

SHARIA

Fact Sheet

UNDERSTANDING SHARIA - FAQs

What is *Sharia*?

The term, *Sharia*, comes from an Arabic word meaning “path” or “path to water.” *Sharia* is often translated to mean “Islamic law,” which is technically correct, but incomplete. *Sharia* is more properly understood as divine guidance for the purpose of helping humanity worship, come closer to God and live with love, kindness, and justice toward His Creation.

Sharia is divided into two broad areas:

- Guidance in worship (*ibadat*), which is the central focus of Islam.
- Guidance in worldly matters (*mu’amalat*) such as visiting the sick, taking care of parents, marriage, inheritance, investments and business affairs, issues of civil and criminal justice, etc.¹

As such, *Sharia* is the system of moral guidance, which Muslims believe was revealed to the Prophet Muhammad by God. It is a set of values, basic norms, and prescriptions for ritual, family and business life, comparable to magisterium/canon law for Catholics or *Halakhah* for Jews.

Where does *Sharia* come from?

Sharia is drawn from the Qur’an and Sunnah. The Qur’an is the main religious text of Islam, regarded as the word of God (Allah) as revealed to the Prophet Muhammad over a period of approximately twenty-three years. Sunnah refers to the teachings and practices of the Prophet Muhammad.

Qualified scholars of Islam use an interpretative process to derive *Sharia* from the Qur’an and the Sunnah. This process includes reasoning by analogy (*qiyas*), debate, consensus (*ijma*) as well as precedent. Islamic law itself is called “fiqh” in Arabic (which means “deep understanding”). Like *Halakhah* (Jewish law), Islamic law represents an ongoing effort and process that takes into consideration the particularities of time and place.

How is *Sharia* practiced in the U.S.?

Given religious freedom clauses in the First Amendment of the U.S. Constitution, Muslims who practice *Sharia* in this country do so on a voluntary, private basis just as many Jews in the U.S. abide by the dictates of *Halakhah*, and many Catholics in the U.S. follow canon law. Essential dictates of *Sharia* involve, for example, practices such as daily prayers, fasting during the month of Ramadan, the use of marriage contracts and rules for giving charity and making investments. Muslims in the U.S. who follow these religious mandates do so without affecting the rights or practices of others.

How is Sharia practiced in other countries?

Over the centuries and across the globe, Islam has been variously interpreted and practiced in a variety of ways, though the Sharia was always based on the sacred text. Historically, Sharia functioned as a flexible system across diverse communities. Until more modern times, the system of Sharia and the laws of the state were generally kept separate because the community – rather than the state – protected the independence of the scholars charged with interpreting Sharia in the context of their times by providing them with financial support. This is not always the situation in the 21st century and there are countries, like Saudi Arabia, where the religious scholars are supported and aligned with the rulers.

Another way that some people think about Sharia is through the lens of different legal systems across the globe. At its most basic and oversimplified level, these include: common law (a system derived from the English, which includes reliance on case law and precedent); civil law (a system derived from the French, which relies on statutes rather than precedent); customary law which reflects widely accepted practices that grow from the local, the ground up, and which people/nations feel obliged to follow; and religious legal systems (which may include practices noted above such as reliance on precedent) including canon law, Sharia and Halakhah.

The systems used in different countries vary and have been classified as primarily monosystems that reflect one of the above or various mixed systems that blend two or more systems. Today, Sharia operates primarily as a:

- **Monosystem** (Examples: Afghanistan, Saudi Arabia)
- **Mixed System of Sharia and Civil Law** (Examples: Iran, Iraq and Morocco)
- **Mixed System of Sharia and Customary Law** (Example: United Arab Emirates)
- **Mixed System of Sharia and Common Law** (Examples: Pakistan, Sudan)
- **Mixed System of Sharia, Civil Law and Customary Law** (Examples: Jordan, Kuwait)
- **Mixed System of Sharia, Common Law and Customary Law** (Examples: India, Kenya)
- **Mixed System of Sharia, Common Law, Civil Law and Customary Law** (Examples: Qatar, Somalia)
- **Mixed System of Civil Law, Common Law, Jewish Law and Sharia** (Example: Israel)ⁱⁱ

What does Sharia address?

Sharia provides guidance for living, and includes recommended and prohibited actions on such matters as: religious practices, ritual purity, diet, clothing and modesty, general relations between the sexes, marriage, divorce, inheritance, charitable giving, investments, business contracts, criminal law, war and peace, etc. Most of it is not meant to be government-enforced, because Sharia is largely a matter of conscience and personal practice.

What are Sharia's objectives?

Sharia has five main objectives: to protect life, property, lineage, religion, and intellect. The overarching objective is to establish social justice, fairness, mercy and security in societies. As such, Sharia addresses both civil and criminal issues, and its principles provide guidance for both personal and moral aspects of life. For the most part, Sharia is overwhelmingly concerned with personal religious observance such as prayer and fasting.

Because much of Sharia is interpretative, it has a degree of flexibility and functions differently in diverse societies and cultures.

What are Sharia's criminal punishments?

Hudud laws are centuries-old punishments specified within the system of Sharia for major crimes such as killing, adultery or theft. Some people mistakenly equate Sharia with *hudud* laws, but these criminal laws and punishments represent only one small part of Sharia. In practice, how Islamic law and the *hudud* component are interpreted and applied can depend on who is empowered to define the parameters of Sharia as well as how and where they were educated.

Today, *hudud* is only applied in a handful of nations such as Iran and Saudi Arabia. In most nations with mixed systems of Sharia and other forms of law, *hudud* laws are not applied. Many Muslims consider the way *hudud* is practiced in, for example, Saudi Arabia, not to be in compliance with the true meaning of Sharia because these laws are not uniformly applied and because *hudud* is properly applied only in a state that adheres to all Islamic principles including the mandate of the sacred text that Sharia must be “just, merciful and a means for furthering the common good.”ⁱⁱⁱ

Who are Sharia adherents?

As in many religious traditions, Muslims practice in a range of ways, which can vary from nation to nation, culture to culture, community to community, individual to individual. People may seek to live up to all or some of the Sharia dictates as they understand their obligations. As Sharia covers a range of daily behaviors and practice, most observant Muslims consider themselves to be Sharia compliant even when they are not practicing every aspect addressed within the scope of Sharia.

How does Sharia compare with the sacred laws of other religions?

Many religions include some kind of sacred dictates or law such as the Ten Commandments, natural law, canon law, *Halakhah* and *dharma*. Each of these include essential or “core” prescriptions that govern daily life (worship, family life, lifestyle practices, charity and ethical business dealings). Many religions also have traditions sometimes understood as “political theology” (religious rules for war and peace, responding to crimes, etc).

For example, canon law is binding for Catholics in a way that is similar to *Halakhah* (Jewish sacred law) for Jews and Sharia for Muslims. The primary sources of the teaching authority of the Catholic Church (*Magisterium*) are the Bible and apostolic tradition, which can be considered analogous to Qur'an and Sunnah. Sharia and canon law both emphasize the family and the connection between sex and reproduction.

In the U.S., one can follow the essential or core parts of a sacred law (e.g., ritual, marriage, etc.) within the parameters of the U.S. legal system. Sharia and *Halakhah* are similar in a range of subjects, methodology, content, and even specific rulings (not eating pork, modesty in clothing, circumcision, etc). Therefore, some Jewish rabbis and groups have voiced concern that laws that would ban Sharia would also endanger their right to follow *Halakhah*, which is why they are speaking out against this campaign.^{iv}

How does sacred law interact with secular law and the U.S. Constitution?

Many religions and churches have some kind of sacred law that serves as a spiritual guide for the believer on how to live one's life. In the United States, the religion clauses of the First Amendment of the U.S. Constitution have two related mandates: first, that the state may not establish a religion (i.e., neither the federal nor the state nor local governments may impose a religion on the people); and secondly, that all people within the nation have the freedom to practice their own religion (or to choose not to believe). The First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

This means that in the U.S., individuals, families, and religious and private groups are free to follow their own sacred laws, provided they are voluntary, people are free to join or leave, and the freedom and rights of others are respected. For example, when observant Jews divorce, they may have a secular divorce and legally be allowed to remarry. However, if they wish to religiously remarry pursuant to their sacred Jewish laws, they will also need a religious divorce called a "Get." Currently, in the U.S., there are numerous religious groups that enjoy their own sacred religious laws and lifestyles (Catholics, Jews, Baptists, Amish, Buddhists, Quakers, communes, among many others).

On occasion, secular/civil law has imposed a limitation on particular sacred/religious laws, to ensure that the public interest is protected. For example, polygamy is now prohibited and religious groups that practiced it may no longer do so.

What do people mean when they talk about a "Sharia scare" – also characterized as "creeping Sharia"?

"Creeping Sharia," refers to an idea that has emerged in some parts of popular culture, social and other media that American Muslims are trying to impose Islamic law as the governing law within America. Based on this idea, an "anti-Sharia bill" is being introduced in states across the nation. Arizona attorney David Yerushalmi^v has developed a template for what has become an anti-Sharia legislation movement entitled "American Laws for American Courts."^{vi} He developed the template for the American Public Policy Alliance, which takes the position that "one of the greatest threats to American values and liberties today" comes from "foreign laws and foreign legal doctrines," including "Islamic Shari'ah law," that have been "infiltrating our court system."^{vii}

Mr. Yerushalmi is General Counsel to the Washington, D.C.-based Center for Security Policy. In 2010, the Center for Security Policy published a report entitled *Shari'ah: The Threat To America, An Exercise in Competitive Analysis, Report of Team 'B' I*ⁱⁱⁱ

The authors describe their report as "concerned with the preeminent totalitarian threat of our time: the legal-political-military doctrine known within Islam as 'Sharia.'"^x They state that the report is "designed to provide a comprehensive and articulate 'second opinion' on the official characterizations and assessments of this threat as put forth by the United States government."^x

Sharia has become a subject of political focus in the U.S. Politicians who have voiced opposition to Sharia include Mike Huckabee, Newt Gingrich, Peter King and Sarah Palin.^{xi}

When people express concern that Sharia poses a threat in the U.S., what are they usually talking about?

People who have a concern that Sharia poses a threat to the U.S. usually base this on an extreme type of scripturalism (i.e., literal adherence to the scriptures) in which one selectively cites verses from a sacred text and takes the position that true believers behave only according to the selected verses.^x Small groups of Muslims practice this extreme scripturalism in contrast to the many who understand and interpret the verses and text over time and within the context of the other verses within the scriptures.

It is noteworthy that within other religious communities extreme interpretations of text exist but are not followed by mainstream practitioners. As noted by Ali and Duss, Jewish adherents today are not known for stoning disobedient sons to death (Deut. 21:18- 21), and Christians are not known for promoting the slaying of all non-Christians (Luke 19:27).^x

Muslim scholars historically agree on certain core values of Sharia, which are theological and ethical, not political. Thus, Sharia is essentially a personal religious law that provides moral guidance for the vast majority of Muslims, including those in the U.S.

How does the concern about what is called the “Sharia threat” affect Muslims in the U.S.?

When Sharia is equated with extreme scripturalism and as a “totalitarian threat,” the resulting inference is that all followers of Sharia pose a threat to the very foundation of American values and lifestyle. These concerns have been voiced widely across various media, often without being explained or put into context. The result is that many people are suspicious of observant Muslims and, often, of anyone who self-identifies as Muslim. This affects the way many people view their Muslim neighbors, schoolmates, and co-workers.

Some believe that concerns about the “Sharia threat” led to support for the Congressional hearings conducted by Representative Peter King on domestic terrorism and Muslim radicalization on March 10, 2011, which focused solely on these issues within the Muslim community and not across the full breadth of the U.S.^{xii} In contrast, Senator Dick Durbin led hearings on the civil rights of American Muslims. Both received criticism for the foci of their hearings, but there was far more extensive media coverage both pro and con of the King Hearings than the Durbin Hearings.

Where has Sharia been banned and what states are considering banning it?

States that have acted to ban Sharia have done so legislatively and also through general ballot initiatives. The Missouri House of Representatives passed a bill in April, 2011 that would stop the courts from considering Sharia law, or any other “foreign law, legal code, or system” when ruling on cases. The bill, which was introduced in March 2011, passed by a vote of 102-51.^{xiii} In November 2010, Oklahoma approved a state constitutional amendment forbidding its courts from relying on international or Sharia law in deciding cases. This resulted in litigation and, as of this writing, it is not in force.

As of June 2011, 24 states are considering, have pursued, or are pursuing “anti-Sharia” legislation. These include: Alabama, Alaska, Arkansas, Arizona, Florida, Georgia, Iowa, Idaho, Indiana, Kansas, Louisiana, Maine, Missouri, Mississippi, Nebraska, New Jersey, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah and Wyoming.^{xiv}

What is *taqiyya* and how is it related to the issue of the “Sharia threat”?

Many of the people who express concern about a “Sharia threat” take the position that people will lie to cover their pursuit of extreme scripturalism. In explaining this belief, they refer to an Arabic word, *taqiyya*, which refers to concealing one’s faith when one fears death (some interpret this word to mean religiously justified lying.) However, the concept of *taqiyya* is primarily applicable in the context of a war where one’s life is threatened.

The concept of *taqiyya* moved into U.S. consciousness during the 2010 debate over Park51 (“Ground Zero Mosque.”) When Imam Feisal Abdul Rauf stated that the proposed Park51 Islamic Center in New York would be a venue for interfaith dialogue, The Center for Security Policy’s Frank Gaffney wrote in *The Washington Times*: “To be sure, Imam Rauf is a skilled practitioner of the Sharia tradition of *taqiyya*, deception for the faith.”^{xv} Others from many different traditions, who knew and had worked with Imam Rauf for many years, disagreed that there was any deception whatsoever.

As with the misinterpretation of Sharia as solely extreme scripturalism, the characterization of *taqiyya* as a routine practice used to protect extreme interpretations of Islam, can stimulate fear and the suspicion that self-identified Muslims and observant Muslims are or are prepared to be liars, simply by virtue of being followers of Islam.

What is the primary concerns about Sharia in the U.S.?

Many people are concerned that Sharia is the foundation for a totalitarian government. This is a misperception based on a belief that Sharia is inflexible, removes human choice, and is contrary to freedom.

This definition of Sharia does not take into account Islam's interpretative practices and the range of Islamic practices and varying interpretations of Islam and Sharia around the globe.

However, it is accurate to say that there are Muslim-majority nations that are and have recently been ruled by authoritarian leaders, where democracy is not being practiced and a form of Sharia is a partial or complete basis for the legal system. It is also accurate that in some of these nations, there have been violations of human rights, including the rights of women, by the Taliban and others. Sometimes these groups state that their acts are religiously justified, as when the Taliban says it follows the "true Islam" and Sharia.

However, such beliefs and practices are in stark contrast with other Muslim majority countries where women exercise broad rights and have assumed leadership positions – practices that are also stated to be religiously justified. For example, there are five Muslim majority nations (Indonesia, Pakistan, Bangladesh, Turkey, Kyrgyzstan) that have elected female heads of state.

What is mainstream Islam's position on loyalty to one's country?

The Amman Message, initiated by H.M. King Abdullah II of Jordan, was issued in July 2005 following an international conference of 200 Islamic scholars from 50 countries. Participating scholars agreed that Islam prohibits terrorism and that Muslims must abide by international law.^{xvi} The Amman Message states:

Islam rejects extremism, radicalism and fanaticism—just as all noble, heavenly religions reject them—considering them as recalcitrant ways and forms of injustice. Furthermore, it is not a trait that characterizes a particular nation; it is an aberration that has been experienced by all nations, races, and religions. They are not particular to one people; truly they are a phenomenon that every people, every race and every religion has known.^{xvii}

Similarly, the Islamic Society of North America issued a statement in 2005 saying that:

It is a well established Islamic principle that citizens of a nation, regardless of its religious makeup, are required not only to uphold the laws of that country, but also to safeguard and protect the security and well being of the country and its people.^{xviii}

Can Muslims be true to America and to their religion at the same time?

Yes. Islam makes a distinction between *din* (religion) and *dawla* (civil government). *Dawla* (civil government) protects basic secular matters, such as life, property and freedom. According to Islamic teachings, anyone living under the protection of a civil government owes obedience to that government. It does not matter the type of government, or whether one is living in a Muslim majority country. Muslim minorities living in secular societies or where another religion is dominant implicitly enter into a social contract with that government. Islam requires them to respect and uphold that society's form of government.

Because the Constitution is the supreme "law of the land," in the U.S., Islamic teachings forbid American Muslims from trying to establish any other kind of government. Under the current system of government, American Muslims enjoy the same benefits as other Americans: the American dream, freedom, opportunity, America's natural beauty, our dynamic culture, etc.

The content of this Fact Sheet is adapted by Tanenbaum and Tanenbaum is responsible for its contents. It is drawn from a number of sources including a Webinar on Sharia produced by the Islamic Networks Group (ING). ING is a non-profit, educational organization that promotes religious literacy and mutual respect through on-site presentations, cultural competency seminars and interfaith dialogues. Founded in 1993, ING and its affiliates serve communities of all faiths or none throughout the United States. The ING materials are used with the organization's permission. Other important sources include a Backgrounder from the Council on Foreign relations by Toni Johnson and Lauren Vriens, "Islam: Governing Under Shari'a." Tanenbaum expresses its appreciation to ING and also to Ingrid Mattson, Professor and Director, Duncan Black Macdonald Center for the Study of Islam and Christian-Muslim Relations, Hartford Seminary for their review and assistance in the preparation of this Fact Sheet.

ⁱ With respect to marriage, scholars may differ over the exact boundaries between ibadat vs. mu'amalat, which is similar to Catholicism, where canon law covers ritual and marriage, and its moral and social magisterium covers various social issues.

ⁱⁱ "Muslim Law Systems and Mixed Systems With A Muslim Law Tradition," JuriGlobe, University of Ottawa, <<http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-musulman.php>>.

ⁱⁱⁱ Ingrid Mattson, Personal Interview, 8-12 July 2011.

^{iv} Ron Kampeas, "Anti-Sharia Laws Stir Concerns that Halachah Could Be Next," Jewish Week, 1 May 2011 <http://www.thejewishweek.com/news/national/anti_sharia_laws_stir_concerns_halachah_could_be_next>.

^v Tim Murphy, "Meet the White Supremacist Leading the GOP's Anti-Sharia Crusade," Mother Jones, 1 March 2011 <<http://motherjones.com/politics/2011/02/david-syerushalmi-sharia-ban-tennessee>>.

^{vi} Jill Schachner Chanen, "Anti-Sharia Bills Under Review," ABA Journal, 1 May 2011 <http://www.abajournal.com/magazine/article/the_law_of_the_land/>.

Andrea Elliott, "The Man Behind the Anti-Shariah Movement," The New York Times, 30 July 2011 <http://www.nytimes.com/2011/07/31/us/31shariah.html?_r=1&emc=eta1>.

^{vii} Emperor, "ADL: Hate-monger, David Yerushalmi a Driving Force Behind Anti-Sharia Efforts," Loonwatch.com <<http://www.loonwatch.com/2011/03/adl-hate-monger-david-yerushalmi-a-driving-force-behind-anti-sharia-efforts/>>.

^{viii} Center for Security Policy, "Sharia: The Threat to America," 13 September 2010 <<http://www.centerforsecuritypolicy.org/p18523.xml>>.

^{ix} Matt Cover, "National Security Experts: Shariah Law Is 'Preeminent Totalitarian Threat of Our Time,'" CNSNews.com, 20 September 2011 <<http://www.cnsnews.com/node/75520>>.

^x Wajahat Ali and Matthew Duss, "Understanding Sharia Law," Center for American Progress, 31 March 2011 <http://www.americanprogress.org/issues/2011/03/sharia_law.html>.

^{xi} Ben Smith, "2012 Candidates Stake Out Positions on Sharia," Politico.com, 11 April 2011 <http://www.politico.com/blogs/bensmith/0411/2012_candidates_stake_out_positions_on_sharia.html>.

Andrea Elliott, "The Man Behind the Anti-Shariah Movement," The New York Times, 30 July 2011 <http://www.nytimes.com/2011/07/31/us/31shariah.html?_r=1&emc=eta1>.

^{xii} Sarah Posner, "Sharia threat bandwagon just keeps rolling on," Guardian.co.uk, 16 March 2011 <<http://www.guardian.co.uk/commentisfree/belief/2011/mar/16/sharia-threat-bandwagon-king-hearing>>.

^{xiii} Jason Hancock, "Missouri House Votes to ban Sharia Law," Stltoday.com, 20 April 2011 <http://www.stltoday.com/news/local/govt-and-politics/political-fix/article_e30151d6-6b9b-11e0-8dd3-001a4bcf6878.html>.

^{xiv} Jillian Rayfield, "Missouri house Passes Ban on Sharia Law," Talkingpointsmemo.com, 21 April 2011 <http://tpmmuckraker.talkingpointsmemo.com/2011/04/missouri_house_passes_ban_on_sharia_law.php>.

^{xv} Frank J. Gaffney Jr., "A Shrine to Sharia," The Washington Times, 28 June 2010 <<http://www.washingtontimes.com/news/2010/jun/28/a-shrine-to-sharia/>>.

^{xvi} "The Amman Message," 1 March 2007 <<http://www.ammanmessage.com/>>.

^{xvii} "The Amman Message," 1 March 2007

<http://ammanmessage.com/index.php?option=com_content&task=view&id=16&Itemid=30&limit=1&limitstart=1>, Compare, Thomas Hegghammer, "The Rise of the Macro-Nationalists," The New York Times, 30 July 2011

<<http://www.nytimes.com/2011/07/31/opinion/sunday/the-rise-of-the-macro-nationalists.html?ref=norway>>.
^{xviii} "ISNA Position: Against Terrorism and Religious Extremism:
Muslim Position and Responsibilities," 2005
<<http://www.isna.net/assets/documents/isnapositionagainstterrorismandreligiousextremism.pdf>>.

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