
Islam: Governing Under Sharia

(aka shariah, shari'a)

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Introduction

Sharia, or Islamic law, influences the legal code in most Muslim countries. A movement to allow sharia to govern personal status law, a set of regulations that pertain to marriage, divorce, inheritance, and custody, is even expanding into the West. "There are so many varying interpretations of what sharia actually means that in some places, it can be incorporated into political systems relatively easily," says CFR's [Steven A. Cook](#). Sharia's influence on both personal status law and criminal law is highly controversial. Some interpretations are used to justify cruel punishments such as amputation and stoning, as well as unequal treatment of women in inheritance, dress, and independence. The debate is growing as to whether sharia can coexist with secularism, democracy, or even modernity, an idea that is being tested by several countries in the Middle East looking to rewrite their constitutions.

What is Sharia?

Also meaning "path" in Arabic, sharia guides all aspects of Muslim life, including daily routines,

familial and religious obligations, and financial dealings. It is derived primarily from the Quran and the Sunna--the sayings, practices, and teachings of the Prophet Mohammed. Precedents and analogy applied by Muslim scholars are used to address new issues. The consensus of the Muslim community also plays a role in defining this theological manual.

Sharia developed several hundred years after the Prophet Mohammed's death in 632 CE as the Islamic empire expanded to the edge of North Africa in the West and to China in the East. Since the Prophet Mohammed was considered the most pious of all believers, his life and ways became a model for all other Muslims and were collected by scholars into what is known as the *hadith*. As each locality tried to reconcile local customs and Islam, *hadith* literature grew and developed into distinct schools of Islamic thought: the Sunni schools, Hanbali, Maliki, Shafi'i, Hanafi; and the Shiite school, Ja'fari. Named after the scholars that inspired them, they differ in the weight each applies to the sources from which sharia is derived, the Quran, *hadith*, Islamic scholars, and consensus of the community.

The Hanbali school, known for following the most orthodox form of Islam, is embraced in Saudi Arabia and by the Taliban. The Hanafi school, known for being the most liberal and the most focused on reason and analogy, is dominant among Sunnis in Central Asia, Egypt, Pakistan, India, China, Turkey, the Balkans, and the Caucasus. The Maliki school is dominant in North Africa and the Shafi'i school in Indonesia, Malaysia, Brunei Darussalam, and Yemen. Shia Muslims follow the Ja'fari school, most notably in Shia-dominant Iran. The distinctions have more impact on the legal systems in each country, however, than on individual Muslims, as many do not adhere to one school in their personal lives.

Punishment and Equality Under Sharia

Marriage and divorce are the most significant aspects of sharia, but criminal law is the most controversial. In sharia, there are **categories of offenses**: those that are prescribed a specific punishment in the Quran, known as *hadd* punishments, those that fall under a judge's discretion, and those resolved through a tit-for-tat measure (i.e., blood money paid to the family of a murder victim). There are five *hadd* crimes: unlawful sexual intercourse (sex outside of marriage and adultery), false accusation of unlawful sexual intercourse, wine drinking (sometimes extended to include all alcohol drinking), theft, and highway robbery. Punishments for *hadd* offenses--flogging,

stoning, amputation, exile, or execution--get a significant amount of media attention when they occur. These sentences are not often prescribed, however. "In reality, most Muslim countries do not use traditional classical Islamic punishments," says Ali Mazrui of the Institute of Global Cultural Studies in a [Voice of America interview](#). These punishments remain on the books in some countries, but lesser penalties are often considered sufficient.

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Despite official reluctance to use *hadd* punishments, vigilante justice still takes place. Honor killings, murders committed in retaliation for bringing dishonor on one's family, are a worldwide problem. While precise statistics are scarce, the UN estimates thousands of women are killed annually in the [name of family honor \(National Geographic\)](#). Other practices that are woven into the sharia debate, such as female genital mutilation, adolescent marriages, polygamy, and gender-biased inheritance rules, elicit as much controversy. There is significant debate over what the Quran sanctions and what practices were pulled from local customs and predate Islam. Those that seek to eliminate or at least modify these controversial practices cite the religious tenet of *tajdid*. The concept is one of renewal, where Islamic society must be reformed constantly to keep it in its purest form. However, though many scholars share this line of thought, there are those who consider the purest form of Islam to be the one practiced in the seventh century.

Sharia vs. Secularism

The issue of sharia law versus secular law gained new scrutiny starting in 2011 in the wake of uprisings in several Arab countries, such as Libya, Tunisia, and Egypt, which ousted long-time autocrats and helped Islamist political parties gain prominence. A [2010 Pew poll](#) conducted in seven countries including Egypt found strong support for Islam in politics and for harsh punishments for crimes such as theft, adultery, and conversion away from Islam. At the same time, a majority of those polled in every country except Pakistan believed democracy is the best form of governance.

Whether democracy and Islam can coexist is a topic of heated debate. Some conservative Muslims argue democracy is a purely Western concept imposed on Muslim countries. Others feel Islam

necessitates a democratic system and that democracy has a basis in the Quran since "mutual consultation" among the people is commended (42:38 Quran). Islamic studies experts John L. Esposito and John O. Voll [explain the debate](#) in a 2001 article. As this [CFR Backgrounder notes](#), rather than rejecting democracy, many Muslims see sharia as a means "to be liberated from government corruption and believe it can exist within a democratic and inclusive framework."

On the other hand, some Muslim scholars say that secular government is the best way to observe sharia. "Enforcing a [sharia] through coercive power of the state [negates its religious nature](#), because Muslims would be observing the law of the state and not freely performing their religious obligation as Muslims," says sharia expert [Abdullahi Ahmed An-Na'im](#).

Opinions on the best balance of Islamic law and secular law vary, but sharia has been incorporated into political systems in three general ways:

- **Dual Legal System.** Many majority Muslim countries have a dual system in which the government is secular but Muslims can choose to bring familial and financial disputes to sharia courts. The exact jurisdiction of these courts varies from country to country, but usually includes marriage, divorce, inheritance, and guardianship. Examples can be seen in Nigeria and Kenya, which have sharia courts that rule on family law for Muslims. A variation exists in Tanzania, where civil courts apply sharia or secular law according to the religious backgrounds of the defendants. Several countries, including Lebanon and Indonesia, have mixed jurisdiction courts based on residual colonial legal systems and supplemented with sharia.

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Western countries are also exploring the idea of allowing Muslims to apply Islamic law in familial and financial disputes. In late 2008, Britain officially [allowed sharia tribunals \(NYT\)](#) governing marriage, divorce, and inheritance to make legally binding decisions if both parties agreed. The new system is in line with separate mediation allowed for Anglican and Jewish communities in England. Criminal law remains under the gavel of the existing

legal system. Supporters of this initiative, such as the former archbishop of Canterbury, Rowan Williams, argued that it would help maintain social cohesion (BBC) in European societies increasingly divided by religion. However, some research suggests the process to be discriminatory toward women (BBC).

Sharia has become a topic of political concern in the United States in recent years. The state of Oklahoma passed a ballot measure in November 2010 to ban the use of sharia law in court cases, which supporters are calling "a preemptive strike against Islamic law" (ABCNews). Several opponents of the construction of new mosques around the United States, including one near Ground Zero, have cited fear of the spread of sharia as a reason for opposition. And about a third of Americans in an August 2010 Newsweek poll suspected U.S. President Barack Obama sympathizes with Islamist goals (PDF) to impose sharia.

- **Government under God.** In those Muslim countries where Islam is the official religion listed in the constitution, sharia is declared to be a source, or the source, of the laws. Examples include Saudi Arabia, Kuwait, Bahrain, Yemen, and the United Arab Emirates, where the governments derive their legitimacy from Islam. In Pakistan, Iran, and Iraq, among others, it is also forbidden to enact legislation that is antithetical to Islam. The crafting of new constitutions following the ouster of long-time rulers in Libya, Egypt, and Tunisia has led to a discussion about the role of Islamic law in a democracy. Similar debates occurred during the crafting of the Afghanistan and Iraq constitutions.

Saudi Arabia employs one of the strictest interpretations of sharia. Women are under the guardianship of male relatives at all times, and must be completely covered in public. Elsewhere, governments are much more lenient, as in the United Arab Emirates, where alcohol is tolerated. Non-Muslims are not expected to obey sharia and in most countries, they are the jurisdiction of special committees and adjunct courts under the control of the government.

- **Completely Secular.** Muslim countries where the government is declared to be secular in the constitution include Azerbaijan, Tajikistan, Chad, Somalia, and Senegal. Islamist parties run for office occasionally in these countries and sharia often influences local customs.

Popular Islamist groups are often viewed as a threat by existing governments. As in Azerbaijan in the 1990s, secularism is sometimes upheld by severe government crackdowns on Islamist groups and political parties. Similar clashes have occurred in Turkey. Under the suspicion that the majority party, the Islamist Justice and Development Party, was trying to establish sharia, Turkey's chief prosecutor petitioned the constitutional court (*Economist*) in March 2008 to bar the party from politics altogether. Secular Muslim countries are a minority, however, and the popularity of Islamist political parties are narrowing the gap between religion and state.

Modern Economies and Sharia

Growing at an estimated 15 percent annually, Islamic banking and finance is a worldwide industry that modifies modern business practices to conform to the rules of sharia. Central to this field is *riba*, the charging or payment of interest, banned under Islamic law. Clever twists on standard financial products like credit cards, savings accounts, mortgages, loans, and even trust funds bypass the interest business model. The industry's assets stood at more than \$1 trillion at the end of 2012. Large global banks such as Citigroup, HSBC, and Deutsche Bank also have developed Islamic banking sectors to cater to the demand.

Some of the ethically minded are also switching over to sharia-compliant investments. Businesses are required to avoid transactions related to forbidden things, such as weapons, alcohol, tobacco, gambling, pornography and pork, and investors are guaranteed that their money won't end up financing those industries. Governments are also looking to get a piece of the pie: Malaysia is the largest issuer of sharia-compliant bonds and Indonesia launched its own in January 2009.

Suggested Reading

This CFR Backgrounder looks at the links between sharia and militancy.

The book *Islam and the Secular State* by Abdullahi Ahmed An-Na'im examines the place of sharia in predominantly Muslim societies.

Law expert Noah Feldman in the New York Times in 2008 looked at sharia's contradictory

reputation and why it has experienced a major revival among Muslims.