



Sharia

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Sharia is a key concept in Islam and our contemporary world. Often translated into English as 'Islamic law', it includes financial contracts, criminal justice, and marriage and divorce. But it also covers ritual practice, dietary prohibitions, and personal and interpersonal ethics. Indeed, the rules of sharia could, in theory, encompass all of life. Sharia thus comprises both a legal system and a rule-based approach to the challenges of living a good life more generally. Sharia ideas and discourses have been hugely important historically across the parts of the world touched by Islam. Despite their marginalization under colonial modernization projects, they remain intensely vibrant and relevant today. In the wake of the widespread failings of postcolonial secular states, sharia has become widely seen as an alternative and challenge to civil law and the liberal tradition. The violence of some of the most extreme contemporary Islamist movements has, however, contributed to an intensely negative stereotyping of sharia in the West.

Such extreme instances need to be placed in the context not only of recent and deeper history, but also the immense diversity of approaches to Islam and sharia that the world's nearly two billion Muslims adopt today. Anthropology has made an invaluable contribution to such efforts. One key topic has been gender, and the place of sharia norms in family law. The relationship between sharia and other sets of norms has been a central case of legal pluralism within legal anthropology. Medical and economic anthropology have explored sharia's role in responses to the challenges of new global technologies such as assisted reproduction and novel financial instruments. More broadly, as part of the wider anthropology of Islam, anthropologists have helped document the various ways in which sharia norms form part of the texture of Muslim life across the world.

Introduction

Sharia is a key concept within Islam and our contemporary world more generally. Originally an Arabic word (*sharīʿa*) from a root which could refer to both law and 'a way', it has often been translated into English as 'Islamic law'. The sharia tradition does indeed include rules and processes dealing with financial contracts, criminal justice, and marriage and divorce, for example. But it also covers ritual practice, dietary prohibitions, and personal and interpersonal ethics. Indeed, the rules of sharia could in theory encompass all of life, laying down right, and wrong, ways of doing almost everything. One will then be judged as to one's actions by God on Judgment Day, according to the standards He has prescribed, in the Quran and through the example of the Prophet. Sharia thus comprises both a legal system and a rule-based approach to the challenges of living a good life, in ways analogous to its Abrahamic relatives the Jewish *halakha* and Catholic moral theology.

Sharia ideas and discourses have been hugely important historically across the parts of the world touched by Islam, even if the extent of their practical application (which has varied) has never been as comprehensive as theory might allow. They also remain intensely vibrant and relevant today - both to

questions of personal conduct, and those as to the nature of society and how it should be governed. In most of the Muslim world, colonial and postcolonial modernity brought a restriction of sharia's role in the life of the state and its replacement by European-style civil law (or English common law). In the wake of the widespread failings of postcolonial secular states and an 'Islamic revival' in response, the call to restore the sharia, as a crucial part of an 'Islamic state' even, has become common. Sharia has come to be seen widely as an oppositional force, a challenge to secular law, and thus also a challenge to the particular system of rights and freedoms associated with the liberal tradition. The violence of the most extreme contemporary Islamist movements, such as ISIS or Boko Haram, has contributed to an already intensely negative stereotyping of sharia, focused on harsh criminal punishments and patriarchal gender norms. In a continuation of Orientalist ideas, sharia has been widely depicted by its critics as antithetical to modernity.

Such extreme instances need to be placed properly in the context not only of recent and deeper history, but also the immense diversity of approaches to Islam and sharia that the world's nearly two billion Muslims adopt today. Unhelpful and unrealistic stereotypes about sharia need to be challenged. What sharia actually means to Muslims in practice needs to be documented. Anthropology has made an invaluable contribution to such efforts. One key topic has been gender, and the place of sharia norms in family law. The relationship between sharia and other sets of norms, in Muslim-majority and minority contexts, has been a central case of legal pluralism within legal anthropology. And medical and economic anthropology have explored sharia's role in responses to the challenges of new global technologies such as assisted reproduction and novel financial instruments. More broadly, as part of the wider anthropology of Islam, anthropologists have helped document the various ways in which sharia norms form part of the texture of Muslim life across the world.

Sharia discourse is a complex and rich tradition. Given the sheer breadth and sophistication of this body of intellectual history, let alone the linguistic and other skills required to grapple with it, Islamic legal studies can be a forbiddingly technical discipline. But, fortunately, non-specialists can draw on widely available and accessible guides, such as Wael Hallaq's (2009a) very substantial account, *Shari'a: theory, practice, transformations* (also available in abridged form, *An introduction to Islamic law* [2009b]). Earlier generations of anthropologists might have left such issues to the specialists. But Talal Asad's (1986) emphatic assertion that Islam is a discursive tradition helped inaugurate a new focus on the place of Islamic discourse, including sharia discourse, in Muslim practice – 'a new anthropology of Islam' (Bowen 2012). Some have worried about the dangers of going too far in this regard. That would include over-emphasising the place of religious rules in what it means to be Muslim. Even if sharia currently looms large in both Muslim and non-Muslim imaginaries of Islam, we must not forget the breadth and richness of the Islamic tradition beyond it (Ahmed 2016: 113-29).ⁱⁱⁱ

Sharia discourse and history

Some rules are explicitly stated in the Quran, the holy text of God's word dictated to the Prophet Muhammad in seventh century (CE) Arabia. One verse (5:6), for example, tells Muslims how they should wash before prayers: 'You who are faithful, when you stand up for prayers, wash your faces and hands to the elbows, and wipe your heads and your feet to the ankles.' There is room for varying interpretation even here – which direction should you wash or wipe, for example? In deciding how correctly to interpret such verses, and how to formulate rules for conduct where they are not so explicitly stated, Muslims can draw on a wider range of sources: the Quran as a whole; the Sunna – the example of the Prophet, as transmitted in the Hadith, or the accounts of what he said and did (and for the Shia, also the example of the divinely guided Imams who came after him); the consensus of the Muslim community; and forms of human reasoning. This is a complex undertaking, a human science in its own right, called *fiqh*, which has resulted in much debate and controversy, and a vast body of legal literature and theory. Those discussions are carried on in all the languages of Islam, even if many of their shared terms (like *fiqh*) are originally Arabic.

Sharia and *fiqh* are tightly linked concepts. But while the word sharia points to God's divine law, *fiqh* – which attempts to discover that law – is a human undertaking, whose content has changed and developed over time. After the Prophet's death (in 632 CE), religious knowledge became gradually more organised, a domain of expertise on the part of increasingly professional scholars ('*ulamā*', sing. '*alim*'). From around the ninth century CE, 'schools of law' (*madhāhib*, sing. *madhhab*) emerged around the thought and teaching of famous predecessors. Four Sunni schools have survived: Hanafi, Hanbali, Maliki and Shafi'i. Some are more associated with some parts of the world than others (the Maliki tradition is especially prevalent in North Africa, for instance). The Twelver Shi'i tradition can be considered a parallel such school.

Scholarly expertise in the sharia is in part an act of religious devotion. But it also has a practical role to play. A jurist (i.e., an Islamic legal scholar) can provide guidance to non-experts, in formal terms as a non-binding legal opinion (*fatwā*). In this case the scholar would be acting as a *muftī* (one who gives fatwas) (see Masud *et al.* 1996). Or, they could arbitrate in disputes, working towards an authoritative and binding resolution or judgement, as a judge (*qādī*, *hākim*) (Masud *et al.* 2005). This could be as an independent scholar, or it could be in the service or with the backing of the state.

The relationship between the scholarly class and the state has varied across time and space. Sharia has often been characterised as a 'jurist's law', in the sense that it is the scholarly class who define the law rather than the state, even if the ruler is in theory bound by God's law, too. Despite a hackneyed – and historically inaccurate – notion that, unlike Christianity, Islam admits no separation between religion and state, the ulama have very often worked independently of it (Lapidus 1996). Recent scholarship has, however, argued for closer attention to the transformations wrought by the Mongol invasions of the Near East in the thirteenth century. In particular, the Ottoman dynasty adopted the Hanafi school of law as its

official one – coexisting with, but privileged over, others (Burak 2013). This led to a closer entangling of sharia and its scholars with state administration over the vast sweep of the Ottoman Empire, alongside other forms of secular and customary law.

Academic studies of sharia's history have concentrated on the Near East. But sharia concepts and ideas have spread far wider, throughout the worlds touched by Islam – indeed they have arguably been vital to the formation of this wider Muslim ecumene. That did not necessarily take the form of domination. People living under modernity have become so used to the idea of law as the instrument of power and social control that they tend to forget that legal forms are also enabling. Financial instruments have been crucial to the history of global trade – and sharia has in this form played an important role in world history (e.g. Lydon 2009 on trans-Saharan trade and Bishara 2017 on the Indian Ocean). Sharia norms underpinned a vision of civilised life that spanned the world and inspired at its frontiers (Scheele 2012). They also constituted a widespread framework of property relations and social reproduction (Goody 1990: 361-82; Mundy 2013).

The encounter with European colonialism and ideas of modernity brought a dramatic rupture in this history (Hallaq 2009: 396-442). In the Near East, even before colonial occupation, ideas and institutions of education and law began to change in response to the challenges of rising European power. Technical sciences became increasingly prestigious. By the nineteenth century, sharia was more and more replaced in the administrative life of the Ottoman state by European-style civil law. Sharia discourse itself was subject to new forms of rationalization, such as codification. Similar changes occurred elsewhere, often as a colonial imposition, such as in the Dutch East Indies or British-ruled India. Generally, sharia's purview has become heavily limited in terms of jurisdiction, often restricted to personal status, i.e. family law. As Asad (2003) has said, this would be best seen not as due to this part of sharia being especially sacred, but rather as integral to the project of secular modernity to restrict 'religion' to the private sphere. It has further been argued that, in the process, sharia has been not just restricted but fundamentally transformed, into a sort of ersatz 'Islamic law' (e.g. Hussin 2016 on British interventions in Malaya, Egypt, and India). Where sharia had been bound up in an organic, society-wide complex of education, moral exhortation, dispute resolution, and administration, the ties that unified that world of discourse have now been largely broken.

Sharia ethnography and modernity

This transition from pre-modernization sharia to state-centred law has been captured in an enduring classic of sharia ethnography, Brinkley Messick's *The calligraphic state* (1992). Messick had the good ethnographic fortune that highland Yemen, at the edges of the Ottoman Empire and not subject to European colonialism, had gone through this process of legal modernization within living memory. His fieldwork in the 1970s-80s took place at 'the end of an era of reed pens and personal seals, of handwritten

books and professional copyists, of lesson circles in mosques and knowledge recited from memory, of court judgments on lengthy scrolls and scribes toiling behind slant-topped desks' (Messick 1992: 1). This 'calligraphic' culture constituted a distinct form of textual domination, a political economy of knowledge rooted in a tradition of learning, which began with memorization of the Quran and depended on personalised forms of authority. Sharia discourse had an open texture, which state codification foreclosed – symbolised, following Messick's central metaphor, by impersonal print.

In keeping with the more holistic scope of pre-modernization sharia, Messick gives an account of the knowledge economy that not only covers the work of Islamic religious professionals as both *muftis* and judges, but also the traditional forms of Islamic education within which they were formed (see also Mottahedeh's [1985] evocative book on Iran, and Eickelman 1985 on Morocco). He also attends closely to the textual forms that they produced. This combination of textual analysis and ethnographic insight, taken still further in a second, resolutely historical ethnography of sharia in Yemen, has won the appreciation of Islamic studies specialists, even if 'the anthropologist as reader' remains a somewhat unfamiliar figure, as Messick laments (2018: 33). This level of dialogue between anthropology and Islamic legal studies is, however, hard to reproduce, and not just because of the exceptional standards Messick's work has set. Ethnography of contemporary sharia has to wrestle with the obvious ruptures that modernity has wrought. Although many governments (and would-be governments) across the world now claim not just to be 'Islamic' but to be restoring the sharia to its proper place, arguably the tradition they lay claim to is an invented one (Eickelman & Piscatori 2004: 22-45). Pre-modern sharia depended on modes of authority, power, and governmentality that are not those of the modern state. An authentically Islamic state in the modern mode may thus be 'impossible', in Hallaq's (2012) widely cited, if polemical, terms. Contemporary state institutions that claim some tie to the sharia – as many family law systems across the Muslim world do, for instance – are actually fundamentally different from their predecessors.

Anthropologists would wish neither to dismiss contemporary Muslim claims to authenticity, nor to espouse naively essentialist notions of Islam. They have instead documented the ways in which such claims to authenticity can be constructed in conjunction with, as well as in opposition to, the rhetoric of modernity (Deeb 2006), and the new forms of authority that mass literacy, mass higher education and mass media entail (Eickelman & Anderson 2003; Eickelman & Piscatori 2004). There are contemporary Islamic states and Islamization projects and one can conduct ethnographies of them (e.g. Feener 2013; Salomon 2016). Conversely, something of the openness and personalised authority of the pre-modern tradition still endures, even in new digital forms (Clarke 2010). Nevertheless, despite the importance of a grounding in the discursive tradition for understanding the ways in which sharia is invoked today, there is a clear danger in simply mapping the terms and concerns of classical sharia onto contemporary forms of post-modernisation 'Islamic law', arguably very different as we have seen (Dupret 2007).

Islamic family law and legal pluralism

One of the earliest legal anthropological studies of a Muslim court, Lawrence Rosen's (1989) study of a provincial court in Morocco, perhaps overreached in this regard. Rosen sees law as a window onto culture, and presents the work of a judge in a low-level family law court implementing a reformed codification of Islamic legal norms as representative of Islamic legal culture generally (see Mundy's [1991] still-instructive review). The problems with such cultural generalization notwithstanding, this helped pave the way for others to show the diversity and complexity of contemporary Islamic family law, in ways that problematise any ready essentialization.

Family law is obviously gendered, and Islamic family law – as generally understood at least – is clearly patriarchal (for global and historical surveys, see An-Na'im 2002; Tucker 2008). According to Islamic family law, marriage is, among things, a contract granting rights to sex and fertility in exchange for a dower, or bridal gift (*mahr*), and maintenance (*nafaqa*) from the husband to the wife. A man can in theory have up to four wives where a woman can only be married to one man. A husband has an absolute right to divorce, effected by his simply pronouncing it (*talaq*, often translated 'repudiation'). A wife's right is limited: she must either persuade her husband to divorce her, even in return for a consideration (*khul'*), or persuade a judge that an annulment or judicial separation be effected. Women generally receive a smaller portion of an inheritance than men.

These rules vary in their details between the different Sunni and Shi'i schools of law, and are, like any aspect of sharia, much debated within them. The case can be made for more gender-equal visions of God's intentions. Modernising governments in the twentieth century reformed family laws by stitching together more progressive rulings from different schools, trying to rule out polygamy or make judicial divorce against a husband's wishes easier, for instance – although bringing women and 'the family' under state law arguably hardened patriarchy in other ways (Hallaq 2009: 443-99). This process of reform continues (Welchman 2007). Feminist scholarship and activism has argued that it needs to go still further, critiquing the largely male body of scholarship that has dominated the interpretation of the sharia to date (Mir-Hosseini 1999, 2006).

Anthropologists have contributed extensively to the understanding of how such systems work in practice. Ziba Mir-Hosseini, an anthropologist and activist, has provided pioneering ethnographic studies, and also made a compelling film with Kim Longinotto, *Divorce Iranian style* (1998), which remains one of the best ways into the subject. Her book *Marriage on trial* (1993) compares 1980s Shi'i Iran, where family law had been re-Islamised after the Islamic Revolution, with Morocco, which had a more secular, reformed family legal system, based on the rules of Maliki *fiqh*. Although both family legal systems were nominally inspired by Islamic law, marriage dynamics play out within their constraints in very different ways, reflecting differences between Shi'i and Maliki *fiqh*, aspects of local culture, and differences in the local economies –

the relative access of men and women to paid labour, for example. Although post-revolutionary Iran's system was nominally more 'Islamic', that did not translate into women having a necessarily worse position. In both cases, women are adept at using the resources that the system does allow them to pursue their claims.

Mir-Hosseini's work has been joined by many others, with hundreds of articles and books across various disciplines and a number of full-length ethnographies by anthropologists of similar courts and tribunals in, for example, Kenya (Hirsch 1998), Malaysia (Peletz 2002, 2020; Daniels 2017), Indonesia (Bowen 2003), Zanzibar (Stiles 2009), Israel (Shahar 2015), Lebanon (Clarke 2018) and India (Lemons 2019), as well as less formal 'sharia councils' in the West (Bowen 2016 on the UK). These studies problematise simplistic stereotypes by revealing the sheer diversity in sharia discourse, as well as the shared principles that unite it, and the complexities of putting sharia into action as law (see e.g. Sonneveld & Stiles 2019 on how a single form of Islamic legal divorce, *khul'*, has been interpreted very differently in different contexts). Sharia never exists in a vacuum; its social life is always shaped by a dialectic with other cultural, linguistic, and normative forms. A shared concern, however – one which Rosen (1989) picked out – is the emphasis placed on trying to repair damaged social relations, over and above pronouncing judgement. Away from the ideal of law, these studies illustrate the pragmatic strategies of the actors within the courts: wives, husbands, lawyers, court officials, and judges.

Those varied ethnographies are of settings with very different legal systems and political concerns, where sharia discourse, whether honoured or stigmatised, recognised by the state or ignored, is only one of a number of competing legal and normative systems – a key example of legal pluralism (Shahar 2008; see also Erie 2016 on China). Negotiating between such different normative systems is an important part of the legal process for litigants and defendants. But it can also be part of a wider conversation about the nature of a polity. Michael Peletz (2002) has shown how Malaysia's sharia courts are bound up in projects of a distinctive Malaysian Islamic modernity. John Bowen (2003) has framed discussions about the relations between customary law (*adat*), sharia, and state law in Indonesia as an 'anthropology of public reasoning', to be compared with discussions of value pluralism elsewhere – as in his subsequent study of the place of Islam and sharia norms in France (Bowen 2011). There, and elsewhere, sharia can be a foil for thinking about what it means for a state to be secular as much as religious (Asad 2003; Agrama 2012; Lemons 2019). It is also a key frame of reference for notions of civility and citizenship, not just the relation between citizens and state, but also between different communities, Muslim and non-Muslim, in Muslim-majority and minority settings (Hefner 2000; Modood *et al.* 2006; Modood 2010; Hefner & Bagir 2021).

Global assemblages

Peletz (2013) has characterised Malaysia's contemporary sharia courts as an eclectic 'global assemblage', where sharia discourse is joined with the discourses of civil and common law, corporate 'e-governance' and

Japanese management and auditing practices. Sharia is itself globally distributed through networks of scholarship, funding, and training, with important nodes in the Middle East – not least the Arabian Peninsula and Iran – South and South-East Asia, and the West. The notion of sharia as a mobile global form that is localised in combination with others is a fertile one more broadly. Rights discourse, for instance, has become a globally recognised way of demanding recognition – one that has parallel forms in the sharia tradition, but is now invoked alongside and in contrast with it, linked to Western notions of human rights and individualism (Osanloo 2006). Sharia norms of food sourcing and preparation – ‘halal’ – have become part of global capitalist enterprise, where religious rules intersect with those of food hygiene and new notions of risk (Fischer 2011; Tayob 2016). An entire Islamic banking sector has arisen catering for new markets for religiously sanctioned versions of contemporary financial instruments (Maurer 2002; Rudnyckj 2019).

‘Islamic bioethics’ is another such contemporary assemblage of sharia and other forms of knowledge-power, which speaks to the ways in which sharia discourse has managed to keep up with the present pace of technological and social change (Clarke *et al.* 2015). Islamic legal scholars have been challenged on the rights and wrongs of biomedical innovations such as assisted reproduction and organ transplantation, in ways that bring together medical and Islamic legal knowledge in novel constellations. Sherine Hamdy (2012) has shown in exemplary detail how fatwas on the end of life and organ transplantation are produced in a dialectic with medical authority in the context of a public health and ecological disaster in Egypt. Simultaneously, the same scholars are also having to define the creation of life in response to the globalization of assisted reproductive technologies such as *in vitro* fertilisation, as Marcia Inhorn (e.g. 2003) has tirelessly documented. Sharia discourse has thus seen its own complicated debates about the ‘new kinship’ relations that result. Is it religiously permitted to use donor gametes, for instance? Does the possibility of having more than one wife diminish fears that the use of donor eggs resembles adultery? Who then should be considered the mother: the provider of genetic material or the woman who bears the foetus? What are the consequences for family life given sharia norms on gendered modesty except with close relatives? (See, for example, Clarke 2009; Naef 2017)

In these cases, Islamic legal opinions are often not as restrictive as common stereotypes about religious rules being ‘strict’ might suggest. On the contrary, sharia discourse can also be enabling, by allowing someone to undertake a course of action with religious sanction, as well as a source of comfort and help to those faced with crucial life decisions and crises. Sharia can be the inspiration for state regulation in these morally challenging domains. But it can also be a resource for personal ethical life. Indeed its personal ethical role has arguably increased under modernity, given the restriction of the place of sharia in state law (see Messick 1996 on shifting patterns in the types of questions put to muftis).

Sharia and the anthropology of ethics

Islamic examples have thus unsurprisingly been central to the burgeoning new anthropology of ethics, which has emphasised not just socially imposed obligation, but also the ways in which people actively try to make themselves good and virtuous.²⁴ Sharia norms can form part of such projects of the virtuous self. Saba Mahmood's (2005) well-known discussion of Muslim piety among women in Cairo turns on, among other things, the way in which the fulfilment of religious obligations such as prayer or wearing a headscarf is seen to help cultivate desired virtues such as steadfastness and modesty (see also e.g. Deeb 2006). This reimagining of religious duties as a means to religious and moral fulfilment, rather than solely as constraint, has transformed the possibilities for understanding and representing what obligations like wearing modest dress might actually mean to Muslims. The insights of this new anthropology of virtue have also been helpful in revisiting some of the classic themes of Islamic legal studies. Hussein Agrama (2010) has shown how the mufti's role can be seen not just as Islamic legal interpretation, but as a pedagogical intervention in the ethical lives of those consulting him (or, more rarely, her). Islamic scholars who work as judges in sharia courts can find themselves caught between this ethos of pedagogy and their duty to apply the impersonal rules of legal bureaucracy (Clarke 2012). Ideas of virtue and its cultivation also inflect the processes of Islamic legal scholarship and interpretation, where it is thought that a virtuous scholar is more able to interpret God's law correctly than a less virtuous one (Nakissa 2014).

Despite the salience of sharia rules in everyday religious life for many Muslims, influential voices in the anthropology of ethics and the anthropology of Islam (Schielke 2009; Lambek 2010) have nevertheless warned against over-emphasising religious rules. One concern is ethnographic, that not all Muslims live such coherent and observant religious lives. Another is theoretical, perhaps even aesthetic, that rules per se are too flat and restrictive an ethical form to be allowed to dominate our moral imaginations. The image of the rule-obsessed 'Salafi' Muslim has become an archetype (among many Muslims as well as non-Muslims) of unrealistic and oppressive sharia-mindedness, although the reality of Salafi practice would bear much closer ethnographic examination (Fadil & Fernando 2015; see e.g. Inge 2016). My own position is that rule-following is an indispensable technology of the virtuous self, as well as of social coordination, but one with its own characteristic possibilities, complexities, and limitations. The use of rules would thus benefit from more nuanced analysis than it has been given in the anthropology of ethics so far (Clarke 2015). Sharia would seem an excellent place to start, as an almost-paradigmatic example of a rule-focused approach to living well, but one that can and should be seen in comparative perspective – alongside Jewish *halakha*, Christian casuistry, Hindu law, or secular codes of civility, for example (Clarke & Corran 2021).

Conclusion

Sharia is a prominent theme in today's global public sphere, a source of norms that structure people's lives in various ways across the world and an important part of religious practice for many (but not all) Muslims. Anthropologists have contributed much to challenging the lazy and often damaging stereotypes that

surround it, in terms of documenting and analysing the very different ways in which sharia can be understood, invoked and practiced. Sharia also has much to offer as a topic for anthropological thought more widely, as an important legal tradition that challenges state-centric notions of law and as a quintessentially legalistic way of approaching moral and religious righteousness. Sharia indeed problematises and fractures the modern liberal distinction between law and ethics in ways that open up fundamental questions for social theory, as indeed for the world at large (Asad 2003; Hefner 2016).

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[1] See also Schielke, S. 2018. Islam. *Cambridge Encyclopedia of Anthropology* (available on-line: <https://www.anthroencyclopedia.com/entry/islam>).

[2] See Laidlaw, J. 2017. Ethics/morality. *Cambridge Encyclopedia of Anthropology* (available on-line: <https://www.anthroencyclopedia.com/entry/ethics-morality>).