SHARI‘AH 101

Back in the fall of 2015, as the presidential campaign was getting underway, Republican presidential candidate Ben Carson said in an interview on “Meet the Press” that he would not advocate electing a Muslim president of the U.S. A day later he clarified his comment in a Facebook posting indicating that a Muslim could serve as president if they disavow sharī‘ah law. Following the terrorist attacks in Brussels in March, Donald Trump said in an interview on NBC’s “Today” that following sharī‘ah was the motivation behind the bombings. In a recent CNN interview with women voters, a Donald Trump supporter justified her political choice by launching into an erroneous critique of sharī‘ah. For Carson, Trump and those who share their views, sharī‘ah is virtually synonymous with “radical Islam” and terrorism. But what precisely is sharī‘ah?

The word sharī‘ah (literally “the path to a watering-place”) is used in Islam to refer to the religiously based laws and legal precepts, the overarching purpose of which is to provide for the protection and advancement of life, religion, property, intellect and family. It is an all-encompassing concept, concerned not only with the devotional aspects of the Muslim faith, such as when and how to pray, ritual purity, rules for fasting, etc., but also with matters related to marriage and morality, such as one finds in the canon law of the Church, as well as property and criminal law, such as one finds in the Book of Leviticus in the Hebrew Bible. In matters such as marriage where religious law and civil law overlap, American Muslims use sharī‘ah in tandem with civil law, not instead of it, just as Catholics are bound by both by Church and Civil Law.

Sharī‘ah is drawn from a variety of sources, first and foremost of all is the Qur’an. Far from being a legal code, however, the Qur’an is mainly concerned with issues of faith, sacred history, devotional matters, and the hereafter. While it also occasionally addresses such matters as marriage, divorce, and inheritance, as well as commercial transactions, it specifically addresses only a handful of crimes and their prescribed punishments.

Thus, a second source is used with the Qur’an to establish religious law: the sunnah, the personal practices and habits of Muhammad as related in the hadith, comprising sayings by Muhammad or stories about him. These hadith number in the tens of thousands, and are judged to have varying degrees of authenticity, assessments which differ among Sunni and Shi‘i Muslims. In addition to the Qur’an and sunnah, laws are also predicated on the consensus (ijmā’) of the community and/or scholars, by analogy (qiyyas) and independent reasoning (ijtihād). It can therefore be seen that sharī‘ah is a complex subject and hardly as “cut and dried” as both critics and advocates have claimed or assumed.

There are, however, four crimes for which the Qur’an does specify a punishment (ḥadd; pl. ḥudūd), and it is these that have gotten the most attention in recent years: theft (punished by amputation), adultery (punished by flogging, not stoning as often claimed), slanderous accusation (flogging), and highway robbery (death). Jonathan Brown comments in his recent
book: “The severe *Hudud* punishments were meant to convey the gravity of those offenses against God and to deter, not be carried out.”¹

The legal conditions required for proving such accusations make *just* convictions almost impossible. Adultery, for example, requires four reliable witnesses to the act. Punishment for theft could only be carried out if it involved non-perishable goods of a certain value, items that were not taken out of necessity, and taken from someone’s home rather than a shop or place of public access. More importantly, however, the **prescribed punishments are not mandatory**, and are to be withheld if the perpetrator repents of the crime: “But one who repents after his crime and amends his conduct, God redeems him. God is Forgiving, Most Merciful.” (Qur’an 5.38-39) Muhammad himself reportedly said: “Suspend the prescribed punishments as far as you can. For it is better to err in forgiveness than making an error in punishment.”

In modern times these punishments have generally been considered as archaisms, but with the rise of political Islam, *ḥudūd*-punishments have been reintroduced in countries such as Pakistan, Iran, Sudan, Afghanistan and Nigeria, as a means of quelling social unrest and deterring crime. Saudi Arabia has carried out *ḥudūd*-punishments since the founding of the Kingdom in 1932. The vast majority of Muslim countries in the world, however, **do not** operate solely along the lines of *sharī‘ah*. Most legal systems combine to varying degrees civil law and constitutions, based on secular European models, with *sharī‘ah* applied principally to devotional and family matters.

Contrary to what fear mongers may believe, most American Muslims do not advocate a complete implementation of *sharī‘ah* in lieu of American civil or constitutional law, and already follow *sharī‘ah* in the observances of their faith without incident or issue. Telling a Muslim to disavow *sharī‘ah* would be equivalent to telling Catholics to categorically reject Canon Law. Eliyahu Stern, as assistant professor of religious studies and history at Yale, has observed that the suggestion that *sharī‘ah* is somehow a threat to American society is “disturbingly reminiscent” of similar criticism made against Jewish law in 19th century Europe.” He concludes:

“The continuation of America’s pluralistic religious tradition depends on the ability to distinguish between punishing groups that support terror and blaming terrorist activities on a faith that represents roughly a quarter of the world’s population.”²

**Recommended Reading:**

- M. Calabria 5.2.2016

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1 Misquoting Muhammad (Oneworld, 2014), 181.

2 “Don't Fear Islamic Law in America,” New York Times, September 2, 2011