

Egypt and Islamic Sharia: A Guide for the Perplexed

Egypt’s post-revolutionary environment - and, especially, its constitutional process - has touched off debates within the country and confusion outside of it regarding the role of the Islamic sharia in the emerging legal and political order. In a new Q&A, Nathan J. Brown explains what the Islamic sharia is - and is not - and how it might be interpreted in Egypt’s new political system. In explaining the complexity of the Islamic sharia, Brown warns that one of the most striking features of the debate is the flexibility of key concepts and positions. Therefore, it is far more important to understand who is to be entrusted with interpreting and applying sharia-based rules than it is to search for the precise meaning of the sharia. What is the Islamic sharia? The term “Islamic sharia” has subtly different denotations and sharply different connotations in Egypt than it often does in the United States or Europe. There is a reason, many scholars insist, that defining it as “Islamic law” (as it is often described in non-Muslim countries) is sometimes overly narrow. Sharia includes large areas of personal conduct not generally covered by legal rules in many societies (such as the regulation of prayer or ritual purity). Not only does it blend private practice, ethics, and public law, but it also includes categories such as detestable (but not prohibited) or preferred (but not required) that make ethical but little legal sense. A vaguer but more accurate



translation might be “the Islamic way of doing things.” And that is the definition accepted by many who follow sharia. Such a translation makes clear why the Islamic sharia is hard to oppose. It is one thing to question hudud punishments (for serious crimes) by claiming to wish to follow the spirit but not the letter of traditional understandings. It is something quite different to proclaim that one prefers to do things in a non-Islamic manner or that Islamic teachings have no relevance in public life. It would be as unexpected as US politicians claiming they prefer the “un-American way.” Public opinion polls on the subject provoke the same response among the broader society. Of course, the Islamic sharia is not merely the equivalent of a flag pin for a politician’s lapel; it has enormous practical and not simply symbolic content. But observers should not expect many calls to abandon the Islamic sharia in Egyptian political debates.

There is another terminological oddity that can shed some light on the connotations of the Islamic sharia: following Egyptian usage, I have been referring to “Islamic sharia”, a phrase that seems almost comically redundant in English, like referring to a “Jewish rabbi”. A non-Islamic sharia might seem to be something like a “Protestant pope”. But Egyptians will sometimes refer to other religious communities as sharias. Muslims would still regard the Islamic sharia as superior - and, indeed, as historically superseding those that came before - but they will sometimes refer to other religion’s sharias, especially, regarding their provisions for personal status law (covering marriage, divorce and inheritance). And since the Hebrew word for Jewish law is halachah (also meaning ‘way’), the idea of Jewish and, for that matter, various Christian sharias may strike some readers as odd, but reflects occasional Arabic usage. While the Islamic sharia sometimes means more than simply Islamic law, it certainly has extensive legal content. Exploration of its nature has led to over a millennium of intellectual inquiry. Business transactions, criminal punishments, inheritance and legal procedures, among many other areas, have been the subject of scholarship by those who probed religious sources to discover the ways that a community of Muslims should operate. And the Islamic sharia also provides some guidance on how violations must be treated - by compensation, penalties, or the voiding of contracts, for instance. Because of this, referring to the Islamic sharia as law is not always misleading. As with any intellectual tradition, opinions over the centuries have varied considerably about what God has required and what the earthly consequences are of violating a rule. For that reason, Muslims will sometimes take pains to distinguish between the Islamic sharia as unchanging divine guidance, and fiqh, or jurisprudence, as the fallible human effort to understand the content of that guidance. There is, in that sense, one sharia, but many different interpretations. Nor is the diverse nature of fiqh seen as a problem; it is not uncommon to hear many Muslims today cite the multiplicity of interpretations in their legal heritage as a virtue, since it shows how attempts to discover and apply the Islamic sharia naturally evolve with prevailing conditions and community needs. Ultimately, then, a call to apply or follow the Islamic sharia will have to confront the questions of which rules to apply from this rich tradition of legal and ethical speculation and - perhaps more critically - who has the authority to decide which interpretations are to be enforced. These are difficult issues, but there are surprising areas of convergence on them in Egyptian discussions. Such convergence sets the terms for debates, but it hardly resolves them. My answers are more of a guide to observers on what to watch for, rather than an attempt to advise Egyptians in any way on what choices to make or to advance some interpretations or approaches as preferable to others. After all, one of the most striking features of the debate is how flexible key concepts and positions are.

*Nathan J. Brown
from Carnegie Endowment*



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