2010

Sharia Law Poses No Threat to American Courts

Nathan B. Oman
William & Mary Law School, nboman@wm.edu

Repository Citation
https://scholarship.law.wm.edu/popular_media/227

Copyright © 2010 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/popular_media
Last month Oklahomans voted to prohibit the use of "sharia law in making judicial decisions." According to the measure's sponsor, State Rep. Rex Duncan, it was necessary as a "preemptive strike" against the sharia law that is already a "cancer upon the survivability of the UK."

Presumably, there is some danger that the Taliban's London stronghold will launch itself toward Tulsa. The reality of sharia in America is more humdrum than such hysterical rhetoric suggests.

For millions of pious American citizens, sharia has a meaning different than that conjured by Duncan. In Arabic, it literally means "a path to water in the desert," and prior to any specific rules, sharia refers to just and righteous human relationships in accordance with God's designs. Sharia thus functions in the same way that the term "gospel" does. For devout Christians, the gospel is not a complex theology but the basic revelation of God's goodness to the world.

Over the centuries Muslim jurists have expounded sharia into a detailed system of rules. In Arabic these interpretations are called not sharia but fiqh. It is in the fiqh that one finds the rules that make "sharia law" a flash point, rules such as the stoning of adulterers or the execution of apostates from Islam. It is important to realize, however, that one may be a pious Muslim and reject the application of these rules while still retaining allegiance to sharia, just as it is possible for a Catholic to affirm her belief in the Christian gospel without accepting the methods of the Spanish Inquisition.

American courts have been asked to apply sharia law in some cases. Two parties may agree by contract to some provision of fiqh. In addition, under legal principles dating to the founding, American courts routinely apply the law of foreign countries to disputes arising out of events in those countries. Some countries use portions of the fiqh in their legal code. Hence, for example, one federal court has applied Islamic law limiting the charging of interest to a contract between two American companies for the construction of a facility in Saudi Arabia.

Our law already has sensible rules governing such cases. Generally, we let people write their own contracts, but there are limits. Just as a contract for murder or prostitution will not be enforced, a contract calling for death by stoning in the event of apostasy from Islam would not be enforced. Likewise, while courts routinely apply foreign law to cases arising from events abroad, they will not apply such law when it violates basic American values. Hence, for example, American courts have repeatedly refused to recognize the attempts of Muslim husbands to use talaq — a particularly pro-husband form of Islamic divorce — performed in Muslim countries to circumvent American divorce proceedings.

In the end, Oklahoma's law needlessly attacks a key part of Islamic spirituality. For Muslims, sharia is both richer and less threatening than the political demagogues suggest. Oklahoma's action is unnecessary because our courts long ago found a sensible way of accommodating the laws of other nations without compromising basic American values. A U.S. district court in Oklahoma has temporarily stayed the application of the new law. Whatever the ultimate outcome of that lawsuit, however, Americans would do well to take a less hysterical approach to the humdrum reality of sharia law in American courts.
Nathan B. Oman is an associate professor of law at The College of William & Mary in Virginia.

Copyright 2013, Deseret News Publishing Company