

UNDERSTANDING SHARIA IN AN AMERICAN CONTEXT

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What is Sharia?

Sharia literally means “way” or “street.” As an Islamic concept, it means “God’s Way” or “God’s Law” – the divine way that God exhorts everyone to live. The details of that behavior are in scriptural sources (the Quran and documented Prophetic Tradition). The legal rules that are derived from those sources (through the process of *ijtihad* – legal interpretation) is called “*fiqh*” (literally, “understanding”).

Because *ijtihad* is a human process, *fiqh* is pluralistic; it is made up of several different (equally legitimate) schools of Islamic law. Some of the more well-known ones are Hanafi, Shafii, Maliki, Ja’fari and Hanbali. If you’re thinking of specific legal rules that you’ve heard are “Islamic law,” you’re actually thinking of *fiqh*.

Some of the *fiqh* rules are quite consistent with legal rules found in American law today (e.g. rights to personal property, mutual consent to contracts, presumption of defendants’ innocence). Others are quite “progressive” in comparison to contemporary (and certainly 19th century) western laws (e.g. women’s right to compensation for housework and to engage in front-line military combat). Still others seem contrary to contemporary human rights norms (e.g. hand amputation for theft, stoning for adultery), though there are doctrinal limitations that should limit the application of the punishment in most cases (e.g. four eyewitnesses required for proving adultery). It should also be recognized that there is a healthy internal Muslim discourse on many *fiqh* laws (especially those regarding criminal law), generating a diversity of authentic Muslim opinions (through *ijtihad*) on what are appropriate *fiqh* rules for modern times and various societal contexts. Diversity remains the key attribute of Islamic legal doctrine, then and now.

What role does Sharia have in the lives of American Muslims?

It depends on the individual, but generally speaking, the goal of living by God’s Way is relevant to all practicing Muslims and indeed to people of all faiths. The details of what that means in an average American Muslim’s life will depend on many factors, including (1) what school of *fiqh* they follow, if any, (2) whether they think some *fiqh* rules are in need of new *ijtihad*, and (3) to what extent they think *fiqh* rules are relevant in the context of living in a non-Muslim secular system. For some, this will mean that they are interested only in keeping up some or all of the religious rituals (e.g. prayer, fasting), but not much else that needs recognition in the public sphere. For others, *fiqh* rules on things like mar-

What is Sharia?

- Sharia is a way of life mandated by God through the Quran and the Prophet Muhammad’s example.
- *Ijtihad* is the way Sharia is interpreted resulting in *fiqh*, or Islamic law, which has a number of schools of thought.

What role does it have in America?

- Individual Muslims will determine the role of Sharia in their lives depending on their personal beliefs, what school of *fiqh* they follow, whether they believe some rules are in need of reinterpretation, and whether they think rules are relevant to their lives in the modern America.
- American judges have accommodated *fiqh* and other religious laws to help individuals resolve legal disputes for decades.

Will Sharia take over America?

- *Sharia* does not direct Muslims to take over the political realm, especially when living as minorities in non-Muslim societies.
- American constitutional democracy expects the people to elect their leaders and vote out those who try to force religious laws on Americans.



riage, inheritance, business transactions, and property are very important to how they order their lives.

For American Muslims who find *fiqh* rules important to ordering their lives, then, if there is a legal dispute involving one of those rules, they will likely find themselves in litigation, raising *fiqh*-based claims before an American judge. This has been a routine legal phenomenon in the United States for several decades (and longer, for religious legal issues raised by other religious minorities). The details vary from state to state, but historically, American judges have had no problem dealing with *fiqh*-based claims just as they have addressed issues of foreign law that arise in other cases. In short, when the *fiqh* rights that are asserted are understandable to the judge and do not violate public policy (set by U.S. constitutional and state law), then the judge takes into account the relevant *fiqh* law and adjudicates based on his or her understanding of the fair resolution of the claims. This approach (which is used for legal issues raised by any religious or foreign law) does not threaten our secular democracy because of the public policy controls inherent in our judicial system.

It is important not to reduce *sharia* – and its *fiqh* articulations – to merely religious rituals that are only relevant in the private sphere. *Fiqh* is made up of very sophisticated legal concepts and analyses, equal in a comparative context to the substantive law of any legal system. The “law” of “Islamic law” should not be ignored.

If Muslims are allowed to practice sharia in the United States (and if judges help them by enforcing it), will sharia take over America?

No. For two reasons: (1) *sharia* does not direct Muslims to take over the political realm, especially when living as minorities in non-Muslim societies (the *fiqh* relating to politics is full of deference to rulers, even to the point of tolerating disregard of *sharia* by Muslim rulers), and (2) as long as American democracy is alive and well, we vote for our leaders and legislators. This includes voting out of office anyone who may try to violate the Establishment Clause by using state power to force any religious laws on American citizens.

Distractions of political posturing aside, the question of Muslims practicing *sharia* is a freedom of religion issue. It is about the constitutional right of those Americans who want to practice their religion by applying *fiqh* rules in their lives to be able do so without interference from the government, as long as those rules do not violate basic U.S. legal norms. Respecting American Muslims’ desire to practice *sharia* will not open America up to theocratic takeover, nor will it make us more vulnerable to terrorist attack. But it will demonstrate to ourselves and to the world that Americans value religious freedom and religious pluralism and that our nation is better for it.



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