Women and Islam
Week#6

By Dr. Monia Mazigh, Fall 2017 ©
What does Sharia mean?

- In Arabic, Sharia "the path," or "a road that leads one to water."

- It refers to a set of principles that govern the moral and religious lives of Muslims.

- Sharia is divine and philosophical.
Sharia vs. Islamic Law

- For Jewish, there is Talmudic Law, or Rabbinic Law, Halakha
- For Christian, there is Christian Canon Law
- For Muslims, there is Islamic Law, Qanun
- Sharia is a methodology of life
Noah Feldman describes sharia as

- Noah Feldman is a Harvard Law professor

- "the principle of treating other people justly, of making sure that the financial system treats people fairly ... and most importantly the basic principles of Islamic fate"
"Sharia represents how practicing Muslims can best lead their daily lives in accordance with God's divine guidance"
Where does Islamic Law come from?

- Islamic law is derived from two distinct sources:
  - The Quran
  - The traditions of the Prophet: the Hadith and Sunnah. Traditions purporting to quote the Prophet are known as Hadith
What is Quran?

- Quran occupies a unique and singular status as the literal word of God transmitted by the Angel Gabriel to the Prophet Muhammad.

- Muslims believe that God warranted and promised to guard the text of the Quran from any possible alterations, revisions, deletions, or redactions.
To whom is the Quran addressed

The Quran addresses itself to the Prophet, specifically, but on other occasions the Quran speaks to all Muslims or to humanity at large. In different contexts, the Quran will address Jews or Christians or the polytheists.
What is Sunnah or Traditions?

Sunnah is broader than Hadith. It refers to the Hadith as well as to narratives purporting to describe the conduct of the Prophet and his companions in a variety of settings and contexts.
Who comes first?

- Quran and Sunnah are considered the two primary sources of Islamic theology and law
- Quran is the first source
- Sunnah of the Prophet is considered as the second most authoritative source of Islam
Difference between Quran and Sunnah

- The Quran is primarily concerned with ethics and morality: justice, equality…

- Sunnah, however, contains everything ranging from:
  - moral principles, to detailed prescriptions on various matters of personal and social conduct, to mythology and historical narratives.
Who can “practice” Islamic Law?

- The huge body of literature that embodies the Sunnah is complex and generally inaccessible to “normal” people.
- Like any legal system, the body of Islamic laws is complex and its practice is entirely reliant on the quality and training of experts, qadis.
Different schools of Islamic Law

- There are five different schools of Islamic law:
  - There are four Sunni doctrines: Hanbali, Maliki, Shafi'i and Hanafi
  - Shia doctrine: Shia Jaafari.

- The five doctrines differ in how literally they interpret the texts from which Islamic law is derived.
School of Fiqh

- Hanafi school came to predominate in the Middle East and the Indian subcontinent
- Maliki school in North, West, and Central Africa
- Shafi’i school in East Africa, the southern parts of the Arabian peninsula, Malaysia, and Indonesia
- Hanbali school in Saudi Arabia
- Shiite schools in Iran and the Shiite communities of India and East Africa
- Ibadi school in Zanzibar, Oman, and parts of Algeria.
The Eternal Law

What is customarily referred to as Islamic law is actually separated into two distinct categories:

- **Sharia**: it is the eternal, immutable, and unchanging law, or Way of truth and justice. Sharia is the ideal law as it ought to be in the Divine realm, and as such it is by definition unknown to human beings on this earth. Thus human beings must strive and struggle to realize Sharia law to the best of their abilities.
Fiqh (understanding) is the human law—it is the human attempt to reach and fulfill the eternal law as it exists in God's mind.

Fiqh, unlike Sharia, is not eternal, immutable, or unchanging. By definition, fiqh is human and therefore, subject to error, alterable, and contingent. It is like jurisprudence.

Islamic jurists issue guidance and rulings. Guidance that is considered a formal legal ruling is called a fatwa.
Make laws while respecting the Quran

- The point of the legal analysis is not to unthinkingly and blindly implement a set of technical rules, but to seek after the ultimate objectives of the Quran.
The importance of contextualizing

- The Sunnah helps in contextualizing the Quranic revelation, and also in understanding the historical framework and role of the Islamic message.

- It is not possible to simply ignore this formidable oral tradition, or focus exclusively on the Quran, without doing serious damage to the structure of the Islamic religion as a whole.
Where can we find Islamic Law?

- Importantly, what is called Islamic law is not contained in a single or few books.

- Islamic law is found in an enormous corpus of volumes that document the rulings and opinions of jurists over the span of many centuries.
What does it cover?

- Islamic law covers a broad array of topics:
  - ritual practice
  - criminal law
  - personal status
  - family law
  - Commercial
  - transactional law
  - international law
  - constitutional law.
Examples of the objectives of Islamic Law

Some examples of the ethical objective of the Quranic law:

- racial and ethnic equality
- freedom from compulsion in the conduct of human affairs
- freedom of conscience
- the right of women to own property
Corporal punishment or “hudud”

- They are part of Islamic Law
- Death penalty for murder
- Lashes for adultery
- Cutting the hands of the thieves
Muslim countries and Sharia
Myth No. 1: Sharia is "Islamic law"

- Arguments taken from Prof. Asifa Quraishi-Landes (https://www.dallasnews.com/opinion/commentary/2016/07/19/asifa-quraishi-landes-5-myths-shariah-law)

- Sharia isn't a "law" as we understand it today. It is a way of life

- Devout Muslims who embrace Sharia conceptually don't think of it as a substitute for civil law

- Fiqh distinguishes between the spiritual value of an action (how God sees it) and the worldly value of that action (how it affects others)
Myth No. 2: In Muslim countries, Sharia is the law of the land

- It is true that Islamic Law influences the legal codes in most Muslim-majority countries.

- Those codes have been shaped by a lot of things, including, most powerfully, European colonialism.

- France, England and others imposed nation-state models on nearly every Muslim-majority land, inadvertently joining the crown and the faith.

- In pre-modern Muslim lands, Fiqh authority was separate from the governing authority, or Siyasa. Colonialism centralized law with the state, a system that carried over when these countries regained independence.
Myth No. 3: Sharia is anti-woman

- Quiwamah is mentioned in Quran, however…

- Fiqh scholars agree that women have the right to orgasm during sex

- Women can fight in combat (Women fought alongside the prophet Muhammad himself)

- Fiqh can also be interpreted as pro-choice, with certain scholars positing that although abortion is forbidden, first-trimester abortions are not punishable.
Fiqh doctrine says a woman's property, held exclusively in her name, cannot be appropriated by her husband, brother or father. (For centuries, this stood in stark contrast with the property rights of women in Europe.) Muslim women in America are sometimes shocked to find that, even though they were careful to list their assets as separate, those can be considered joint assets after marriage.
Myth No. 4: Islam demands brutal punishments

- In the Quran corporal punishment are permitted, including amputation of limbs, but Fiqh restricts its application. Theft, for example, doesn't include anything stolen out of hunger or items of low value.

- Extramarital sex is also punishable in the Quran, but it comes with an extremely high evidentiary burden of proof: four eye-witnesses. It's a sin but not one that is the business of the state to punish.
Myth No. 5: Sharia is about conquest

In 2010, former House Speaker Newt Gingrich gave a speech stating: "Stealth jihadis use political, cultural, societal, religious, intellectual tools; violent jihadis use violence. ... They're both seeking to impose the same end state, which is to replace Western civilization with a radical imposition of Sharia."
The covenants in Islam

- In the Quran God commends Muslims to keep promises and uphold covenants. That includes treaties among nations and extends to individuals living under non-Muslim rule.

- Muslims have lived as minorities in non-Muslim societies since the beginning of Islam -- from Christian Abyssinia to imperial China. And Fiqh scholars have always insisted that Muslims in non-Muslim lands must obey the laws of those lands and do no harm within host countries.
Sharia in Canada?

- Sharia law is explicitly banned in Quebec. It was upheld by a unanimous vote against it in 2005 by the National Assembly of Quebec,

- While the province of Ontario allows family law disputes to be arbitrated only under Ontario law.

- Marion Boyd, former attorney general of Ontario was commissioned by Premier Dalton McGuinty to study the possibility of implementing religious arbitration in civil matters enforceable by Canadian courts

- [https://www.pardonapplications.ca/articles/sharia-law-ontario-separating-myth-fact/](https://www.pardonapplications.ca/articles/sharia-law-ontario-separating-myth-fact/)
In the United States, various states have outlawed sharia, or passed some form of ballot measure which "prohibits the states courts from considering foreign, international or religious law." As of 2014 these include Alabama, Arizona, Kansas, Louisiana, North Carolina, South Dakota and Tennessee.
Sources

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- http://www.nytimes.com/2008/03/16/magazine/16Shariah-t.html
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