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## [Backgrounders](#)

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### Islam: Governing Under Sharia

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(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," said 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 in the wake of popular uprisings and civil wars.

#### 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 with 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, Islam's most orthodox which spawned the Wahhabi and Salafi branches, 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, while 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," said 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.

*The issue of sharia law versus secular law gained new scrutiny in 2011 in the wake of uprisings in several Arab countries.*

Extremist groups such as the al-Qaeda spinoff known as the Islamic State in Iraq and Syria (ISIS), have become notorious for executions by stoning and crucifixion. They apply *hadd* punishments rarely used in Islamic history. Vigilante justice also 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**. Other practices that are woven into the sharia debate, such as female genital cutting, **child and 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 that 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. 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 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 2013 Pew poll** conducted in thirty-nine countries 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, Muslims in only five countries, including Pakistan and Afghanistan, preferred a strong leader to a democratic 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). 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."

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," said 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.

Western countries are also exploring the idea of allowing Muslims to apply Islamic law in familial and financial disputes. In late 2008, the United Kingdom officially allowed tribunals 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 there. 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](#) in European societies increasingly divided by religion. However, some research suggests the process [discriminates against women](#).

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 said was "[a necessary preemptive strike](#)" against Islamic law.

Several opponents of the construction of new mosques around the United States, including one near Ground Zero in lower Manhattan, have cited fear of the spread of sharia as a reason for their 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 Muslim countries where Islam is the official religion, sharia is declared to be a source, or the source, of the law. 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. Efforts to force an Islamist agenda in Egypt by the [Muslim Brotherhood](#) led to the 2013 ouster of Mohamed Morsi, the country's first

democratically elected president, and the return of a more secular military government.

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 under 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](#) 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

[Global Islamic financial assets rose to \\$1.3 trillion in 2012](#), double the level of 2007, an expansion rooted in consumer demand for products that comply with religious codes. Sharia-compliant financial instruments can't pay or collect interest, due to Islam's proscription of usury; Islamic investments also can't be associated with alcohol, pork, gambling, pornography, or other Muslim prohibitions. Islamic finance surged in recent decades by introducing products that mimic credit cards, savings accounts, and mortgages while avoiding interest. Islamic banks are growing rapidly in countries from Malaysia to Morocco, and even international lenders such as HSBC, Cr dit Agricole, and Standard Chartered have developed Islamic banking divisions.

The growing pool of sharia-compliant assets is fueling demand for Islamic bonds, or *sukuk*, issued by corporations and governments, mainly in Muslim countries. Malaysia and Saudi Arabia dominate the sukuk market, but Prime Minister David Cameron's 2013 announcement that the [United Kingdom will issue a £200 million \(\\$327 million\) sukuk](#) indicates the potential for Islamic finance in global markets.

*Lauren Vriens contributed to this report.*

## Additional Resources

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.

This CFR Backgrounder explains the [origins and rise of Islamic finance](#).

Explore Muslim attitudes toward Sharia in this [2013 worldwide survey by the Pew Research Center](#).

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Sharia law comes from a combination of sources including the Qur'an, the sayings of the prophet and the rulings of Islamic scholars. The legal philosophers of Islam, such as Ghazali, Shatibi, and Shah Wali Allah explain that the aim of Sharia is to promote human welfare. This is evident in the Qur'an, and teachings of the Prophet. The scholars explain that the welfare of humans is based on the fulfillment of necessities, needs, and comforts.