

***Setting the Record Straight on Shari‘ah:  
An Interview with Intisar Rabb***

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Intisar Rabb is a member of the law faculty at Boston College Law School where she teaches advanced constitutional law, criminal law, and comparative and Islamic law. She is also a research affiliate at the Harvard Law School Islamic Legal Studies Program and a 2010 Carnegie Scholar. She is particularly interested in questions at the intersection of criminal justice, legislative policy, and judicial process in American law and in the law of the Middle East and the wider Muslim world.

She has served as a law clerk to the Hon. Thomas L. Ambro of the U.S. Court of Appeals, Third Circuit, and subsequently worked with members of the bench and bar in the United Kingdom as a Temple Bar Scholar through the American Inns of Court. Rabb has traveled for research to Egypt, Iran, Syria, and elsewhere.

**Sally Steenland: Shari‘ah has been in the news these past few months as states like Oklahoma have passed laws banning Shari‘ah and other states are proposing similar laws. Most people, however, don't actually know what Shari‘ah is. Can you tell us what Shari‘ah is—and what it is not?**

**Intisar Rabb:** Shari‘ah is the ideal law of God according to Islam. Muslims believe that the Islamic legal system is one that aims toward ideals of justice, fairness, and the good life. Shari‘ah has tremendous diversity, as jurists and learned scholars figure out and articulate what that law is. Historically, Shari‘ah served as a means for political dissent against arbitrary rule. It is not a monolithic doctrine of violence, as has been characterized in the recently introduced Tennessee bill that would criminalize practices of Shari‘ah.

**S: Are there similarities between Shari‘ah and religious practices in Christianity or Judaism?**

**I:** Yes. Shari‘ah historically was a broad system that encompassed ritual laws, so in some ways it is like Jewish law that has rules for how to pray, how to make ablution before prayers—that sort of thing. There are also broader principles that Shari‘ah tries to embody, such as justice and fairness.

**S: So Christians might practice their faith by tithing—giving money to their church. They might pray before meals. They might observe certain religious holidays. They might not shop on Sunday. But they still obey local laws, federal laws, and the Constitution. For Muslim Americans, what are some ways they observe Shari‘ah?**

**I:** The examples you gave are parallel to the practice of Shari‘ah in daily life. There are certain tenets of Islam that require Muslims who choose to adhere to it to give to charity, to pray, to attend the mosque, to fast during the month of Ramadan. These are some examples of how Muslims fulfill religious obligations.

There are social obligations as well. I like to point to an organization in Chicago—the Inner City Muslim Action Network—that says it is inspired by Islamic precepts to give back to the local community, to make sure that the poor, needy, and disenfranchised in one's community are taken care of. That is an example of the practice of Shari'ah in America.

A final example involves areas where Muslims are concerned about private affairs, such as marriage laws. Just as Christians have weddings in a church, Muslims often have weddings in a mosque or some other venue presided over by an imam, and the marriage is also solemnized by the state. There is a religious aspect and a state aspect to a wedding ceremony.

**S: What do you say to critics who claim that Shari'ah is a threat to democracy and that we need laws forbidding it so that Shari'ah doesn't take over America? Also, can you discuss how religious codes and the U.S. legal system can live side by side?**

**I:** As you know, I teach both American law and Islamic law in an American law school, so I am very much attuned to seeing issues of religion in terms of American federal and state laws. The First Amendment affirms the free exercise or practice of religion and at the same time forbids the establishment of religion by government.

These twin clauses of free exercise and nonestablishment allow a wide array of religious practice in America—Islam being one of them. This has been part of the fabric of American religious and civic life since our founding. In fact, Muslims have been part of our country since before its founding, as many were brought to this country as slaves.

We have never had a threat to our democracy from the long-time religious practices of Muslims in America. I think in part that stems from the nature of Muslim religious practice in this country—it is more of a private religious matter than a very public iteration. It also speaks to the strength and flexibility of our laws, both state and federal, that continuously affirm religion as a value. We want to encourage its free practice while also not establishing religion in any governmental sense.

**S: You say that Muslim Americans have been in this country for hundreds of years, which means that people have been practicing their faith, including Shari'ah, for a long time. This is not a new thing. Why do you think it's getting attention now?**

**I:** In a word, I would say politics. Leading up to the midterm elections in November 2010, there was the mosque controversy in New York and the specter of Muslims taking over. We saw an anti-Shari'ah law in Oklahoma. The anti-Shari'ah bill in Tennessee goes a lot further. In my view a lot of it had to do with the politics of equating Shari'ah with Muslims, with terrorism, with national security, and with an attempt by some, especially on the right, to rally support around a wedge issue.

It can strike some sensitive chords because we have had horrible tragic events happen to us. With the events of 9/11, with the wars in the Middle East that raise the specter of Islam as a negative phenomenon—playing on those fears is being used 10 years after the attacks.

**S: You mentioned the anti-Shari'ah law that was introduced in Tennessee. My understanding is that it goes further than the Oklahoma ban and that in Tennessee it**

**would be a felony to practice Shari‘ah, which means it would be a felony to pray, to give money to charity, to fast. Is that correct? And if so, would it be a felony for everybody to pray, or does the Tennessee law single out Muslims? Does it say that Christians and Jews can pray and give money to charity and Muslims cannot?**

**I:** According to the draft text I have seen of the Tennessee bill, it would be a felony for Muslims to perform everyday religious practices like praying, giving to charity, or fasting because they would be defined as banned Shari‘ah practices. That is clearly unconstitutional because it violates the religious free exercise clause of the First Amendment and is a violation of equal protection laws.

There may be times that we as a state want to limit some aspects of the private practice of Islamic law. A California court, for example, ruled that allowing women to take a certain sum of money upon divorce, as is typical in Islamic marriage contracts, was against the state's policy of forbidding profiteering from divorce. Other courts have found differently on that issue. And so there may be times when the issue arises as to whether Islamic legal practices conflict with public policy, and then the courts will resolve these issues and they will be adhered to, as they were in the California case. But to issue a blanket ban on otherwise lawful and wholly permissible and civically valuable religious practices is what the Tennessee law proposes to do and is unconstitutional.

**S: You gave the example of California courts and divorce. Do courts get involved with the religious practices and laws of other faiths, where teachings regarding something like divorce may bump into civil law?**

**I:** Yes. Law courts, when presented with an issue, whether it comes from a religious contract or a secular private contract that seems to conflict with public policy—then, yes, law courts adjudicate those issues. They could come from Judaism, Christianity, Islam, or other religions. Courts are seeking to make sure that state policy is the supreme law of the land. Typically, matters such as marriage and divorce proceed informally. It is only in the rare instance that the matter goes to court. And then judges will adjudicate matters in reference to American law. So there is no threat that Shari‘ah, or any other religious law, will supersede the laws of the state.

**S: Let’s talk about Shari‘ah in other countries. Critics of Shari‘ah speak as if it were a monolithic punitive system that threatens to take over the United States. You have said that some Muslim-majority countries adopt Shari‘ah and some do not.**

**I:** Of all the countries that are part of the Organisation of the Islamic Conference, 26 countries make Islamic law a source of law according to their constitution. Of that number, all but five apply Shari‘ah only to matters of family and inheritance law. So the number of countries where Shari‘ah is the law of the land is extremely small. Saudi Arabia and Iran apply Islamic law most extensively.

But among other countries with Muslim majorities, there is Turkey that follows a French model of secularism. We have countries like Senegal, which doesn’t have a particular legal status for Islamic law. Then there are countries like Egypt, which has Islamic law as a part of the constitution as a source of law. In the three decades since that law was inserted in the

constitution, Egypt did not turn into an authoritarian Islamic state. It was authoritarian, but not on the basis of Islamic law. Incidentally, that clause remains with revisions to proposed amendments to the constitution. And the supreme constitutional court of Egypt has managed to work out definitions of Islamic law that come from secular judges. They do not allow religious clerics, who are not part of the state system, to define what the state law is, even when it relates to Islamic law.

**S: Religions such as Christianity and Judaism include different traditions, interpretations, and disputes about sacred texts and teachings. Do different interpretations exist within Shari‘ah as well?**

**I:** Absolutely. The \$64,000 question of the day is who gets to speak for Shari‘ah. Traditionally it was this class of educated jurists or scholars who spent a lifetime studying legal texts and theory and practice. They were much like the jurist consults of ancient Rome or the law professors in modern America. Imagine if law professors got to say what the law is. That is the equivalent of classical Muslim society as to who got to speak for Islamic law.

Even then there was a wide diversity of opinion. There is an old joke that if you put four law professors in a room and ask them a single question, you will get at least five answers. It was a lot like that. There were four major Sunni schools and three major Shia schools even in the premodern period.

Now in the modern period, there is even more diversity of opinion. Not only are these scholars saying that they have the authority to interpret Shari‘ah but other individuals are saying that they also have the right to say what Shari‘ah is. So we have some scholarly informed interpretations of Shari‘ah, based on considerable research, again like law professors. And then we have popular Islamic legal opinions that would apply to many in the Middle East, and perhaps beyond that, who decide that they can interpret what Shari‘ah is.

In addition, we have others who intentionally distort Shari‘ah to serve their political ambitions. The latter category applies to the likes of bin Laden in the Muslim context and people like Newt Gingrich in the American context. These people are clearly at the margins of the conversation. Out of 1.3 billion Muslims in the world, we hear of a handful of folks following interpretations like the one bin Laden espouses. It is newsworthy because it is rare.

**S: It sounds like you’re saying Shari‘ah is not monolithic. It is not frozen in time but is dynamic and open to different interpretations. It has popular self-appointed experts, legal experts, and religious scholars, all of whom are having their say in terms of what they think Shari‘ah is.**

**I:** Yes. There are many who claim to speak for Shari‘ah. In Islam there is no church akin to the Catholic Church. There is no pope. With so little hierarchy, you get a very diffuse, Protestant-like view of what Islamic law means in the religious lives of individual Muslims and communities.

**S: In your view, what are the consequences of misperceptions about Shari‘ah in this country?**

**I:** I think they are largely negative, with some small positive glimmers. Misinformation results in fear mongering that is used for political ends. It has resulted in profiling against ordinary American Muslims. It may have a chilling effect on the civic engagement of lawful activities like charitable giving, praying, and carrying out the religious practices of ordinary life.

The positive glimmer is that perhaps all the negative press creates some sort of interest in knowing about what Shari‘ah actually is. To the extent that misinformation about Shari‘ah encourages dialogue, discussion, and public education, I think there can be a positive outcome if we continue to educate ourselves about what Shari‘ah is and what it is not.

**S: Let’s say someone is reading this interview who would like a few facts to remember about Shari‘ah. What would they be?**

**I:** Shari‘ah represents ideals of justice, fairness, and the good life—ideals that Americans hold dear. And it is worth learning more about Shari‘ah.

**S: One last question. Can you translate the word "Shari‘ah" and tell us what it means?**

**I:** Shari‘ah literally means “the way.” The full meaning is “the way to justice that is willed by God.” The attempt to find the way is an enduring attempt for humans of all ages. The best ideals of justice are a work in progress, not a finished product.

**S: Thank you, Intisar, for talking with us. All best wishes in your work.**

**I:** Thank you.

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*Sally Steenland is Director of the [Faith and Progressive Policy Initiative](#) at the Center for American Progress.*

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