

**Sharia and the Legal System in the United States:  
An Overview and Christian Response**

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## I. Introduction

Sharia law appears frequently in the news, but rarely is it ever treated soberly. In early 2017 at Highland Hills Middle School in Georgetown, Indiana, parents were outraged when their seventh graders were given an assignment that, according to these parents, painted Sharia law in a “positive light.”<sup>1</sup> One father said, “I’m just not OK with my daughter—or any child that age—leaving class with the understanding that anything about Sharia law is OK.”<sup>2</sup> Another father called the activity “propaganda.”<sup>3</sup> More recently in Minneapolis, Abdullah Rashid, a twenty-two year old Muslim man, began a sort of Islamic police force, called the General Presidency of the Religious Affairs and Welfare of the Ummah, and has recruited ten other young men to suit up in pseudo-police uniforms and patrol Muslim neighborhoods of Minneapolis and enforce “the civil part of the sharia law.”<sup>4</sup> Local Islamic leaders have publicly decried and condemned the man’s efforts to “turn Cedar-Riverside into a ‘sharia-controlled zone’ where Muslims are learning about the proper practices of Islam and that ‘non-Muslims are asked to respect’ it,” as one newspaper reports him saying.<sup>5</sup> National Public Radio ran a radio story in 2016 that attempted to draw connections between anti-Sharia, anti-Muslim groups in Minnesota and recent support for Republican political candidates.<sup>6</sup> Indeed former

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<sup>1</sup> Kirsten Clark, “Worksheet on ‘Sharia law’ Irks School Parents,” *SC Times*, January 17, 2017, accessed May 4, 2017, <http://www.sctimes.com/story/news/local/indiana/2017/01/17/worksheet-sharia-law-irks-school-parents/96660192/>.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Faiza Muhammad, “Minneapolis Muslims Protest ‘Sharia’ Vigilante in Cedar-Riverside Area,” *StarTribune*, April 13, 2017, accessed May 4, 2017, <http://www.startribune.com/minneapolis-muslims-protest-sharia-vigilante-patrolling-in-cedar-riverside-area/419321224/>.

<sup>5</sup> *Ibid.*

<sup>6</sup> “Party in the U.S.A.,” Zoe Chace, Act One in “Will I Know Anyone at This Party?” episode 600 of *This American Life*, aired October 28, 2016 on NPR, accessed May 4, 2017, <https://www.thisamericanlife.org/radio-archives/episode/600/will-i-know-anyone-at-this-party>.

Republican U.S. Representative Michele Bachmann warned of the encroachment of Sharia law in the United States.<sup>7</sup> To support her claim, Bachmann cited public schools that serve Sharia-compliant foods to students.<sup>8</sup> A right-wing think tank published a book that claimed, “one out of five American judges fail to reject foreign law that violates U.S. and state public policy.”<sup>9</sup> Another booklet from a political organization indicates that Sharia law is making its demands in many places in American society: hospitals, textbooks, employer-employee relationships, banking, and public welfare programs.<sup>10</sup>

There is no doubt that simply mentioning “Sharia law” can cause quite a stir. But despite its frequent use, there appears to be confusion as to what the word “Sharia” actually refers. Is it an entirely alternate legal code that Muslims are attempting to force upon all Americans? Even Muslims disagree on Sharia, at least as to how it should be applied in an American context, as is evidenced by the Rashid episode.

Here, we will attempt to understand Sharia law in the American legal context better. In short, no substantial group of Muslims are attempting to bring all of American law under pure Sharia rule. Where Muslims are attempting to use Sharia to govern internal affairs, they may only legally do so in America as far as it is consistent with our standards of justice. Christians should promote freedom of religion and not balk at the mere mention of the word “Sharia,” understanding that while at parts it sets itself up against core ideas of a liberal democracy and

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<sup>7</sup> Brian Tashman, “Bachmann: Halal Food Options a Sign of Sharia Law,” *Right Wing Watch*, April 6, 2016, accessed May 4, 2017, <http://www.rightwingwatch.org/post/bachmann-halal-food-options-a-sign-of-sharia-law/>.

<sup>8</sup> Ibid.

<sup>9</sup> The Center for Security Policy, *Shariah in American Courts: The Expanding Incursion of Islamic Law in the U.S. Legal System* (Washington, DC: Security Policy Press, 2014), 16.

<sup>10</sup> Bill Warner, *Sharia Law for Non-Muslims*, A Taste of Islam Series (Nashville, TN: Center for the Study of Political Islam, 2010), 2.

religious freedom, the application of Sharia by Muslims in America today does not even begin to encroach on Christians' own religious liberty or core principles of American government. Instead, American Christians should support Muslims' right to exercise their religion to the extent that it is consistent with American law. To reach these conclusions, we will (1) attempt to define and delineate what Sharia law is, (2) examine how Sharia law is being applied in America today while considering its place in the American legal landscape, and (3) make suggestions for how Christians might respond to this.

## II. Sharia Law Defined and Delineated

What is Sharia law? Technically, the term "refers to God's law in its quality as divine. Loosely used, it can indicate Islam, God's religion. It refers to God's law as it is with him or with his Prophet, or as it is contained (potentially) within the corpus of revelation."<sup>11</sup> A closely associated term is *fiqh*, a technical word that, in its broader sense, means "understanding of the [divine] law," including "all efforts to elaborate details of the law, to state specific norms, to justify them by reference to revelation, to debate them, or to write books or treatises on the law are examples of *fiqh*."<sup>12</sup> Sharia has sometimes been used in other ways: first, as a substitute for *fiqh* and, second, as a term "applied to actual bureaucratic systems thought to conform adequately to the norms expressed in theoretical writings."<sup>13</sup> So, Sharia is rightly used to talk of three distinct concepts: (1) the divine quality of Allah's law given to people, (2) the

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<sup>11</sup> Norman Calder, "Law: Legal Thought and Jurisprudence," in *The Oxford Encyclopedia of the Islamic World*, ed. John L. Esposito (Oxford; New York: Oxford University Press, 2009), 3:381.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

study of and ethical conclusions formed on the basis of that law, and (3) systems and institutions that rightly conform to that divine law.

It is more common to hear Sharia defined as “Islamic law,”<sup>14</sup> at least since modernity.<sup>15</sup> Hallaq’s thesis is that what Sharia has meant changed over time: before the modern nation-state became a reality in the nineteenth century, Sharia was “a complex set of social, economic, moral, educational, intellectual and cultural practices” that operated “outside dynastic rule” and not “wielding coercive or state power”; however, it transformed at the dawn of the modern nation-state into “a body of texts that is entirely stripped of its social and sociological context” that became “lodged *within* the structures of the state,” becoming the “centerpiece of political contention” and “politicization” that it had never been before.<sup>16</sup> Thus, the state now is the agent responsible for Sharia, not the traditional communities and individuals who shaped Muslim Sharia identity for centuries. Brown does argue, however, that there was still some level of “interdependence” between the government and legal communities before the dawn of the nation-state.<sup>17</sup>

Regardless of the background, Sharia synchronically has indeed become synonymous simply with Islamic law, namely “the path of correct conduct that God has revealed through his messengers.”<sup>18</sup> Thus, Sharia is an ethical ideal, the ethical and legal teaching of Islam.

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<sup>14</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 1; see also *Oxford English Dictionary Online*, s.v. “Sharia, n.” accessed May 5, 2017, <http://www.oed.com/view/Entry/177544>.

<sup>15</sup> Hallaq, *An Introduction to Islamic Law*, 168

<sup>16</sup> *Ibid.*, 163–69.

<sup>17</sup> Daniel W. Brown, *A New Introduction to Islam*, 2nd ed. (West Sussex, UK: Wiley-Blackwell, 2009), 156.

<sup>18</sup> Jonathan E. Brockopp, “Shari’a,” in *Encyclopedia of Islam and the Muslim World*, ed. Richard C. Martin (New York: Macmillan Reference, 2004), 2:618.

Sharia as a body of content arises from a number of sources. The first source is the Quran itself, containing over five hundred verses of legal instruction.<sup>19</sup> The transmission of the content of the Quran is wholly reliable, but sometimes the content itself is ambiguous.<sup>20</sup> Second, the life of Muhammad himself, the Sunna, is a source of Sharia.<sup>21</sup> The Sunna is preserved in the Hadith, a collection of oral tradition eventually written down that passed on what Muhammad said, did, and approved of, all becoming the basis for Sharia.<sup>22</sup> While the Hadith is an expansive collection of material that could contribute to the Sharia, only 5,000 sayings have been deemed trustworthy by the community to become a reliable source of Sharia.<sup>23</sup> Third is consensus, “the agreement of the community as represented by its highly learned jurists living in a particular age or generation, an agreement that bestows on those rulings or opinions subject to it a conclusive, certain knowledge.”<sup>24</sup> However, the substance of the law is not found through consensus, but consensus is only the method of arriving at a legal conclusion.<sup>25</sup> The Quran and Sunna remain as the substance of the law.<sup>26</sup> Consensus only provides for one percent of the entire body of the Sharia, but it is a method for establishing certainty on cases that have it.<sup>27</sup>

However, most of the Sharia landscape is made of legal opinions not rising to the level of consensus. When appealed to for a scholarly opinion on an ethical or legal dilemma, a legal

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<sup>19</sup> Hallaq, *An Introduction to Islamic Law*, 16.

<sup>20</sup> *Ibid.*, 17.

<sup>21</sup> *Ibid.*, 16.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, 16–17.

<sup>24</sup> *Ibid.*, 21.

<sup>25</sup> *Ibid.*, 22.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

scholar<sup>28</sup> undertakes the process of *ijtihad*, that is, the process of using inference to determine *probable* legal conclusions.<sup>29</sup> This is a fourth source of law, *qiyas*, that is, using inference, either by analogy or by *a fortiori* reasoning, to extend the logic from one established authority to that of a new one.<sup>30</sup> Next, *istihsan* is an alternative way of reaching an ethical conclusion, though most often based on explicit Quran and Hadith texts, that often leads to exceptions to rules established by the *qiyas* or other authority.<sup>31</sup> For example, though *qiyas* requires recompense to be paid if one breaks the rules requiring fasting during Ramadan, the Sunna says that one who breaks the fast accidentally is not guilty of breaking the law.<sup>32</sup> Thus, here, the *istihsan* was justified by an explicit sacred text, but it can also be based on principles of necessity or public interest.<sup>33</sup>

One feature of Islamic jurisprudence is that *qiyas* and *ijtihad* can possibly—and often do—lead to a diversity of opinions and rulings on the exact same issue.<sup>34</sup> However, it is not as though one opinion is right and another is wrong; nobody can know the answers to the questions except Allah.<sup>35</sup> Even though a single issue might have two to twelve varying legal

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<sup>28</sup> The legal landscape was made of a number of types of scholars, the *mufti*, the author-jurist, the judge, and the law professor (ibid., 7–13).

<sup>29</sup> Ibid., 27.

<sup>30</sup> Ibid., 22–25. However, this is not to be confused with the Western jurisprudential doctrine of *stare decisis*.

<sup>31</sup> Ibid., 25–26.

<sup>32</sup> Ibid., 26.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid., 27. Contributing to this diversity are the various schools of Islamic legal jurisprudence, typically associated with particular geographic areas and acting somewhat like Christian denominations. Among Sunni schools still in existence today are the Hanafi, allowing more personal freedom and comprising about one-third of all Muslims today; the Maliki, originating in Saudi Arabia, more bound to tradition, and more conservative than the Hanafi, especially with regards to women; the Shafii, representing the synthesis of other scholars, tends to be more traditional; and the Hanbali, the school that has historically emphasized the sources and textual basis for its jurisprudence (Farhat J. Ziadeh, “Law: Sunni Schools of Law,” in Esposito, *The Oxford Encyclopedia of the Islamic World*, 3:389–97). Shiites also have their own schools of jurisprudence (Abdulaziz Sachedina, “Law: Shii Schools of Law,” in Esposito, *The Oxford Encyclopedia of the Islamic World*, 3:397–99).

<sup>35</sup> Hallaq, *An Introduction to Islamic Law*, 27.

opinions, Hallaq says this makes Islamic law flexible and adaptable, ready to give new options when such a need arises.<sup>36</sup> This pluralism is an outworking of a fundamental principle that while human reason must be used to the full, the content of Sharia can only come from Allah, not reason.<sup>37</sup> Because of this starting place, Muslims are content living without resolving every ambiguity. This comes back to the distinction between Sharia and *fiqh*:

Sharia is the sum of all God’s rulings on human actions, and if the Sharia as a whole was precisely spelled out, we would have no doubt about [any legal or ethical question]. God has not spelled out his will at this level of precision, however. Rather, he has left that task to human beings, as a test of our devotion. Consequently, no matter how hard we toil, there will always be a gap between God’s perfect will—the Sharia—and our limited and fallible understanding of it, reflected in *fiqh*.<sup>38</sup>

Sharia includes both purity laws and worship requirements.<sup>39</sup> But it goes beyond the religious; it is encompassing of the whole of life. A typical legal text will systematically divide the corpus of Sharia into four “quarters”: rituals, consisting of seven books (e.g., Books of Purity and Washing, Prayer, Fasting, Pilgrimage, and Hunting and Butchering Animals); sales, consisting of twenty-four books (e.g., Books of Sales, Partnership, Loans, Agriculture Lease, Gifts, and Bequests); marriage, consisting of thirteen books (e.g., Books of Marriage, Dower, Contractual Dissolution of Marriage, Oaths, Family Support, and Child Custody); and injuries, consisting of thirteen books (e.g., Books of Torts, Quranically Regulated Infractions, Discretionary Punishments, and Suits and Evidence).<sup>40</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid., 15.

<sup>38</sup> Brown, *A New Introduction to Islam*, 153–54.

<sup>39</sup> Ibid., 160–64.

<sup>40</sup> Hallaq, *An Introduction to Islamic Law*, 28–30.



There are some aspects of Sharia that may be more controversial to Western ears. A man is permitted to enter a temporary marriage with a woman in some cases out of an attempt to placate men's sexual desires.<sup>41</sup> For a man, divorce is easy: repeat the phrase of repudiation three times, with a menstrual cycle between each recitation, and, as long as the wife is not pregnant, the husband is granted the divorce.<sup>42</sup> The wife, on the other hand, has the ability to seek a court's termination of the marriage.<sup>43</sup> The couple can always agree to a divorce, though it is seen as a bad thing.<sup>44</sup> Beating and amputation of hands are acceptable—even required—punishments for crimes.<sup>45</sup> Husbands have freedom to beat their wives in some cases.<sup>46</sup> Charging interest is forbidden, formally leaving Sharia in conflict with Western economic practices.<sup>47</sup> Non-Muslims are treated differently: Christians and Jews are given a protected second-class status if they pay a tax, and all others are required to submit to Islam or face the use of force.<sup>48</sup> It must be remembered that these principles were developed in pre-modern societies, where authority did not derive from the nation-state.<sup>49</sup> Sharia courts did exist and thrive, but they were local projects, interested more in preserving the state of the community than in wielding power.<sup>50</sup>

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<sup>41</sup> Peter G. Riddell and Peter Cottrell, *Islam in Context: Past, Present and Future* (Grand Rapids, MI: Baker Academic, 2003), 53.

<sup>42</sup> Riddell and Cottrell, *Islam in Context*, 54.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Warner, *Sharia Law for Non-Muslims*, 11.

<sup>47</sup> Riddell and Cottrell, *Islam in Context*, 54–55.

<sup>48</sup> Warner, *Sharia Law for Non-Muslims*, 26–31.

<sup>49</sup> Hallaq, *An Introduction to Islamic Law*, 57–82

<sup>50</sup> Ibid., 60–64.

The Islamic legal institutions began to first change when Britain began colonizing India in the 1600s.<sup>51</sup> British officials took over the Sharia courts, and they attempted to apply Islamic law to the Muslims.<sup>52</sup> However, the Islamic legal system was not like a Western system; there was no doctrine of *stare decisis* and the laws could be very flexible, so the British began to insist on a codification of Sharia and previous cases began to have precedential value.<sup>53</sup> Slowly the British pushed against Sharia, and by the end of the nineteenth century, the Sharia system had been replaced by British law, except for regulations regarding worship, family law, and some parts of property transactions.<sup>54</sup> Similar transformations or other modernizations began during that same period in Indonesia, the Ottoman Empire, Egypt, Iran, and Algeria.<sup>55</sup> This period of modernization, according to Hallaq, transformed Sharia into an “entexed,” fixed body of law that paved the way for Sharia to become as politicized as it is today.<sup>56</sup> Now, the nation-state wields Sharia as a reengineered tool; “this reengineering was the work of a moralizing state, and was by no means dictated by the mechanisms associated with Sharia’s traditional ways of functioning.”<sup>57</sup> Today, the relationship between Sharia and the nation-state is a difficult one, even in Muslim countries.<sup>58</sup>

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<sup>51</sup> Ibid., 85.

<sup>52</sup> Ibid., 85–86.

<sup>53</sup> Ibid., 86–89.

<sup>54</sup> Ibid., 88–89.

<sup>55</sup> Ibid., 89–114.

<sup>56</sup> Ibid., 168–69.

<sup>57</sup> Ibid., 170.

<sup>58</sup> See Mohammad Hashim Kamali, “Law and Society: The Interplay of Revelation and Reason in the Shariah,” in *The Oxford History of Islam*, ed. John L. Esposito (Oxford; New York: Oxford University Press: 1999), 149–153.

### III. The Place of Sharia in the United States Legal Landscape

The first sizable group of Muslim immigrants to the United States came in a wave between 1875 and 1912, though that was not the first time Muslims set foot on North American soil; Christopher Columbus likely had Muslim crew members and one in five African slaves were Muslim.<sup>59</sup> Today, Pew Research has estimated 3.3 million Muslims live in the United States,<sup>60</sup> though others place the number between two and eight million.<sup>61</sup> In the twenty-first century, there are competing visions for what Islam should look like, so Muslims in the United States are anything but a monolithic group.<sup>62</sup>

However, the modernist thought of Egyptian jurist Rashid Rida has influenced much contemporary Muslim practice in the United States. He argues that in places that are not the “abode of Islam,” criminal and civil Sharia do not bind, so Muslims in that context are free to “do whatever is necessary to become politically and economically empowered.”<sup>63</sup> Thus, in

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<sup>59</sup> Jane I. Smith, *Islam in America* (New York: Columbia University Press, 1999), 50–51.

<sup>60</sup> Besheer Mohamed, “A New Estimate of the U.S. Muslim Population,” PewResearchCenter, January 6, 2016, accessed May 6, 2017, <http://www.pewresearch.org/fact-tank/2016/01/06/a-new-estimate-of-the-u-s-muslim-population/>.

<sup>61</sup> Edward E. Curtis, “United States, Islam in,” in Martin, *Encyclopedia of Islam and the Muslim World*, 2:707; Martin Jane I. Smith and Karen Isaksen Leonard, “United States of America,” in Esposito, *The Oxford Encyclopedia of the Islamic World*, 5:474.

<sup>62</sup> On the one hand, Subhi Mahmasani advocates for a traditional implementation of Sharia, but in a modern context (“Adaption of Islamic Jurisprudence to Modern Social Needs” in *Islam in Transition: Muslim Perspectives*, 2nd ed., John J. Donohue and John L. Esposito, eds [Oxford; New York: Oxford University Press, 2007], 145–50. Ayatullah Koeheini, a now deceased conservative theologian and politician from Iran who established the Islamic Republic of Iran after the 1979 Iranian Revolution, “advocated an Islamic state led by a qualified jurisconsult [the supreme leader] who would ensure that Islamic rulings are adhered to and implemented within the broad outlines and general principles of the Shari’a” (Hamid Mavani, “Ayatullah Khomeini’s Concept of Governance (wilayat al-faqih) and the Classical Shi’i Doctrine of Imamate,” *Middle Eastern Studies* 47 [2011]: 808). On the other hand, many argue for a separation of the sacred and secular, a version of “liberal Islam” (e.g., Asaf A.A. Fryze, “The Reinterpretation of Islam,” in Donohue and Esposito, *Islam in Transition*, 151–56; Mahmoud Sadri, “Sacral Defense of Secularism: The Political Theologies of Soroush, Shabestari, and Kadivar,” *International Journal of Politics, Culture, and Society* 15 [2001]: 257–70).

<sup>63</sup> Khaled Abou El Fadl, “Striking a Balance: Islamic Legal Discourse on Muslim Minorities,” in *Muslims on the Americanization Path?*, Yvonne Yazbeck Haddad and John L. Esposito, eds (Oxford; New York: Oxford University Press, 2000), 55.

America, Muslims are required to pray and fast, but they do not need to comply with—much less bind others with—other parts of the law. Despite this, many Muslim communities still understandably want to implement Sharia as consistently as possible, at least within and among their own community.

The Fiqh Council of North America helps Muslims in the United States work through issues of Sharia in a context of being a minority and has become an authority among Muslim communities.<sup>64</sup> It has issued rulings on the topics of divorce, requiring a decree from a state court; dowry, requiring that it be paid to the wife during marriage or upon divorce; alimony and child support, requiring the divorced husband to support his ex-wife, though the dowry is considered in the determination of how much is required; and the marriage ceremony, permitting any Muslim to oversee and officiate the exchange of the marriage contract vows; and many other matters.<sup>65</sup> The council spends its efforts on other seemingly mundane issues, even recommending Muslims respond “*Salam!* Peace on earth!” when greeted with “Merry Christmas” by Christians as a “sincere and thought-provoking” reply.<sup>66</sup>

Some American Muslims, grounded in a radical worldview,<sup>67</sup> have advocated for replacing American constitutionalism with Sharia, as Pipes chronicles.<sup>68</sup> Arguing for installing an American caliphate in the place of the current government system, one Muslim leader has said, “Take my word, if 6–8 million Muslims unite in America, the country will come to us.”<sup>69</sup> These

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<sup>64</sup> See Yusuf Talal DeLorenzo, “The Fiqh Council in North America,” in Haddad and Esposito, *Muslims on the Americanization Path?*, 65–86.

<sup>65</sup> *Ibid.*, 73–83.

<sup>66</sup> *Ibid.*, 82.

<sup>67</sup> See Riddell and Cottrell, *Islam in Context*, 164–81.

<sup>68</sup> Daniel Pipes, *Militant Islam Reaches America* (New York; London: Norton, 2003), 111–25.

<sup>69</sup> Quoted in Pipes, *Militant Islam*, 112.

are the kind of statements that strike fear into some Americans. But other American Muslims, coming from a moderate worldview,<sup>70</sup> argue that Islam is fully compatible with the American legal system as it currently stands.<sup>71</sup>

Instead of dealing in abstractions with voices which may or may not have substantial influence in America, it may be more instructive to look at the current legal landscape to evaluate how Muslims are actually practicing Sharia by examining where the current areas of legal controversy lie. The Center for Security Policy identified 146 cases in U.S. state and federal courts that involved Sharia in one way or another from 1950 to the present.<sup>72</sup> However, to think this shows any substantial infiltration of Sharia law into the American judiciary is problematic. First, in 2015 alone, there were over 82 million cases filed in state courts.<sup>73</sup> The number of cases with even a remote connection to Sharia is truly miniscule. Second, “Sharia” law was not applied to anyone who did not have a legal nexus to Sharia as applied by a foreign government or due to a voluntary arbitration agreement. Third, In the “top 20 case” published by the Center for Security Policy, not one single case supplanted American law—state or federal—with Islamic law.<sup>74</sup> The claims of the Center for Security Policy should not cause any fear that Sharia is establishing itself in American courts. Nevertheless, Sharia law does intersect with the American legal system in number of ways that we will consider next.<sup>75</sup>

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<sup>70</sup> See Riddell and Cottrell, *Islam in Context*, 182–94.

<sup>71</sup> Feisal Abdul Rauf, “How the American Declaration of Independence, Bill of Rights and Constitution Are Consistent with Islamic Jurisprudence,” *University of Saint Thomas Law Journal* 7 (2010): 452–510.

<sup>72</sup> Center for Security Policy, *Shariah in American Courts*, 15.

<sup>73</sup> National Center for State Courts, *Examining the Work of State Courts: An Overview of 2015 State Court Caseloads*, accessed April 6, 2017, <http://www.courtstatistics.org/~media/Microsites/Files/CSP/EWSC%202015.ashx>.

<sup>74</sup> Center for Security Policy, *Shariah in American Courts*, 23–34.

<sup>75</sup> For a legal publisher’s review of Sharia in U.S. courts, see Jay M. Zitter, “Application, Recognition, or Consideration of Islamic Law by Courts in United States,” *American Law Reports*, 6th ed. 82 (2013).

First, some Muslims do participate in religious Sharia arbitration tribunals. Religious tribunals are not new to the American legal scene.<sup>76</sup> In addition to Muslims, both Christians and Jews have had their own dispute resolution forums for some time, covering not only matters of religion, but also civil (but not criminal) matters.<sup>77</sup> However, for these forums to bind the parties, they must be voluntarily agreed to by the parties: the American system permits no compulsory adjudication by a religious court.<sup>78</sup> In an arbitration agreement, the parties are able to stipulate as to what law governs the relationship and potential dispute, whether local state law, another state’s law, or even religious or non-territorial law.<sup>79</sup> However, the agreed-upon law cannot be out of accord with American principles of justice, nor can it be “inherently unfair,”<sup>80</sup> providing a safeguard against outcomes that are contrary to American ideals of justice. American courts are rendered incompetent by the First Amendment to adjudicate religious matters anyway, only reviewing religious tribunals’ decisions on religious issues with an eye to “neutral principles of law.”<sup>81</sup> Religious tribunals are a place where Islamic law might be applied, but its potential negative force is hemmed in by requiring parties to voluntarily agree to arbitration and requiring that the outcome of arbitration is not inconsistent with American ideas of justice.<sup>82</sup>

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<sup>76</sup> Eleanor L. Grossman and Glenda K. Harnad, “Religious Tribunals,” *American Jurisprudence*, 2nd ed. Alternative Dispute Resolution 4 (Feb 2017): § 12.

<sup>77</sup> Michael C. Grossman, “Is This Arbitration? Religious Tribunals, Judicial Review, and Due Process,” *Columbia Law Review* 107 (2007): 177–82; R. Seth Shippee, “‘Blessed are the Peacemakers’: Faith-Based Approaches to Dispute Resolution,” *ILSA Journal of International and Comparative Law* 9 (2003): 240–54.

<sup>78</sup> Grossman and Harnad, “Religious Tribunals”; Federal Arbitration Act, *U.S. Code* 9 § 2; Uniform Arbitration Act (2000), §§ 3–4.

<sup>79</sup> Amy S. Fancher, “Policies, Frameworks, and Concerns Regarding Shari’a Tribunals in the United States—Are They Kosher?” *Regent University Law Review* 24 (2012): 474 n. 97.

<sup>80</sup> *Ibid.*, 474; *Riley v. Kingsley Underwriting Agencies Ltd.*, 969 F.2d 953, 958 (10th Cir. 1992).

<sup>81</sup> *Jones v. Wolf*, 443 U.S. 595, 602–603 (1979).

<sup>82</sup> Fancher does advocate for increased accountability and more clearly defined and limited parameters for religious tribunals, seeing the potential for abuse of the current system. Fancher, “Policies, Frameworks, and

Next, laws of other nations are frequently employed in United States courts. However, they are only invoked when a number of finely-tuned factors are considered with the ultimate aim of promoting fairness and justice.<sup>83</sup> For example, in a breach of contract claim arising out of joint ventures with American oil companies doing business in Saudi Arabia, a Saudi company sued Mobil and Exxon.<sup>84</sup> The Delaware Supreme Court permitted a cause of action for a Saudi tort, “usurpation,” to be appended to the suit. Because it was a Saudi cause of action, the law governing the issue was Saudi law. The court even recognized that the tort derives from Sharia law, and it still applied the Saudi law, finding the defendants did in fact commit usurpation. However, it is important that the court did not apply Sharia law per se; it applied the law of Saudi Arabia that happened to be grounded in Sharia. Because Mobil and Exxon availed themselves of the laws of Saudi Arabia by doing business there, an American court was permitted (and right) to apply Saudi law to Mobil and Exxon’s conduct. This case can be seen as one of the most reprehensible for those advocating for anti-Sharia policies, but it does not indicate that American courts are capitulating to Sharia law. In other cases, courts have applied the law of Mexico, Britain, Germany, Japan, China, and practically every other country’s laws, whether they happen to have religious foundations or not.

One area that is subject to higher litigation is the applicability of the Sharia dowry upon divorce. In short, courts consider and adjudicate issues of the dowry under the rubric of the

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Concerns,” 486. Mona Rafeeq generally holds this view as well, but more explicitly delineates that criminal law should never be handled by arbitration tribunals (“Rethinking Islamic Law Arbitration Tribunals: Are They Compatible with Traditional American Notions of Justice?” *Wisconsin International Law Journal* 28 [2010]: 137).

<sup>83</sup> Sonja Larsen and Jarl Oakes, “Basic Conflicts of Rules for Determining Applicable Law,” *American Jurisprudence*, 2nd ed. Alternative Dispute Resolution 16 (Feb 2017): § 3.

<sup>84</sup> *Saudi Basic Industries v. Mobil*, 866 A.2d. 1 (Del. 2005).

standard prenuptial agreement.<sup>85</sup> While sometimes the dowry is held to be enforceable,<sup>86</sup> other times the dowry as a prenuptial agreement does not pass legal muster.<sup>87</sup> Again, while courts might be upholding “Sharia law” in some of these cases, it is not because the court applies Sharia per se to the case. It is because the religious element fits an already-established legal category.

The First Amendment provides protection for individuals from government restriction on free exercise of religion. Some worry that this could lead to harmful Sharia practices being permitted in America, such as female circumcision. However, in *Employment Division v. Smith*, the Supreme Court held that Congressional legislation that is a neutral law of general applicability, even if it has an incidental effect upon religious exercise, does not offend the First Amendment.<sup>88</sup> Under this rule, the federal government and states can freely prohibit female circumcision, as Congress has done<sup>89</sup> along with many states. However, Congress has provided additional federal legislative protection for religious exercise beyond the constitutional baseline with the Religious Freedom Restoration Act of 1993 (“RFRA”),<sup>90</sup> prohibiting placing a “substantial[] burden on a person’s exercise of religion even if the burden results from a rule of general applicability” unless the law “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental

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<sup>85</sup> See Paul M. Coltoff, John Glenn, and Glenda K. Harnad, “Prenuptial Settlements and Agreements, Generally,” *American Jurisprudence*, 2nd ed. Husband and Wife 41 (February 2017): § 81 et seq.

<sup>86</sup> E.g., *Akileh v. Elchahal*, 666 So. 2d, 246 (Fla. 2d DCA 1996); *Odatalla v. Odatalla*, 810 A.2d 93 (N.J. Sup. Ct. Ch. Div. 2002).

<sup>87</sup> E.g., *In re Marriage of Dajani*, 251 Cal. Rptr. 871 (Cal. App. 1988); *Ahmed v. Ahmed*, 261 S.W.3d 190 (Tex. App. 2008).

<sup>88</sup> 494 U.S. 872 (1990).

<sup>89</sup> U.S. Code 18 § 116.

<sup>90</sup> U.S. Code 42 §§ 2000bb–2000bb-4. However, this cannot bind state legislatures, but states have passed “mini-RFRAs” to provide similar state protection.



interest.”<sup>91</sup> Limiting its own ability to pass laws, does RFRA bind Congress’s hands and invalidate its law against female circumcision? It is a difficult question when the practice is framed as religious, and although no court has expressly ruled on this issue, one Washington court has indicated that public policy favors prohibiting cutting children for corporal punishment or circumcising females.<sup>92</sup> It is likely that courts will find that congress does have a compelling governmental interest in protecting children from what many call female genital mutilation, because of the harm circumcision causes women. So whether under *Employment Division* or RFRA, Sharia’s mandate of female circumcision is not permitted in the United States. While many practices are protected under RFRA, it can be repealed by Congress at any time, reverting to the *Employment Division* test, limiting how intrusive Sharia can be on American life.

In this section we have seen that despite the confusion caused by political rhetoric, there are some objective ways Sharia’s effect on the American legal system can be assessed. We have considered the use of religious tribunals, the incorporation of international law in American court cases, the terms of Sharia marriages, and the constitutional and federal statutory scheme protecting non-Muslims from subversive Sharia practices that could tend to undermine the social fabric. For Sharia to establish a foothold on the American legal system as a whole, a change to our entire constitutional structure is required. In 2017, there is no concrete threat of that happening in the foreseeable future.

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<sup>91</sup> U.S. Code 42 § 2000bb-1.

<sup>92</sup> *State v. Baxter*, 141 P.3d 92, 99–100 (Wash. App. 2006).

#### IV. A Christian Response to Sharia Law in the United States

To fully unpack the Christian’s response to Sharia’s presence in the United States, Christians have to understand their own relation to their government and laws of the land. Should it be the Christian’s concern to “Christianize” a country’s policies? Or should the Christian be content with the pursuit of a liberal justice that favors no one religion above another? The answer to this question will dictate to what extent a Christian is willing to permit other religions’ laws being promulgated among its own community. Much ink has been spilled debating this topic even among Reformed Christians in the previous decade, and space limits exploration of these topics here.<sup>93</sup>

Regardless, let us consider a few modest proposals for Christians. First, Christians should avoid being alarmists, even if only from a purely practical perspective. As Peter exhorts, it is important to be sober-minded (1 Pet 1:13) and level-headed during conversations such as these. Those who warn of the imminence of all Americans being under Sharia rule are fearful or acting as fear-mongers, not acting sober-mindedly. Next, it is important to not use “Sharia” as a pejorative term. It is a part of our legal and political landscape—and will likely increase in its share as the number of Muslims in America increase—but Sharia is first and foremost a religious, doctrinal term. Christians should seek to do Muslims justice by using their

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<sup>93</sup> David VanDrunen (e.g., *A Biblical Case for Natural Law* [Grand Rapids, MI: Acton Institute, 2006]; *Natural Law and the Two Kingdoms: A Study in the Development of Reformed Social Thought*, Emory University Studies in Law and Religion [Grand Rapids, MI: Eerdmans, 2009]; *Living in God’s Two Kingdoms: A Biblical Vision for Christianity and Culture* [Wheaton, IL: Crossway, 2010]; *Divine Covenants and Moral Order: A Biblical Theology of Natural Law*, Emory University Studies in Law and Religion [Grand Rapids, MI: Eerdmans, 2014]) represents one side of the debate, the “two kingdoms” camp. John Frame (*The Doctrine of the Christian Life* [Phillipsburg, NJ: P&R, 2008]; “Review of David Van Drunen’s *A Biblical Case for Natural Law*,” Frame-Poythress.org, May 10, 2012, accessed May 6, 2017, <http://frame-poythress.org/review-of-david-van-drunens-a-biblical-case-for-natural-law/>) represents the other side, the “transformational” approach.

terminology rightly and with respect. Certainly Christians and most Americans think aspects, or even large swaths, of Sharia is sinful, on one hand, and bad for a democratic society, on the other. But that is no reason for disparaging the term.

Additionally, Americans should have confidence in our legal and Constitutional system. Sharia is in no position to become normative for all Americans. As we reviewed in Section III, above, while Sharia does make appearances in several areas of law, Christians would do well to study our legal system to see that Sharia is not supplanting American law. Christians should be vigilant, however, and seek to perfect our legal system to make the system as transparent and honest as possible, especially in the area of arbitration.

Christians would do well to take a cue from Islamic tribunals and make increased use of Christian arbitration tribunals. To obey Paul's command to not sue one another in a state court (1 Cor 6:1–8), Christians should look for alternative dispute resolution mechanisms, such as the local church's session or organizations like the Institute for Christian Conciliation.

This evaluation of Sharia should also cause Christians to stop and consider how they might love their neighbors. We should personally and privately accommodate Muslims as best as possible, showing them we care about them personally. Employers ought to consider granting Muslim employees time out of the workday for prayers if at all possible. Parents ought to embrace the serving of Sharia-compliant foods at public schools. Christians should dignify our Muslim neighbors to show respect for them and their beliefs. However, Christians ought to consider how we love our non-Muslim neighbors as well. To that end, we should strive to not permit Sharia to become the law of the land because it would detrimentally affect society at large, especially its demands that all non-Jews and non-Christians submit to Islam or face the

sword. It would be unloving to allow those parts of Sharia that are out of accord with fairness and justice to be applied to non-Muslim Americans.

Finally, Christians ought to pray for our leaders (1 Tim 2:2). Paul directs us to pray thus not so that Christian policy is enforced throughout the land, but so that Christians can “lead a peaceful and quiet life, godly and dignified in any way” (1 Tim 2:2). The Christian’s aim should not be for dominion over our Muslim or Jewish or atheist neighbors. It should be for a quiet humility, that we might be faithful in our station, able to worship God, and free to proclaim the gospel. Whether Sharia is the law of the land or not, Christians still have a hope greater than this world.

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