

What is Shari‘ah and Why Does It Matter?

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It's 10:30 p.m. You're a black male driving along the back roads of Anywhere, USA. Your car breaks down just as your cell-phone battery dies, so you'll have to get out and knock on someone's door for help. You come upon a patch of houses, some proudly boasting American flags, the others flagless. Which of these houses shall you approach? While it may come as a shock to some, most blacks to whom I have posed this scenario opt for a flagless house. This has nothing to do with any lack of patriotism. Outside these circumstances, they proudly stand for, salute and wave the flag. In fact, that Ralph Lauren gear with the chic little American flags as emblems -- you can't keep 'em on the shelves in some black communities! History, however, and the political symbolism that the deeds and rhetoric of some have attached to Old Glory have simply transformed it under certain circumstances from our national flag into a red flag.

The same applies to Shari‘ah. Most Americans have no idea what it really means or stands for. But the deeds and rhetoric of some have produced a similar effect: Shari‘ah has come to constitute a red flag, even without the misrepresentations of so-called Islamophobes. Many Muslims dislike this logic and are actually as offended by it as some Americans will be by the insinuation that our flag can double as a symbol of racism. Both groups would do well, however, to note that people are not going to ignore their actual experiences just to make others comfortable in their ideologically constructed world of ideals.

And yet only the naïveté of the most crass and cynical utopianism would deny the validity of an ideal based solely on the reality of an experience. We don't conclude that the ideal of eradicating hunger is bogus simply because so many hungry people continue to exist. Rather, if those who have the resources and opportunity to eradicate hunger consistently fail to do so, we conclude that they are either not fully committed to this ideal or that they are woefully blind and inept in their attempts to realize it.

At the most basic level, Shari‘ah is the Muslim universe of ideals. It is the result of their collective effort to understand and apply the Quran and supplementary teachings of the Prophet Muhammad (called Sunna) in order to earn God's pleasure and secure human welfare in this life and attain human salvation in the life to come. While the Quran and Sunna are transcendent and unchangeable, Shari‘ah itself is the negotiated result of competing interpretations. In fact, most Muslims tend to speak not of Shari‘ah but of *fiqh*, which literally means "understanding" and underscores the distinction between God's prescriptions on the one hand and the human attempt to understand these on the other. This in turn explains two other unavoidable characteristics of Shari‘ah: diversity of opinion, and inevitable change. In Sunni Islam (and to do Shi‘ism justice would require a separate treatment) there are four "schools" of *fiqh*, all equally orthodox, all equally authoritative. This is because Sunnism never established a single ecclesiastical authority

or "church" to decide doctrine. Instead, the only doctrines deemed binding on the community as a whole were those on which the community's scholars reached a unanimous -- not majority! -- consensus. In the absence of this, competing parties would simply have to agree to disagree, as no school or individual -- not even the Caliph or temporal ruler -- could claim the infallible right to impose a doctrine as unassailable truth.

As for change, the rules of Shari'ah are divided into two categories: religious observances (prayer, fasting, etc.) and civil-criminal matters (marriage, sales, adultery, jihad, etc.). While religious observances are relatively static and fixed, the rules on civil-criminal matters are subject to change in accordance with circumstances. Here, in fact, we come to a fourth important feature of Shari'ah: in addition to interpreting scripture in order to apply it to reality, Shari'ah also includes the attempt to process reality to determine how scripture, Prophetic teaching and the cumulative tradition of deliberation would have one respond to it. In this capacity, Shari'ah may end up sanctioning, or even including, all kinds of ideas and institutions that were not dictated by scripture. For example, there were no domes, schools of *fiqh* or minarets in the Prophet's Arabia. Likewise, the fact that there was no democracy or "human rights" does not automatically render these "un-Islamic." In short, Shari'ah includes the attempt to proffer God-conscious responses to an ever-changing reality. And in this capacity, many of its rules are subject to change with changes in the circumstances to which it seeks to respond.

Having said all of this, Shari'ah is not just "rules." While the common translation, "Islamic law," is not entirely wrong, it is under-inclusive, for Shari'ah includes scores of moral and ethical principles, from honoring one's parents to helping the poor to being good to one's neighbor. Moreover, most of the "rules" of Shari'ah carry no prescribed earthly sanctions at all. The prescriptions covering ablution or eating pork or how to dress are just as much a part of Shari'ah as are those governing sale, divorce or jihad. Yet there are no earthly punishments prescribed for those who violate these dictates. Like the bulk of Shari'ah's "rules," reward and punishment in these areas are the preserve of God in the Afterlife.

Unfortunately, many Americans have been led to believe that Shari'ah equals not only rules but criminal punishments -- floggings, for example. Three quick points: First, criminal sanctions constitute a tiny sliver of Shari'ah. Of the 1,081 pages of the two-volume Arabic text from which I studied Shari'ah, only 60 pages were devoted directly to criminal sanctions! (Jihad, incidentally, took up only 19.) Second, the criminal sanctions of Shari'ah did not emerge as the property or instrument of the Muslim state but functioned in fact to impose limits on the use of state power. Third, the punishments for criminal behavior cannot be separated from the evidentiary rules -- equally Shari'ah! -- that provide for their application (*e.g.*, multiple eye-witnesses). In practical terms, in other words, short of confession, rules on such things as adultery or fornication function almost entirely as moral exhortations. God-consciousness spawned by Shari'ah, not fear

of being punished, sustains these ideals. Of course, many Americans will object that such issues should not be subject to any rules or religious exhortations at all. But given some of our increasingly worrisome realities (out-of-wedlock births, etc.), perhaps this would make for fruitful conversation.

Why does Shari‘ah matter? It matters for Muslims because it represents the ideals that define a properly constituted Islamic existence. Islam without Shari‘ah would be Islam without Islamic ideals. While most non-Muslim Americans may think of Islam without Shari‘ah as simply Islam without rules or criminal sanctions, for Muslims Islam without Shari‘ah would also mean Islam without prescriptions on ablution, prayer, alms, sales, diet, filial piety, civics, etc. While the discourse in America around Shari‘ah will probably continue to succumb to the self-serving tendency to "compare my ideals with your realities," Shari‘ah itself will continue to inspire Muslims, especially in their personal lives, to strive, with hope and humility, to narrow the gap between the unacceptable "is" and the ever-elusive "ought."

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