, it will argue for a richer understanding of bases and forms of these traditions. In the context of legal pluralism, it will demonstrate that a pluralist framework provides a better normative and descriptive understanding of connected but plural legal traditions.

Arif Jamal is an Assistant Professor of Law at the National University of Singapore (NUS). He studied politics (BA) and law (LLB) in Canada and was called to the Bar of British Columbia. Thereafter, he undertook post-graduate work in the UK earning an LLM degree, focusing on Islamic law, at the School of Oriental & African Studies (SOAS) and then completing his doctorate the Faculty of Laws at University College London (UCL). Arif's research and teaching interests include legal and political theory, law and religion and law in Muslim contexts.

ADAM POSSAMAI

University of Western Sydney

Plurality and Shari'a in the everyday life of Muslims in Sydney

Debates about Shari'a law and legal pluralism have come to the fore of political discourse in many Western multicultural societies including Australia. Often, comments about Shari'a are disengaged from the everyday life of Muslims. Using Sydney as a case study, this paper will provide a qualitative analysis of more than 50 interviews with Muslims with regards to their understanding and practice of Shari'a. The theoretical aim of this paper will be to situate the debate on legal pluralism and Shari'a within Eisenstadt's multiple modernity thesis and to argue that we should work towards a new multi-faith pragmatic modern project. This, it will be discussed, fits with Habermas' post-secular project. This theory will be tested as a third way between legal pluralism and 'universal' legalism.

Adam Possamai is Professor of Sociology and Director of Research at the School of Social Sciences and Psychology at UWS. His latest book is the Sociology of Shari'a: Case Studies from Around the World (Springer, 2015), edited with Jim Richardson and Bryan Turner.

SHARI'A, CULTURE AND LEGAL PLURALISM SYMPOSIUM

THE RELIGION AND SOCIETY RESEARCH CENTRE
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