

Sharia, Family, and Democracy in Nigeria and Beyond

Religious and Legal Norms in Pluralistic Democratic States

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About

by nigeriasharia - Thursday, October 28, 2010

<http://blogs.law.emory.edu/nigeriasharia/>



PROJECT CONCLUDED JUNE 2012. This blog and resource page was part of a larger project, which ran from 2010-2012 to examine how Western democracies with Muslim minorities can have a productive conversation with Muslim countries that implemented Sharia, particularly on issues

of marriage and family law.



[The project was funded by the Social Science Research Council and led by principal investigators Abdullahi A. An-Na'im, M. Christian Green, and John Witte, Jr., of the Center for the Study of Law and Religion and the Center for International and](#)

[Comparative Law at Emory Law School .](#)



[Emory Law School is also home to Professor An-Na'im's Future of Shari'a Project.](#)

The core question of the project was whether there can be a responsible jurisdictional pluralism of religious and legal norms in domestic relations that respects both the religious freedom concerns of religious communities and rule of law concerns of the state.

With its nearly even division between Muslims and Christians and the implementation of Sharia in the Northern States beginning in 1999, Nigeria has become a focal point for these debates in recent years. The implementation of Sharia in Nigeria raised important questions concerning plural legal and religious norms of marriage and family, the religious identity and inter-communal relations of Muslims and Christians, and the possibility of a moderate form of Sharia existing in a pluralistic, democratic state. When the project began in 2010 these questions were occurring in the political context of the Nigeria presidential elections of 2011 and the end of a decade of inter-communal violence in Nigeria. The Nigerian Sharia debates also raised important concerns about the implications of Sharia for the rights of Nigerian women and children.

At the same time, even as the project was getting underway, there was a sense that what happened in Nigeria might have implications far beyond. The Sharia debate entered the political lexicon of the United States in 2010 and became a prominent feature in the buildup to the 2012 presidential election. During the two years of the project, laws were proposed in dozens of states to reject the application of Sharia and other "foreign law" in the U.S. By the end of the project, nations in Africa, Europe, Asia, the Americas, and Oceania were all engaged in discussions of their own about the permissibility and coexistence of plural norms and forms of marriage and family, particularly under Sharia. The 2010 constitutional referendum in Kenya featured considerable discussion about the role of Sharia courts. South Africa and other nations debate the extent and effects of customary law to indigenous and tribal groups based on ethnicity and culture. A number of European nations continued to struggle with how to recognize the religious and cultural identities and family patterns of their Muslim immigrant populations. While some

feared the arrival of Sharia on their shores, others, most notably the Anglican Archbishop of Canterbury Rowan Williams in 2008, suggested that accommodation of "juridical pluralism" in family law may be inevitable.

In this project, a diverse group of scholars in law, religion, and the social sciences from around the world examined the possibilities for a peaceful reconciliation to the ongoing contestation over Sharia in Nigeria in the area of family law--and the lessons that Sharia in Nigeria may hold for other nations and legal systems. This website archives the discussion that emerged through the project blog, a symposium law review issue, and journalistic and public policy coverage of the global Sharia debate from 2010-2012. Here you will find archives and links to all of these resources, along with information on key organizations that participated in the Nigerian Sharia debate, a collection of resources and readings on the global Sharia debate, and a comprehensive archive of international news coverage broken down by region.

Blog

by nigeriasharia - Friday, March 29, 2013

<http://blogs.law.emory.edu/nigeriasharia/blog/>

Moderate Sharia in the Secular State?

by nigeriasharia - Friday, November 05, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/11/05/moderate-sharia-in-the-secular-state/>

In his recent New York Times commentary, "[Serving Two Masters: Shariah Law and the Secular State.](#)" Professor Stanley Fish previewed the essays collected in the forthcoming volume [Shariah in the West](#), edited by Professors Rex Ahdar and Nicholas Aroney. Fish summarizes the volume's animating question with a quote from one of the volume's contributors, anthropologist Erich Kolig: "How far can liberal democracy go, both in accommodating minority groups in public policy, and, more profoundly, in granting official legal recognition to their beliefs, customs, practices and worldviews, especially when minority religious conduct and values are not congenial to the majority?"

Fish predicts that such accommodation will be less than satisfactory to any religious minority whose faith operates as "comprehensive doctrines" in the Rawlsian sense or, quoting Abdullahi An-Na'im, "encompasses all aspects of public and private law, hygiene, and even courtesy and good manners." The implication is that such comprehensive religions are incapable of meeting such accommodation by the secular state in the middle, so to speak, by any moderation of their scope and tenets.

And yet, a *New York Times* [article](#) just three years ago suggested that Nigeria was home to a more moderate type of shari'a than exists in other parts of the world, having settled into a "distinctively Nigerian compromise between the dictates of faith and the chaotic realities of modern life in an impoverished, developing nation." In his afterword to the Ahdar and Aroney volume, John Witte suggests that such moderation is both likely and necessary for shari'a in the secular state. Is Nigerian shari'a a more moderate form of shari'a? If so, how does that sit with the secular state or fit with the continuing narratives of inter-religious and inter-communal violence that continue to bedevil the Nigeria's fragile democracy?

Sharia Cannot be Enforced as the Law of the State, Part I

by [abdullahiahmedannaim](#) - Thursday, November 11, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/11/11/sharia-cannot-be-enforced-as-the-law-of-the-state-part-i-a-general-framework/>

EDITOR'S NOTE: This is the first of three related posts that will be uploaded over the coming week. The second and third posts, containing Professor An-Na'im's argument from sharia and conclusions on the topic will be posted on November 15 and November 18. For those who would like to read the entire article from which these posts are excerpted, the complete article is accessible on this site at this [link](#). Readers interested in a more extended discussion of these topics may wish to read Professor An-Na'im's book, [Islam and the Secular State](#).

Part I: A General Framework

The position I am advancing in my contribution to this project is that Sharia (the normative system of Islam) cannot, and not only should not, be enforced as the law of the state, even where Muslims constitute the predominant majority of the population. This view is premised on the religious nature of Sharia itself, as I will briefly explain below, but also indicated by the nature of the state where all Muslims live today. I will begin in this brief piece with a statement of the general framework of the relevance of religious and customary norms to modern legal systems, and then present my Islamic argument against the fallacy that Sharia can ever be enforced as state law.

I should note in relation to the broader concept and scope of this project on religion, family and democracy that the argument I am presenting here is probably applicable to other religious and customary law traditions. However, I will limit my remarks here to the relationship between Sharia and state law in particular not only because this is the focus of my own work, but also as a matter on which I hope to make a difference as a Muslim from Sudan who has closely witnessed the tragic consequences of confusion among present-day Muslims on this question. My aim is therefore to address this specific question for its relevance to Muslims throughout the world, including Nigeria which is the primary case study for this project. I also hope, however, that what I have to say about Sharia and state law can be helpful in clarifying the relationship between religious and customary law in general and state law.

The premise of the general framework of the relevance of Sharia (and other religious or customary norms) to family law is that the law and administration of justice of any state should reflect the values, priority concerns and interests of the population. In that process of self-governance, the democratic principle indicates that the political will of the majority of the population should prevail in such matters, subject to the constitutional rights of the minority or minorities. Religious, ethnic and other communities have the right to organize and act collectively in contributing to the formulation and implementation of public policy and legislation through the democratic political process, but such collective action should not have a monopoly or veto power over such matters, even when acting in the name of the predominant majority of the population. The importance of this limitation of the will of the majority with the rights of the minority is in converse relationship to the predominance of the majority, that is, the larger and stronger the majority the more important it is to subject its political will to the constitutional rights of the minority or minorities. Another aspect of this approach is that notions of majority and minority are not

only fluid, contingent, and contested, but also relative to structural and contextual power relations. Notions of majority and minority are ambiguous because we are all members of the majority of our societies in some respects, and members of minorities in other respects. I may be in the majority in ethnic or religious terms, but in the minority in political terms, or vice versa. A numerical minority can be a political majority, as was clearly seen in the case of Apartheid South Africa, and is probably true in many parts of the worlds today, though in more subtle or ambiguous ways.

These and other corollaries of the principle of majority rule subject to rights of minorities are so foundational for social and political organization in all human societies, everywhere, that none of us can ever “get his or her own way” in matters of public policy and legislation. We all have to live with policies and laws we oppose, even when adopted in our collective name, until we can change them through the same democratic political process that is made possible by constitutional limitations on the prevalent political will of the day. The basic moral and political justification of majority rule, I believe, is the possibility for the political minority of today to become the political majority of tomorrow. For that to be a plausible possibility for minorities to engage in the legitimate and peaceful political process, instead of resorting to violent rebellion or submitting to dehumanizing apathy and subordination, the constitutional rights of all citizens must be equally vigorously protected by and for all of us, because each of us do need these rights for ourselves and our communities, even when that may seem unnecessary for those in power at the time. The basic principle to emphasize here is that the more vulnerable and politically or socially marginalized a person or group is, the more deserving of the protection of constitutional rights against the “democratic” tyranny of the majority.

Another aspect of my approach is that the term “normative pluralism” is more appropriate than legal/judicial pluralism in reflecting the reality of normative diversity, with a moral and political commitment to respecting that diversity, while preserving the integrity of the uniformity of state legal systems. The term “religious” includes native/traditional religions and customary normative systems. My focus on family law is due to the fact that it is probably the most widely practiced or proposed field of religious/customary law for application through state legal systems. Accordingly, the term “law” here refers to rules governing family relations under state legal systems, as distinguished from other normative systems in a broader sense. In other words, when religious or customary norms are enforced as state law, they are no longer religious or customary. This means that the religious or customary rationale of the norms should not be invoked to lend additional authority to what is really an integral part of secular state law. In this light, I would challenge invoking religious or customary authority to exempt family law from constitutional and human rights limitations on all aspects of state law.

This point is important for the distinction I am drawing between state law and religious or customary normative systems as two different and separate types of systems that should not be confused by calling all of them “law”. Norms regulating family relations can be religious or customary as long as they are not enforced through state law, but once so enforced they become simply state law rules, regardless of their perceived religious or customary sources. This is not to suggest or imply that state law is superior or more effective than other normative systems. On the contrary, religious and customary norms may often be more effective than state law in shaping the behavior of believers or members of a community. Rather, the point is that since the source and authority of state law are different from that of religious normative systems, it is confusing to use the term “law” for both types of normative systems. It seems that preference for the term “law” is to indicate the sense of binding norms that seek to regulate human behavior and organize social institutions. But this purpose can be realized by using the term “normative

system”, as rules that are binding and authoritative in a *different manner* than state law, without confusing normative and legal systems.

Finally on this general framework and approach, there are clear overlaps between state law and other normative systems of any society, but the two types of systems should be distinguished from each in order to better regulate their dialectic relations. For instance, religious norms can enhance the legitimacy and efficacy of state law which, in turn, may facilitate compliance with religious and customary norms among their respective communities. At the same time, however, state law may need to intervene to bring community-based compliance into conformity with constitutional and human rights standards. For the purposes of such regulation and mediation of competing normative claims, the state may seek to influence social change by facilitating internal cultural transformation, as I will briefly explain later in Part III of this posting, but should not attempt to achieve its legitimate objectives coercively. The less normative change is intrusive and more reliant on internal agents of social change the more effective and sustainable will the outcome be.

Sharia Cannot be Enforced as the Law of the State, Part II

by [abdullahiahmedannaim](#) - Thursday, November 11, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/11/11/137/>

EDITOR'S NOTE: This is the second of three related posts. For those who would like to read the entire article from which these posts are excerpted, the complete article is accessible on this site at this [link](#). Readers interested in a more extended discussion of these topics may wish to read Professor An-Na'im's book, [Islam and the Secular State](#).

Part II: The Argument from Sharia

I should first emphasize that although my argument focuses on current notions of the state and state law as globally applicable ideas that have spread far beyond their European origins, I would emphasize the distinct historical and contextual workings of these institutions throughout the world. Subject to historical and contextual factors, all human societies today live under the same basic model of the centralized, bureaucratic, hierarchical, territorially bounded so-called “nation states”. This does not mean that these states are working well everywhere, or that they must operate in the same way in every setting, but the basic model is the same, as practiced in the historical territorial, and demographic context of each country. It is not possible to evaluate or discuss here the distinctive ways in which state institutions work and evolve in various settings, but the need for such analysis is fully acknowledged.

My general argument is that the nature of Sharia as a religious normative system, on the one hand, and state law as a secular political institution, on the other, requires clear differentiation between the two in theory and separation in practice. However, the methodological and normative similarities between Sharia and state law, and the fact that they both seek to regulate human behavior in the same social space, raise possibilities of interaction and cross-fertilization between the two. Methodologically, though Sharia evolved among independent Muslim scholars and their communities, outside state institution, the methods of interpretation the Quran and Sunna – traditions- of the Prophet used by those scholars are similar to modern techniques of textual construction and reasoning by analogy and precedent. (Hallaq 2009, 100-124) Normative similarities between Sharia and state law can be seen in such fields as property, contracts, and civil liability for damage to or misappropriation of property. (Hallaq 2009, 239-245, 296-306) It is therefore not difficult to envision a dynamic process of mutual interaction between Sharia and state law principles through what I call ‘civic reason,’ as I will discuss further below. As a result of such interactions, state law can be legitimized by Sharia among religious believers, while ways in which Muslims perceive and practice the social aspects of Sharia can be influenced by constitutional and human rights norms.

For that possibility of positive interaction, however, it must be clear that Sharia as such cannot be enforced as state law and remain religiously authoritative for Muslims for the following reasons: First, whatever the state enforces is bound to be the view of the ruling elite of the rules of Sharia they choose to apply and never Sharia itself because any human understanding of Sharia is only human and cannot be divine or religious as such. Second, since the ruling elite will have to select from among equally legitimate competing views of the rules of Sharia, as interpreted by Muslim scholars over time, state

officials would be coercively enforcing their choice upon the Muslim population, regardless of what those Muslims believe Sharia to be on the issue at hand. For instance, Wahabi Sunnis of Saudi Arabia are imposing their views on Shia citizens of the country who believe the Wahabi view to be heretical. Imami Shia rulers of Iran are imposing their views of Sharia on citizens of Iran who disagree with the official state ideology of the state. Third, whatever is being enforced through state law and administration of justice is authorized by the coercive power of the state, and not the religious validity of the rule. Since it is impossible to enforce the totality of Sharia, according to all possible interpretations, some aspects would be enforced because the state decreed that, while others will remain unenforced because the state so determined.

It is therefore clear that the outcome of state enforcement will always be secular, not religious, regardless of claims of the state in some Muslim-majority countries like Iran or Saudi Arabia that it is enforcing Sharia as state law. (An-Na'im 2008, pp. 30-36) Muslim citizens may influence formulation of state law and public policy from a Sharia perspective if they can summon sufficient political support of such propositions through the democratic political process, but that does not mean that the norms so incorporated into state law are still religious norms. Sharia norms can be one of the normative sources from which state law is derived but not cannot as such constitute state law because Muslims believed them to be Sharia.

This view does not dispute the *religious* authority of Sharia, which must necessarily exist outside the framework of the state. As a Muslim, I believe Sharia is always relevant and binding on Muslims, but only as each of us believes it to be and not as declared and coercively enforced by the state. For any act to be religiously valid, the individual believer must comply voluntarily, with the necessary pious intent (*nya*), and without violating the rights of others. This focus on the individual believer is integral to Islam. (The Quran, 6:164; 17:15; 35:18; 39:7; 52:21; 74:38; Taha 1987, 62-77) Still, principles of Sharia should be relevant to the public discourse, provided one can make the argument for that through what I call 'civic reason' and not simply by assertions of what one believes to be the will of God. By civic reason I mean that the rationale and purpose of public policy or legislation is based on the sort of reasoning that the generality of citizens can accept or reject, which cannot happen when such matters are demanded as categorical religious mandate. The process of civic reason also requires conformity with constitutional and human rights standards in the adoption and implementation of public policy and legislation. All citizens must be able to make their own legislative proposal or object to what others are proposing through public and fully inclusive public debate, without having to challenge each others' religious convictions. Moreover, by its nature and rationale, civic reason is not limited to Sharia principles and can apply to other religious normative systems. Civic reason and reasoning, not personal beliefs and motivation, are necessary whether Muslims or members of any other religion or tradition, constitute the majority or the minority of the population of the state. (An-Na'im 2008, 92-101)

I am suggesting that these two types of relationships can exist between Sharia and state law when the two systems apply to the same human subjects within the same space and time. It may therefore be helpful to see Sharia and state law as complementary but different normative systems, instead of requiring either to conform to the nature and role of the other. In other words, this dialectic relationship is premised on a distinction (not dichotomy) between Sharia and state law to avoid confusing the function, operation, and nature of outcomes when the two systems co-exist in the same space and apply to the same human subjects. If state law incorporates a principle of Sharia for coercive enforcement by state courts and executive powers, the outcome is a matter of state law and not Sharia because it will not have the

religious significance of compliance with a religious obligation. Conversely, compliance with Sharia cannot provide legal justification for violating state law. For Sharia and state law to be complementary, instead of being mutually antagonistic, each system must operate on its own terms and within its field of competence and authority.

References:

An-Na'im, Abdullahi Ahmed, 2008 An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard UP).

Hallaq, Wael B., 2009, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press).

Taha, Mahmoud Mohamed, 1987, *The Second Message of Islam* (Syracuse, NY: Syracuse University Press).

Sharia Cannot be Enforced as the Law of the State, Part III

by **abdullahiahmedannaim** - Thursday, November 11, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/11/11/sharia-cannot-be-enforced-as-the-law-of-the-state/>

EDITOR'S NOTE: This is the last of three related posts. For those who would like to read the entire article from which these posts are excerpted, the complete article is accessible on this site at this [link](#). Readers interested in a more extended discussion of these topics may wish to read Professor An-Na'im's book, *Islam and the Secular State*.

Part III: Sharia and Religious/Cultural Self-determination

As I have argued in the preceding parts of this posting, Sharia principles cannot be state law as such because of the distinction, not dichotomy or hierarchy, between Sharia and state law. This true, I believe, whether Muslims constitute the predominant majority or minority of the population because the reason is conceptual, not only political. Sharia cannot be state law because of the religious nature of Sharia, which is inherently and permanently different from state law, which does not claim divine authority. Other conceptual reasons include the unavoidable need to select among equally legitimate views of Sharia for the purposes of determining positive state law. The need for the state to definitively set the law and coercively enforce it on the totality of the population subject to its jurisdiction is inconsistent with the religious nature of Sharia because no human being can decide religious truth for human beings. At the same time, however, Muslims can exercise their fundamental democratic right to religious/cultural self-determination through the complementary relationship between Sharia and state. I will now briefly clarify how this might happen in practice.

In my view, there are three main elements to this framework of religious/cultural self-determination for Muslims:

- (1) Private social practice of Sharia within the framework of state law and its constitutional safeguards;
- (2) Consideration of Sharia as normative source for state law through civic reason in the democratic political process, without claiming that Sharia can be state law as such;
- (3) Religious discourse and cultural transformation to mediate tensions between historical interpretations of Sharia and modern constitutional and human rights principles.

On the first count, Muslims can in fact behave in conformity with the vast majority of Sharia principles without coming into conflict with state law in a democratic society. For example, Muslims can refrain from taking or charging interest on loans (*riba*), prohibited by Sharia, and can establish financial institutions that enable them to do that, within the framework of existing state law that permits charging interest. Muslims can also observe Sharia requirements about marriage and divorce voluntarily without having those requirements imposed on all by state law. Space does not permit further elaboration on this,

but whatever conflicts or tensions that may exist between Sharia and state law can be mediated through the second two approaches.

The premise of the second count is that, as noted earlier, the law and administration of justice of any state should reflect the ethical values, priorities and interests of the majority, subject to the constitutional rights of the minority or minorities, however small, including members of the Muslim majority who disagree with other Muslims. Muslims and other religious or cultural communities have the right to organize to act collectively in contributing to the formulation and implementation of public policy and legislation through civic reason and the political process, provided they do not claim to have a monopoly or veto power over such matters, even when acting in the name of the predominant majority of the population.

For instance, Muslims can lobby for a legal ban on charging interest if they can persuade other citizens of the economic or social benefits of such a ban by giving reasons that all can debate freely, rather than asserting their own religious conviction or cultural affiliation as categorical justification. Muslims can also propose legislation to provide for Sharia principles of marriage and divorce, through the same process and subject to constitutional and human rights safeguards. This possibility does not mean that Sharia as such can co-exist as a parallel legal system competing with state law of any country, or that it retains its religious authority when incorporated into state law. In view of the centralized, bureaucratic, and coercive nature of the modern 'territorial' state, the secular legislative organs of the state must have exclusive monopoly on enacting state law, and secular judicial administrative organs must also have exclusive authority to interpret and apply state law.

The third and critically important approach to religious/cultural self-determination for Muslims, whether they are the majority or minority of the population of the state where they live, is through Islamic discourse on the interpretation of Sharia in the modern context. Since what Muslims uphold as Sharia today was the product of human interpretation of the Quran and Sunna of the Prophet, as noted earlier, that can be modified through re-interpretation of the same sources. The outcome would be as legitimate from an Islamic point of view as any earlier interpretation of those principles if Muslims accept them as such. What I call inter-generational consensus was the only manner in which any principle of Sharia came to be established in the past, and remains the valid today. There is possibility of a human institution that can "declare or amend Islamic doctrine" on behalf of the general Muslim population of the world. (An-Na'im 2008, 12-15) It is not possible to discuss here the current and future agenda, methodologies and processes of such re-interpretation, (An-Na'im 1990) but the purpose here is to explore ways of addressing problematic aspects of historical interpretations of Sharia regarding, for example, the rights of women and freedom of religion. For instance, there is no question that Sharia allows men to take more than one wife, but whether it permits polygamy today or not has been a matter of debate among Muslims scholars and opinion leaders since the 19th century. There is also heated debate about the presumed right of a Muslim husband to repudiate his wife unilaterally and without having to show good cause. Resolving such issues through public debate among Muslims will enhance the legitimacy of state laws prohibiting polygamy and requiring equality between men and women in matters of divorce and its legal consequences.

It must be emphasized in conclusion, however, that none of these approaches would permit Muslims to opt out of the application of secular state law, or have Sharia principles enacted as state law except through the regular democratic process and subject to constitutional safeguards. Neither would Muslims be entitled to plead Sharia as justification of violation of state law. Rather, the object is to enable Muslims to exercise their right to religious/cultural self-determination within the framework of state law

and its constitutional safeguards, like any other religious/cultural community. The same or equivalent approaches are equally available to other religious/cultural communities to exercise their right to self-determination within the same framework and subject to the same safeguards.

References:

An-Na'im, Abdullahi Ahmed, 1990, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse University Press).

An-Na'im, Abdullahi Ahmed, 2008 An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari`a* (Harvard UP).

Recent Forum on Nigeria: Religion, Family, and the Weakened State

by nigeriasharia - Friday, December 03, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/12/03/recent-forum-on-nigeria-religion-family-and-the-weakened-state/>

My colleague, [Erik Owens](#), Associate Director of the [Boisi Center for Religion and Public Life](#) at Boston College, has a new posting in the *Huffington Post* describing a recent forum on Nigeria that he and I attended with a packed crowd at the annual meeting of the [American Academy of Religion](#) in Atlanta.

The forum was sponsored by the [Council on Foreign Relations](#) at its first-ever event at the AAR. Here are some excerpts from Owens' article, accessible in full at this [link](#):

"In fact, at a recent forum to discuss religious conflict in Nigeria, two experts with deep ties to the country -- a Nigerian scholar of religion and an American diplomat -- agreed that the country's problems stem less from religious antagonism than religious opportunism enabled by a weak state. The forum, held in late October during the American Academy of Religion's annual meeting, was sponsored by the [Religion and Foreign Policy Initiative of the Council on Foreign Relations](#). [Jacob Olupona](#), professor of African religions at Harvard Divinity School, bemoaned his native country's failure to establish a sense of national identity that could help to bridge Nigerians' diverse religious, ethnic, and linguistic identities. Unlike Tanzania, whose successful social policies have created a strong national identity, "Nigeria has failed at nation-building," Olupona said, in part because it has no social security programs to bind citizens together. As evidence, former U.S. Ambassador to Nigeria and current CFR Senior Fellow [John Campbell](#) cited a recent poll in which **92% of Nigerian Muslims claimed to identify themselves most strongly with their religion, then with their family/ethnic group, and lastly with their country. (Virtually the same proportion, 87%, of Nigerian Christians said the same.)**

So what should be done about this strong sectarian impulse? Olupona began with a reminder that the "religion" at work in this context is a social and cultural phenomenon, not simply a quest for the sacred or transcendent. He recalled that many institutions such as community centers or hospitals that were once simply a part of a village or neighborhood have been rebranded as Muslim or Christian institutions, and that religious justifications were frequently given for actions that also had ethnic and economic causes. But despite the current tension between Christians and Muslims, Olupona counseled the Nigerian government to stay out of the process of interfaith dialogue -- at least until it has worked on more basic issues to improve access to healthcare and clean water, and to reduce poverty.

Ambassador Campbell, author of the new book [Nigeria: Dancing on the Brink](#), agreed that the weakness of the Nigerian state was a crucial factor in the recent outbreaks of violence that combined religious, ethnic and economic grievances. But while American policymakers push for a "clean" presidential election in January as a step toward greater democratic legitimacy, he emphasized that the United States has remarkably little leverage over Nigeria. As the world's sixth-largest oil

exporter and a leader in the African Union, Nigeria is the United States' most important strategic partner in West Africa -- and their government does not want us involved in monitoring its elections.

As we watch the events unfold in Africa, keep a careful eye on the shifting national and religious identities -- and the rhetoric that masks and reveals them -- in Sudan and Nigeria alike. Weak states are dangerous places for citizens, not least because peaceful transitions there are all-too-frequently elusive."

By Owens' account, both Campbell and Olupona attribute Nigeria's troubles to its [weak state](#), rather than to religious or ethnic strife *per se*. Campbell makes an interesting argument in his excellent new book, *Nigeria: Dancing on the Brink*, that Nigerians' reaction to state weakness has been **"to migrate internally in to the worlds of family, ethnic group and religion."** (p. 109) Indeed, he concludes, **"Family, ethnic, and religious identities** are trumping a sense of national allegiance in large part because the state no longer address the basic concerns and needs of the people." (p. 138) This would seem to make inquiry into **Shari'a, family, and democracy** all the more timely and compelling.

Additional Note on Recommended Reading: I have been made aware of another new book that is relevant to our inquiry. This is [Shamil Jeppie, Ebrahim Moosa, and Richard Roberts eds., *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*\(Amsterdam University Press, July 15, 2010\)](#). It sounds like essential reading for this topic.

A Sister Blog Debuts! Contending Modernities

by nigeriasharia - Tuesday, November 30, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/11/30/a-sister-blog-debuts-contending-modernities/>

Some of the contributors and subscribers to our Nigeria Sharia blog may have an interest in a sister blog (and associated research project) recently unveiled just before the Thanksgiving Holiday at a conference in New York. The *Contending Modernities: Catholic, Modern, Secular* project is being led by my Kroc Institute colleagues, Scott Appleby and Patrick Mason. The blog is accessible at <http://blogs.nd.edu/contendingmodernities/> Here is a description from the project's home page:

“*Contending Modernities* recognizes that the world's problems in the 21st century — from mass violence and economic injustice to government corruption, environmental degradation, and human rights abuses — will not be solved by secular organizations acting independently of religious communities. The project seeks to develop a rich and nuanced understanding of how religious and secular institutions and individuals interact, for good and ill.

Designed to unfold in stages over several years, *Contending Modernities* will bring together scholars, educators, and practitioners to pursue pure research that will be applied as participants share findings with religious officials, political and business leaders, nongovernmental and governmental organizations, and the media. The project will begin with a focus on the interaction among the world's two largest religious communities (Catholics and Muslims) as well as secular people and institutions, and eventually will expand to include all major religions.

The project's research agenda will inform discussion of sensitive but crucial contemporary issues such as: the proper role of religiously inspired political parties and social movements; debates about gender and the rights of women and children; the conflict between claims to exclusive truth and respect for religious pluralism; bioethical issues ranging from birth control to abortion to genetic engineering; and the tension between religious principles of social justice and the seemingly value-neutral dynamics of a global market economy.”

The project and blog are highly relevant to our inquiry into plural legal and religious norms and how these relate to larger questions of how religious groups and the secular state negotiate modernity--particularly in the context of the family. Stay tuned for cross-postings between our blogs.

Sharia in America?: Rhetoric and Reality

by nigeriasharia - Saturday, December 11, 2010

<http://blogs.law.emory.edu/nigeriasharia/2010/12/11/sharia-in-america-rhetoric-and-reality/>

Much of the recent fuss about “creeping Shari'a” in some circles, including the recent referendum on State Question No. 755, the "Save Our State Amendment" to the Oklahoma Constitution, points to a [decision](#) that was handed down in a New Jersey trial court last spring. The case features descriptions of particularly egregious domestic abuse. The trial court decision in favor of the husband was subsequently reversed on appeal.

As constitutional law scholar, Garrett Epps [describes](#) it the Oklahoma response to the New Jersey decision:

Proponents of 755 say the danger really is imminent. They point to a New Jersey case called *S.D. v. M.J.R.* In that case, a trial judge refused to issue a restraining order against a Moroccan husband who had repeatedly raped his wife. The judge decided that the man "was operating under his belief that it is, as the husband, his desire to have sex when and whether we wanted to, was something that was consistent with his practices." Thus, the husband lacked "criminal intent."

The Appellate Division of the New Jersey Superior Court reversed the decision. It applied Supreme Court precedents showing that religious belief of any kind does not excuse a defendant from obeying "neutral, generally applicable" laws. The court said that the trial judge "determined to except defendant from the operation of the State's statutes as the result of his religious beliefs. In doing so, the judge was mistaken." Case closed.

So here's the danger: a boneheaded decision by a local judge in another state, which was reversed exactly the way it should have been--by the appellate court. Hardly a mortal threat to the nation--and nothing less would justify suspending the Constitution's guarantees of religious freedom.

Epps is joined in his condemnation of the proposed Oklahoma law by fellow legal scholar, Michael Helfand, who in rejecting the law also points the reality of limited accommodation of religious law in America in the form of religious arbitration tribunals to which parties can voluntarily appeal. As he [observes](#):

Rex Duncan, a Republican state representative in Oklahoma and a sponsor of the amendment, has explained that part of its purpose is to ban religious forms of arbitration: "Parties would come to the courts and say we want to be bound by Islamic law and then ask the courts to enforce those agreements. That is a backdoor way to get Sharia law into courts. There ... have been some efforts, I believe, to explore bringing that to America, and it's dangerous."

In reality, such arbitration is well established. For nearly half a century, Jewish, Christian and Muslim tribunals have operated in the United States in concert with government courts. These tribunals preside over matters of religious ritual and also apply religious law to a wide range of

disputes between individuals and even commercial entities. Parties, in keeping with shared beliefs and values, can voluntarily agree to submit employment, divorce, contractual and various other types of disputes for resolution. State and federal courts currently treat such religious tribunals as they do all other arbitration panels that litigants can seek out as an alternative to going to court. And, as long as the tribunal and its decisions meet certain standards, government courts routinely "confirm" them — that is, render them legally enforceable.

So the reality of “juridical pluralism” of religious and legal norms is not without precedent--or practice--in these United States. Something to keep in mind in considering Shari’a, family, and democracy in Nigeria--and beyond.

Sharia, Secular State and Nigeria: A Matter of Getting Down to the Basics

by nigeriasharia - Wednesday, April 20, 2011

<http://blogs.law.emory.edu/nigeriasharia/2011/04/20/sharia-secular-state-and-nigeria-a-matter-of-getting-down-to-the-basics/>

Jude O. Ezeanokwasa, PhD/JCD

As we reflect on Sharia, family law, secular state and democracy, having Nigeria in the foreground, I wish to come to this discourse with my recently published book, a great contribution and resource for understanding--first hand and from the perspective of a non-Muslim, particularly a Christian--the realities and potentials of Sharia in a secular democracy.

The book is titled *The Legal Inequality Of Muslim and Christian Marriages in Nigeria: Constitutionally Established Judicial Discrimination* and it makes contributions from the angle of family law and marriage. It argues principally that the practice of Sharia dislocates the principle of secularity which is supposed to inspire and animate Nigerian Democracy. It examines the religious and cultural self-determination the Nigerian constitution allows Muslims in family law from the background of the principles of equality of citizens and religious freedom, the axles on which any healthy democracy operates.

Sovereignty, or Supremacy?

The constitution recognizes Islamic marriage as an independent and sovereign system of marriage with its formation and matrimonial causes regulated independent of the ordinary secular government institutions to which other religious marriages such as the Christian ones are subjected. That traditional religion is placed on the same status with Islamic marriage is ineffectual, because traditional religion is dying out. Its members are converting to either Christianity or Islam, the two dominant religions in the country and with numerical parity. Moreover, traditional religion has no developed judicial, legislative and executive institutions as to conflict with the secularity of the democracy.

This is not the case with the Sharia system whose judicial, legislative, and even executive institutions operate often in conflict with the ordinary institutions of the federal government. For instance, the operations of the *Hisba*, the Islamic police in some Sharia compliant states go contrary to the provisions of the Police Act of the federation. The independence and sovereignty these parallel Islamic institutions enjoy make the Sharia in fact superior to the constitution which is supposed to be the supreme law of the land. Everything about Islamic marriage is regulated by the Sharia; whereas everything about the marriage of Christians and others is regulated by the state through the marriage statutes.

The Sharia determines who, where, when, and how a Muslim will marry; whereas the National Assembly determines who, where, when and how a Christian will marry. To marry, Christians have to pay fees to the government, whereas Muslims do not. Christians also have to have their places of worship licensed by the government, while Muslims do not. Where they have no place of worship licensed, they are to

exchange their marriage vows before a marriage officer who could be a Muslim. Islamic matrimonial causes are handled by Sharia courts without deference to secular state institutions whereas Christian marriage tribunals are administered subject to the prior competence of the institutions of the secular state.

Juridical Pluralism, or Socio-political Schizophrenia?

The book brings out the fact that the religious/cultural self-determination granted to Sharia marriage has created two independent juridic communities--the theocratic and the secular --in the same geographical and political territory. Muslims follow their religious law and non-Muslims must follow statutory regulations of their marriage. An example is the case of the Muslim senator who married a 13-year girl in contravention of the federal law relative to the marriage age. His defense was that he was bound by the Sharia--which allows even a younger age--and not by the statute evidently passed by him in the senate.

While this situation flies flagrantly in the face of the rule of law, as it breaches the equality of the citizens before the ordinary law of the realm, it also undermines the equality of the religions of the citizens under a secular state. As a result, the National Assembly loses its significance as the superior legislative institution for everybody in the state, as its competence in matters of marriage is reduced to sectional jurisdiction over non-Muslims alone. To the extent that the acts of the National Assembly do not bind Muslims, the National Assembly becomes an instrument of domination and oppression in the hands of Muslim legislators. A legislator whose constituency is not subject to a bill has no motivation to be sincere, fair and sensitive in its legislative process.

The juridic and legislative polarizations between Muslims and non-Muslims, deriving from the religious/cultural self-determination Sharia enjoys, contribute to the social and political schizophrenia that governance in Nigeria has become, as Muslims define their human and civil rights from the point of view of Sharia and the Universal Islamic Declaration of Human Rights (UIDHR) while the rest have theirs from the perspective of the Universal Declaration of Human Rights (UDHR) and the constitution. Often the rules of these two juridic camps are opposed. The case of the Muslim senator remains an example.

Secular Democracy and the Sovereignty of Community

Secular democracy connotes that sovereignty resides in the people not just as disparate individuals, but as a political community that operates together under common institutions, values and objectives. The unity of this community, of course, is not that of uniformity, it is a unity in the essentials and diversity in non-essentials--the essentials referring to those institutions and issues that are best handled by the state for the united existence of the community as one political entity, while the non-essentials point to those important things in the life of the citizens which nonetheless do not directly impinge on the united existence of the state as a political entity. From the legal point of view, this feature of the essentials and non-essentials is reflected in the division between public law and private law, respectively.

The secular nature of a democracy is rooted in the fact that the institutions of public law are as far as possible made independent of the dogmas of any religion in the bid to secure a socio-political space common to all. But with Muslims having their religious/cultural family law institutions running radically parallel to those of the state, both the unity and secularity of the state are impeded, as the public law domain of the state loses its religious neutrality. This is a great political anomaly--and this is the circumstance Nigeria has found herself in. In the case of the senator (*supra*), despite the undeniable fact

that he transgressed the law of the state, he successfully pleaded the superiority of Sharia over acts of the National Assembly. He was not even arrested.

Secular Democracy, Religious Pluralism and Sharia Family Law

The image of a secular democracy is all the more disfigured by the operation of Sharia family law in the country in that Muslims not only have family law institutions that are radically independent of those of the state, but they also derive benefits from the family law institutions of the state. Unlike those of the Christians, Muslim family law institutions are funded by the state. Muslims are not bound by the marriage statutes, yet Muslim legislators participate in their enactment. Muslims do not celebrate their marriage according to the Marriage Act, yet they can function as marriage officers and officiate at the marriage of non-Muslims. While matrimonial causes of Muslims are reserved for Sharia courts, Muslim judges sit in judgment over the marriage causes of non-Muslims.

In the day to day life of the country, the complexity created by this privileged position of Muslims is enormous and destabilizing. A single Muslim automatically constitutes a constitutional super-majority wherever he might be, regardless of the religion and culture of the environment. In a federating state that may be 99% non-Muslim, his personal family law prevails over that of the numerical majority; while where Muslims have the numerical majority, their personal family law translates to territorial law forbidding or restricting unfairly the religion, culture, and family law, of the minorities. As we know, minorities' rights are an integral part of a secular democracy.

Arguments aimed at justifying the situation in Nigeria by recourse to the colonial history, to the effect that it was the British that created the situation as it is, are flawed according to my argument in this book. Other arguments in support of the religious and cultural self-determination of Muslims, such as the comprehensiveness of the Sharia legal system and the customary nature of Islamic legal system, are shown to be insincere and unconvincing.

The Problem with Pluralism

The situation as it is deals a fatal blow to any efforts of the government in monitoring marriage and family issues. Since whatever happens under Islamic family law is completely outside the competence of the secular state, one wonders how government can monitor, regulate and protect the family as an institution without ceding its powers and functions to Muslim religious leaders. Meaningful policies for the protection of the family institution can only come with comprehensive statistics and data on marriage. In Nigeria, this is impossible because all that the state has is information on the marriages of non-Muslims.

What emerges from my book is that a true secular state must, of necessity, have common institutions, fundamental objectives and values which must be appreciated, pursued and defended by all, irrespective of religion. These fundamental values point to fundamental human rights. The question my book poses for this discussion of Sharia, family law, and democracy is: ***Is the Sharia concept of human rights consistent with the concept of human rights in a secular state as understood in the light of the Universal Declaration of Human Rights?*** This is the basic question and a necessary prelude to any broader discussion of Sharia, family law, democracy, and the secular state in order to avoid concepts and words that equivocate.

Editor's Note: Dr. Jude O. Ezeanokwasa obtained his Ph.D. in Civil Law and Canon Law from the Pontifical Lateran University. Dr. Ezeanokwasa's book, [The Legal Inequality Of Muslim and Christian Marriages in Nigeria: Constitutionally Established Judicial Discrimination](#), was published by the Edwin Mellen Press in February 2011.

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by nigeriasharia - Friday, November 05, 2010

<http://blogs.law.emory.edu/nigeriasharia/people/>

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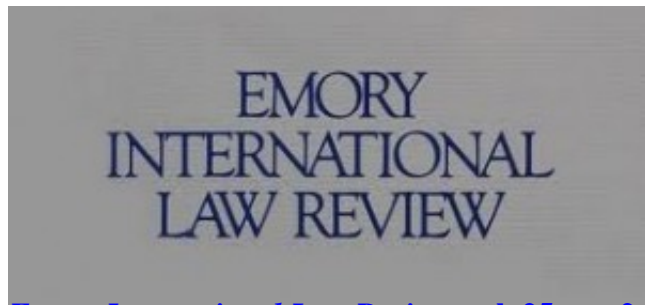
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Law Review Symposium

by nigeriasharia - Friday, November 05, 2010

<http://blogs.law.emory.edu/nigeriasharia/law-symposium/>



[Emory International Law Review, vol. 25, no. 2, Fall 2011](#)

SHARIA, FAMILY, AND DEMOCRACY: RELIGIOUS NORMS AND FAMILY LAW IN PLURALISTIC DEMOCRATIC STATES

FOREWORD

John Witte, Jr.

Emory University

[Foreword--Frontiers of Juridical Pluralism: Law, Religion, and the Family](#)

Witte's foreword situates the symposium inquiry in the immediate context of the Anglican Archbishop's controversial 2008 pronouncement that some form of accommodation of Sharia in Britain was "unavoidable." With this introduction, Witte lays out the questions that necessitate and inform in the symposium issue—questions about marital, cultural, and religious identity and practice in modern pluralistic societies that are committed to human rights and freedom for all. These "faith-based family law" questions are at the "legal frontier" of this symposium comparing pluralistic family law developments in the West and in Africa.

RELIGIOUS AND LEGAL PLURALISM IN COMPARATIVE THEORETICAL PERSPECTIVE

Abdullahi Ahmed An-Na'im

Emory University, USA

[Normative Pluralism and Legal Uniformity:](#)

[Religious Norms and Family Law: Is It Legal or Normative Pluralism?](#)

An-Na'im's article addresses the core question of how to mediate the tension between the democratic application of religious norms and human rights concerns, especially regarding the rights of women and children. The intimacy of family relations and the central role of the family as a marker of identity and agent of children's socialization make family law especially important in these debates.

Following a thorough review of the possibility of mediation between legal and religious norms and the relation between Islamic normative systems and state legal systems, An-Na'im concludes that in pluralistic democratic states, state law must be distinguished from religious norms, state law is the only source of law that the state can enforce, the risk of violating human rights norms in the application of religious norms in families and local communities should be addressed through a process of internal reform.

Ann Laquer Estin

University of Iowa, USA

[Family Law, Pluralism, and Human Rights](#)

Estin traces the development of human rights from Enlightenment understandings of civil and political rights and the development of family law in the United States and Canada under the influence of both common law and Christian ecclesiastical law norms. She identifies key human rights protections relevant to family law, including rights to culture and religion, marriage rights, and the rights of women and children in families. She notes that religiously specific understandings of marriage and family can conflict with these human rights, raising two types of challenges. First, under human rights law, governments must accommodate family practices of distinct cultural and religious groups, while also protecting the individual rights of family members from religious groups exercising state-backed authority. Second, in adjudicating these cultural and religious rights, governments end up defining the limits of group authority and boundaries of group membership--boundaries that are strongly shaped by religious and family law. State policing of these boundaries raises difficult questions about citizenship that may weaken the bonds between communities and their sense of belonging to the wider society.

Natan Lerner

Radzyner School of Law, Interdisciplinary Center Herzliya, Israel

[Group Rights and Legal Pluralism](#)

Lerner's essay addresses the place of group rights in democratic societies and the role of legal pluralism theories. Group rights are presently recognized as entitled to a treatment equal to individual rights, at least the recognition of some form of legitimacy that justifies respect, consideration, and protection. These group rights have not been a focus of classic international law, but now there are new calls from groups to have their value systems incorporated into the general legal systems of the state or to upgrade their traditional adjudication systems to the category of law. Liberal democracies have rejected this in criminal law, but the situation is more fluid and potentially amenable to accommodation in the case of family law. This essay addresses these calls for legal pluralism, with particular attention to the rights of indigenous and immigrant groups, which are increasingly driving the religious legal pluralism debate.

Rosalind I. J. Hackett

University of Tennessee, USA

[Regulating Religious Freedom in Africa](#)

Hackett's essay picks up the themes of democratic pluralism, family law, and group rights from the previous essays in an overview of the state regulation of religious freedom in Africa. In the African context, states are capitalizing on the distinction in international human rights documents between

internal beliefs and the external manifestation of beliefs, imposing significant restraints on the public manifestation of belief by unpopular groups—often out of concern for untrammelled religious growth and religious extremism. Hackett examines Africa’s changing religious scene and growing human rights culture, with particular attention to Nigeria, Ghana, Kenya, and the Democratic Republic of Congo, and particular addition to the plight of African traditional religions.

RELIGIOUS AND LEGAL PLURALISM IN NIGERIA

Abdulumuni A. Oba

University of Ilorin, Nigeria

[Religious and Customary Law in Nigeria](#)

Oba’s essay discusses the relationship between “religious law” and “customary law” in the context of the Nigerian legal system. He examines the pluralistic nature of Nigeria in terms of ethnicity, religion, and law, and argues that the religious law paradigm is problematic for the discussion of laws at the global level and within the Nigerian legal system. Oba identifies customary law, Islamic law (Sharia), and English law (common law) as the three operative legal traditions in Nigeria and discusses their status and scope, the conflicts between them and the challenges facing Islamic and customary law in Nigeria. In so doing, Oba challenges the distinction between “religious law” and “customary law” as beholden to Western perceptions of religion. He argues that, in Nigeria, all three forms of law are linked to religion, as common law is seen to reflect the influence of Christianity and customary law is linked to African traditional religion—thus, the distinction between religious and customary law is inappropriate in describing the Nigerian system. In the end, Oba argues that Islam should be recognized as a legal tradition, rather than as religious law, and that Islamic law and customary law should continue to be recognized along with common law in Nigeria’s pluralistic system.

Eyene Okpanachi

University of Alberta, Canada

[Between Conflict and Compromise: Lessons from Nigeria's Kaduna and Kebbi States](#)

While not resolving the question, Okpanachi’s essay comes the closest to addressing the prospects and problems in implementing a moderate form of Sharia. His essay seeks both to debunk the oversimplification of Sharia in Nigeria as a unified, monolithic project and to address the problem of turbulent intergroup relations that imperil a peaceful pluralism. The centerpiece of his essay is a comparison of Sharia implementation in the majority Muslim Kebbi State and the more religiously pluralistic Kaduna State. In Kebbi, the local government played a prominent role in implementing, monitoring, and ensuring observance of Sharia in a way that was not unexpected in light of its majority Muslim demographics. In the more pluralistic Kaduna State, the government role in Sharia implementation was reduced, but did involve the creation of state bodies that worked with civil society organizations to achieve a peaceful pluralism in what Okpanachi calls the “Kaduna Compromise.” Kaduna’s civil society has been a force for normative consensus for peacebuilding, but it has also become highly radicalized and politicized in a way that has also led to eruptions of violent conflict, as after the 2011 elections. The “Kaduna Compromise” remains a work in progress and an illustration of the difficulty of achieving moderate Sharia in a pluralistic democratic society.

Abdul-Fatah Makinde and Philip Ostien

Shari'ah Debates in Africa Project, Nigeria

[The Independent Sharia Panel of Lagos State](#)

Makinde and Ostien describe the outcome of the establishment in 2002 of an Independent Sharia Panel in Nigeria's populous and cosmopolitan Lagos State, where Muslims make up about half of the population. The ISP was established to fulfill what the Muslim activists who established it described as an urgent need for a forum in to administer Islamic law. Otherwise, Muslims in Lagos would continue to have to have their disputes settled under Yoruba customary law or common law. Despite their efforts to establish the ISP, the institution remained poorly funded, with no salaries for judges, and was used by a very small number of Lagos Muslims. Makinde and Ostien explore possible constitutional arguments that the ISP founders could make toward recognition of the panel, including infringement on their constitutional freedom to practice religion, but the very existence of the panel reduces the power of this claim. Similarly, though a political argument could be made for the constitutional or legislative establishment of an Islamic court system, this argument is defeated by the low resort of Lagos Muslims to that panel. The authors conclude that most Lagos Muslims are content to keep Sharia private, rather than have state implementation of Sharia through the recognition of an Islamic law court.

M. Christian Green

Emory University, USA

[Religion, Family Law, and the Recognition of Identity in Nigeria](#)

Green addresses the question of Sharia in Nigeria in the context of a global religious resurgence in the "postsecular" era that has heightened both competition between religious and quests to secure religious identity—at least in terms of perceptions—in Africa, particularly in religiously pluralistic countries, such as Nigeria. In that context, religion and family become central to communal identity assertion, as well as being proxies for other social, political, and economic concerns. Green discusses the contestation over religion, family, and identity in Nigeria in light of an important recent survey by the Pew Forum on Religion & Public Life, *Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa*, in which Nigeria was an outlier in its perceptions, attitudes, and values toward religious freedom, pluralism, and democracy on a number of important measures. Green cautions against seeing religion purely as a proxy for other issues and points to the ways in which when conflicts become religious they tap into powerful forces of identity construction that must also be addressed at face value, lest perceptions become reality. At the same time, she expresses hope in the possibility for moderate Sharia developing in Nigeria and other countries on the margins of the Muslim world through a process of democratic scrutiny, critique, and compromise in a context of religious pluralism.

RELIGIOUS AND LEGAL PLURALISM IN GLOBAL COMPARATIVE PERSPECTIVE

Joel A. Nichols

University of St. Thomas

[Religion, Marriage, and Pluralism](#)

Departing from the 2010 controversy over the Oklahoma referendum to ban the application of international or Sharia law in the state courts, Nichols examines the prospects for legal pluralism in marriage and family matters in the United States. Following discussion of jurisdictional overlap in

connection with Sharia family law in Canada, the United Kingdom, and the U.S., Nichols examines four possible options for legal pluralism in the U.S.: (1) the state “getting out of the business” of marriage and leaving it to religious groups, (2) the state regulating marriage according to particular religious, moral, or political views, (3) the state regulating some aspects of marriage uniformly, but allowing some law to conform to particular desires, and (4) increased solicitude in the law for enforcing the contractual insertion of particular values in the form of pre- and post-marital agreements. The task, Nichols says, is for societies to begin to have discussions of how to take seriously dual allegiances to religious and civil norms, while also providing equality and protection for vulnerable parties.

Pascale Fournier

University of Ottawa

[Borders and Crossroads: Comparative Perspectives on Minorities and Conflict of Laws](#)

Fournier discusses the situation of Muslim immigrants to the West who bring specific religious traditions and social mores to their new countries of residence. She contrasts the *lex patriae* conflict of laws rules of many continental European legal systems, particularly France and Germany, which apply the laws of their countries of origin to marriage and divorce matters, with the *lex domicilii* rules of Canada, which apply Canadian law in matters of personal status, regardless of the parties’ nationality. The Canadian system, in particular, allows immigrants to benefit from Western legal systems’ guarantees of gender equality, possibly allowing women to fare better or at least more predictably in systems that apply the law of their countries of origin. Fournier examines whether the Canadian system does lead to better results for Muslim women, focusing on the way in which Muslim marriage and divorce norms can be articulated in contractual terms in ways that blur the lines between Western legal systems and Islamic institutions and norms. She describes the way in which Muslim marriage and divorce norms are translated within the Canadian system in ways that belie the assumption that the principle of *lex domicilii* allows immigrants to immigrate better and allows women to fare better than under foreign Islamic legal systems.

Yüksel Sezgin

John Jay College, City University of New York

[Women’s Rights in the Triangle of State, Law, and Religion: A Comparison of Egypt and India](#)

Sezgin analyzes the postcolonial personal status systems of Egypt and India and why such modern nation-states, constitutionally obliged to treat their citizens equally before the law—would ignore their constitutional obligations and hold people to different legal standards on the basis of gender, ethnicity, and religion by continuing to employ old personal status systems. While the “colonial legacy” thesis would suggest plural systems represent the failure of postcolonial governments to overcome the resistance of ethno-religious groups and authorities in the project of unifying the law after independence, Sezgin argues that this thesis ignores the centrality of the state and the desire of leaders to control and utilize personal status as a potent tool in the process of state- and nation-building. Contrary to another assumption, Sezgin argues that women do not silently acquiesce in the social-political construction of these personal status laws, but rather spearhead revolutions that redefine women’s roles as rights-bearing and equal individuals in these systems, contesting the scriptural monopoly of state-sanctioned religious institutions, reinterpreting religious laws, and reinventing the tradition by vernacularizing international human rights and women’s discourses. He examines examples of these

reform movements in Egypt and India.

T. W. Bennett

University of Capetown, South Africa

[Legal Pluralism and the Family in South Africa: Lessons from Customary Law Reform](#)

Bennett describes the recent revolution over the last fifteen years in South African customary law, which was originally recognized by the unified British and Dutch colonial powers after the Anglo-Boer War as applying to blacks only on racial grounds. The interim post-apartheid South African constitution of 1993 involved a horizontal application of the Bill of Rights to relations between individuals and a commitment to protection of culture, the latter subject to an “internal” limitation clause that initially made systems of cultural and religious law subject to greater scrutiny. The 1996 Constitution, however, did much to enhance the status of customary law. Since then customary and other systems of personal law have been recognized on the basis of both cultural and religious affiliation. Nonetheless, culture still eclipses religion as the basis for recognizing customary laws in the South African system. Trends toward pluralism and deconstructionism have since broadened the recognition of customary law, giving rise to further recognition of the “living version” of customary law. This has opened the door to such legislation as the Recognition of Customary Marriages Act in 1998, which allows parties freedom to engage in culturally significant practices, while, at certain strategic points, demanding state intervention. These and other aspects of religious and customary law continue to be worked out in South African courts and Law Reform Commissions in ways that have garnered greater respect for customary law, both in its inherent value and as a means of people living out their culture.

Organizations

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/organizations/>

[Governmental Organizations](#)

[Nongovernmental Organizations](#)

[African Organizations](#)

[International Foundations](#)

Governmental Organizations

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/organizations/governmental-organizations/>

[Adaidaita Sahu: Directorate of Societal Reorientation \(Kano State\)](#) (Official website expired)

"Adaidaita Sahu is a code name for the Kano State societal reorientation programme inaugurated by Governor Ibrahim Shekarau on Saturday, September 11, 2004. Government said the goals include inculcating right morals, curbing disorderliness, corruption, and improper conduct at individual, group, and institutional levels in the society. It also strives to reorient vulnerable groups like children, youths, and women."

[Federal Ministry of Justice \(Nigeria\)](#)

"The Nigerian Federal Ministry of Justice is the legal arm of the Federal Government of Nigeria, primarily concerned with bringing cases before the judiciary that are initiated or assumed by the government. It is headed by the Attorney General, who is also Minister of Justice and is assisted by a Permanent Secretary, who is a career civil servant."

[Independent National Election Commission \(INEC\)](#)

"The Independent National Electoral Commission (INEC) is the main agent of democracy in Nigeria. INEC a permanent body created by the constitution to organize Federal and state elections in Nigeria. The mission of the Independent National Electoral Commission (INEC) is to: 1.educate Nigerian citizens about democracy and the election process; 2.provide for voter registration; 3.compile a credible voters' register; 4.demarcate constituency boundaries; v. organize and conduct credible elections; 5.monitor the conduct of political parties; 6.audit the finances of political parties, and 7.promote an enduring democratic culture in Nigeria."

[National Assembly of Nigeria](#)

"The National Assembly is Nigeria's bicameral legislature and the highest elective law-making body of the country. It consists of the 109-member Senate and the 360-member House of Representatives. The term of the National Assembly is 4-years from the date of its first sitting after the general elections. The current 7th National Assembly (2011-2015) was inaugurated on 6th June, 2011. Out of the 109 Senators of the Senate, 36 were re-elected while 73 were elected for the first time. Out of the 360 members of the House of Representatives, 100 were re-elected while 260 were elected for the first time."

[National Human Rights Commission \(NHRC\)](#)

"The National Human Rights Commission of Nigeria was established by the National Human Rights Act, 1995 in line with the resolution of the General Assembly of the United Nations which enjoins all member States to establish Human Rights Institutions for the promotion and protection of human rights. The

Commission serves as a mechanism for the enhancement of the enjoyment of human rights. Its establishment is aimed at creating an enabling environment for extra-judicial recognition, promotion and protection and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation."

United States Diplomatic Mission to Nigeria

"The Political Section is responsible for current and long-term reporting and analysis on Nigeria including domestic and international political affairs. The Political Section maintains contacts with Nigerian governmental ministries and agencies, as well as with other diplomatic missions assigned to Nigeria. The current concerns involve human rights, the labor movement and the slow progress toward democratization. "

U.S.- Nigeria Binational Commission

"On April 6, 2010, U.S. Secretary of State Hillary Clinton and Nigerian Secretary to the Government of the Federation Yayale Ahmed inaugurated the U.S.-Nigeria Binational Commission, a strategic dialogue designed to expand mutual cooperation across a broad range of shared interests. The Commission is a collaborative forum to build partnerships for tangible and measurable progress on issues critical to our shared future."

Nongovernmental Organizations

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/organizations/nongovernmental-organizations/>

Alliance for Credible Elections (No website available.)

[American Bar Association, Rule of Law Initiative](#)

"The Africa Division of the ABA Rule of Law Initiative, is a public service project that promotes the rule of law throughout Africa. Working in cooperation with governments and civil society groups, the Africa Division engages in a wide range of programs, including the training of judges and prosecutors, the establishment and maintenance of legal aid and victim support centers, and the provision of expertise in drafting legislation."

[BAOBAB for Women](#)

"BAOBAB For Women's Human Rights is a not for profit, non-governmental women's human rights organization, which focuses on women's legal rights issues under the three (3) systems of law - customary, statutory and religious laws in Nigeria. BAOBAB operates from a national office in Lagos and with outreach teams in 14 states across Nigeria. These are: Adamawa, Borno, Edo, Kaduna, Kano, Katsina, Kogi, Kwara, Lagos, Osun, Oyo, Plateau, Taraba and Zamfara. The organization works with women, legal and paralegal professionals, human rights NGOs and members of the general public."

[Help Eliminate Loneliness and Poverty \(HELP\)](#)

"H.E.L.P (Help Eliminate Loneliness and Poverty) is an independent, non-governmental organization founded in October 1995 by Nigerian Sponsors and based in Lagos. Its programmes are largely supported by Philanthropic individuals, corporate bodies and donor agencies H.E.L.P. is an affirmative action Organization involved in advocacy, empowerment and charity activities to protect and uplift the vulnerable and disadvantaged of Nigeria's fast growing population. It is also to draw attention to the issues of poverty, Refugees, Destitution, Detainees, Prisoners, Homelessness, Unemployment, Women-empowerment, Children, Elderly, Disabled, Handicapped, Drug and Alcohol in society."

[International Society for Civil Liberties and Rule of Law](#)

"Intersociety was formed in response to the growing culture of impunity among global societies, including Nigeria, which is associated with gross breach of people's liberties. Intersociety, in partnership with other credible civil society groups seeks to end the culture of election rigging in Nigeria, promotes the crusade against corruption, and ensures domestication, by the National and State Assemblies of all outstanding international rights treaties yet to be domesticated. The Society also seeks to promote credible criminal and civil justice reforms at the local (government), State and federal levels, and promotes strict observance of the Chapter Two (including its justiciability) and the Chapter Four of the Constitution of Nigeria, 1999, by all authorities and persons in Nigeria. These we called "Four Pillars of

Organic Solidarity”, that is to say, peopling democracy and governance, peopling rule of law, peopling civil liberties and peopling economy."

[Muslim Lawyers' Association of Nigeria \(MULAN\)](#)

Mission: "Promoting the cause of Islam & the interest of Muslims in Nigeria through the legal profession. Identifying the rights and interest of Muslims in the context of law and judicial process. Articulating appropriate strategies for the promotion and protection of the fundamental rights and interest of Muslims in Nigeria within a democratic setting. Facilitating the pursuit and attainments of legitimate right of indigent Muslims. Promoting regular dialogue and review of the legal and judicial environment as it affects the Muslim Ummah). Enlightening and sensitising the Ummah on their rights under Nigerian Law. Encouraging partnerships with other Muslim professionals and institutions with a view to promoting the cause of Islam in Nigeria."

[National Democratic Institute](#)

"NDI is a nonprofit, nonpartisan, nongovernmental organization that has supported democratic institutions and practices in every region of the world for more than two decades. Since its founding in 1983, NDI and its local partners have worked to establish and strengthen political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government. NDI and its local partners work to promote openness and accountability in government by building political and civic organizations, safeguarding elections, and promoting citizen participation. The Institute brings together individuals and groups to share ideas, knowledge, experiences and expertise that can be adapted to the needs of individual countries."

[Nigerian Bar Association](#)

"The Nigerian Bar Association is the umbrella body of all lawyers. It is charged with overseeing the welfare and other professional activities of the Nigerian Lawyers. More importantly, it has come to be the barometer of the conscience of the Nation. The link between the law and development cannot be overemphasized. The law as a tool of social engineering places as a duty on the bar to work towards a new Nigeria especially given the challenges of time."

[Women Advocates Resource and Documentation Centre \(WARDC\) \(No website available.\)](#)

"The Women Advocates Research and Documentation Center is working to end violence against women in Nigeria, where poverty and impunity from the law deprive women of their most basic security. WARDC is dedicated to enhancing women's participation in political and peace processes, and to ensure that women's legal rights are upheld in Nigeria."

[Women's Rights Advancement and Protection Alternative \(WRAPA\)](#)

"Women’s Rights Advancement and Protection Alternative (WRAPA) Nigeria, is a registered and Non-Governmental Organization (NGO), Non-Political and Non-Profit making charitable organization for advocacy and mobilization for the promotion, protection and realization of Women’s human rights, the elimination of all forms of repugnant practices as well as violence against women and the

enhancement of their living standards."

Religious Organizations

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/organizations/religious-organizations/>

[The African Church](#)

The African Church is an independent African church that split from the Anglican Church in 1901. It is located primarily in Nigeria. Its headquarters is in Ibadan and its African Church School of Theology is affiliated with the University of Ibadan.

[Catholic Bishops Conference of Nigeria](#)

"Incorporated in March 15, 1958, the Catholic Bishops' Conference of Nigeria, CBCN, is the organ of unity, communion and solidarity for the millions of Catholics spread across the thirty six states of Nigeria and the Federal Capital Territory. It is the forum wherein the collegiality of the Nigerian Catholic bishops, as successors of the Apostles in union with the Pope, is expressed and where the idea of the Church as family is signified. Through the Conference, the archbishops and bishops of the 52 ecclesiastical jurisdictions, as shepherds of souls in their archdioceses and dioceses, are able to pray together, study together, and work together; and with one voice, are able to speak and spearhead the teaching, prophetic and pastoral ministry of the Catholic Church in Nigeria."

[Catholic Secretariat of Nigeria](#)

"As the administrative Headquarters of the Catholic Bishops Conference of Nigeria, through the Catholic Secretariat of Nigeria, the Church has been able to make significant and effective input into the social, economic and political engineering of not only Nigeria but also some African countries, especially where the initiatives taken by the Church in Nigeria have been accepted as models."

[Christian Association of Nigeria \(CAN\)](#)

CAN is an umbrella organization for Christian churches in Nigeria. Founded in 1976, it originally contained only the Catholic and mainline Protestant churches, but later expanded to include other Christian churches. CAN is an association of Christian churches in Nigeria that meets regularly and take joint action on vital matters, especially on those issues which affect the Christian Faith and the welfare of the generality of Nigerians. Churches eligible for membership fall into one of five groups: the Catholic Secretariat of Nigeria (CSN), the Christian Council of Nigeria (CCN), the Christian Pentecostal Fellowship of Nigeria (CPFN)/Pentecostal Fellowship of Nigeria (PFN), the Organisation of African Instituted Churches (OAIC), and the TEKAN and ECWA Fellowships. CAN protested the adoption of sharia in the northern states throughout the 2000s and has spoken out against Muslim violence against Christians.

[Christian Brethren Church](#)

The Christian Brethren Church in Nigeria is a Protestant and Anabaptist Christian denomination from

Nigeria with more than 100,000 members and is the largest national body of Church of the Brethren in the world. It is a member of the Christian Council of Nigeria and the Christian Association of Nigeria. Several of its churches in Maiduguri were destroyed in incidents of sectarian violence in 2009.

[Christian Council of Nigeria](#)

The Christian Council of Nigeria was founded in 1929 with the mission to facilitate and build the capacity of member churches that ensures a sustained Christian lifestyle, witness and transformation of the Nigerian society. It includes all of the Nigerian Christian churches and is a member of the World Council of Churches (WCC) along with other regional and international Christian organizations.

[Church of Nigeria, Anglican Communion](#)

In 1974, the sixteen dioceses of the Anglican Church in Nigeria initiated the process of becoming an autonomous Province within the Anglican Communion and their autonomous status was achieved in 1975. Initially known as the Association of Anglican Dioceses in Nigeria (AADN), the fully autonomous Church of the Province of Nigeria was inaugurated at a meeting of the Standing Committee of the Province of West Africa 1979. The church was split into three Provinces on 20th September 1997. From 2000-2010, the church was presided over by Archbishop Peter Akinola, the former Bishop of Abuja, who also served as President of the Christian Association of Nigeria. Upon retirement, Archbishop Nicholas Okoh assumed leadership over the Church.

[Church of the Lord \(Aladura\)](#)

The Church of the Lord (Aladura) is one of a group of churches founded in Nigeria in the 1920s and 1930s mostly from former members of the Anglican Church. Aladura churches embrace prayer and faith healing practices associated with Pentecostalism, but are opposed to the practices of African traditional religion, particularly polygamy and witchcraft. They largely avoid politics and focus on holiness.

[Federation of Muslim Women's Associations in Nigeria \(FOMWAN\)](#)

The Federation of Muslim Women's Associations in Nigeria (FOMWAN) was established in October 1985. With a consultative status with the United Nations, FOMWAN is a non-profit and non-governmental civil society umbrella body for Muslim women associations in Nigeria. FOMWAN is a network of Muslim Women organisations nationally and is emerging and growing as a national faith based non governmental organisation with emphasis on promoting and protecting the interest, welfare and aspirations of its members in line with Islamic injunctions. FOMWAN provides social service to its members and seeks to contribute to national development, particularly the health, literacy and economic empowerment of its members and promotion of positive social behavior of Muslim girls for responsible living and adulthood.

[Interfaith Mediation Centre](#)

"The Interfaith Mediation Centre is a non governmental, non partisan, not for profit making faith based organization. IMC's mandate is to promote and facilitate the use of faith based approach in conflict prevention. The organization has the mandate to mediate and encourage dialogue among youth, women, religious leaders and the government, to inculcate and promote the culture of mutual respect and

acceptance of the diversity of each other's cultural, historical and religious inheritances. IMC also co-operate with other organizations with similar objectives at Local and International levels."

[Muslim Association of Nigeria UK \(MAN UK\)](#)

The Muslim Association of Nigeria UK is a religious, charitable, and social service organization founded by and meeting the needs of the Muslim Nigerian immigrant community in the United Kingdom. As the UK is the largest destination for Nigerian immigrants, MAN UK is representative of community organizations founded by expatriate Muslim Nigerians.

[National Council of Nigerian Muslim Organizations in the USA \(NCNMO\)](#)

"The purpose of the NCNMO is to serve the best interests of Islam, Nigerian Muslim Communities in particular and all Muslims in general. Its objectives are to foster mutual understanding among all brothers and sisters in Islam in general and Nigerian Muslim associations in particular. To propagate Islam in the most spiritual, intellectual, and dignified manner to all human beings. To voluntarily assist and help brothers and sisters in Islam during times of difficulty and crisis to the extent possible. To assist Muslim Institutions and Communities in the performance of Islamic activities through religious, social, educational and charitable activities."

[National Supreme Council of Islamic Affairs \(NSCIA\)](#)

NSCIA is an umbrella group for four Muslim communities in Nigeria and was established to preserve, protect, promote and advance the interests of Islam and the Muslims throughout Nigeria. Many of its website pages remain works in progress, but the site does contain resources for Nigeria's Muslims in a number of areas, including links to the website of the Abuja National Mosque.

[Nigeria Inter-Religious Council \(NIREC\)](#)

The objectives of NIREC are to foster understanding of the teachings of Christianity and Islam; to create a permanent and sustainable channel of communication, interaction, and dialogue between Christians and Muslims in Nigeria; to promote the ethical, social and cultural values of the two faiths for the rebirth and rebuilding of a better society; to provide a forum for mutual co-operation and promotion of the welfare of all citizens in the nation; to create channels for the peaceful resolution of inter-religious friction or misunderstanding; to promote cordial relationships among various religious groups and between them and the government; to emphasize and accentuate the positive roles religion should play in nation building and development; to serve as a forum for achieving national goals, economic growth, national unity and promotion of political stability; to make recommendations to the Federal and other levels of Government on fostering integral and spiritual development of Nigerians; and to network with organizations of similar aims at home and internationally.

[Nigeria Muslim Forum UK \(NMF UK\)](#)

The Nigeria Muslim Forum is a UK-based Islamic Organisation whose membership is open to all Nigerian Muslims. It is an affiliate of Muslim Council of Britain (MCB), and a member of Council of Nigerian Muslim Organisations in UK and Ireland (CNMO). The main activities of the Forum include

organizing Ta'lim sessions (Study Circles) through its regional and local branches; organizing national and international events for the discussion of issues of significance to the Islamic community; working with other organizations within and outside Nigeria in executing projects and activities that are of benefit to Nigerian Muslims in particular and the Ummah as a whole; and sponsoring qualified and deserving Nigerian Muslims in furthering their education within and outside Nigeria.

[Nigerian Baptist Convention](#)

The Nigerian Baptist Convention, founded in 1850, includes over 10,000 churches with about 3,000,000 baptized members and up to 6.5 million non-baptized members spread across the nation. It is comprised of twenty-three Conferences (ecclesiastical regions) in Nigeria alone, along with churches in other West African countries, the United Kingdom and the United States.

[Nigerian Canadian Muslim Association](#)

The Nigerian-Canadian Muslim Association shall serve the interest of Muslims and Islamic followers. Its objectives are to preach, promote and advance the spiritual teaching of the Islamic faith by practicing the religious observances, tenets and doctrines associated with Islam, to maintain mission and missionaries in order to propagate Islamic faith, and to support charitable and humanitarian causes. The association does not affiliate with, support, or denounce political causes.

[Organization of African Instituted Churches \(OAIC\) \(West Africa Region\)](#)

The OAIC is an umbrella organization for the independent and indigenous African churches known as African Instituted churches. The organization works to bring African Instituted Churches together in fellowship and to equip and enable them to preach the Good News of Jesus Christ in word and deed. It promotes values of solidarity with the poor, powerless, and vulnerable faith in God and the guidance of the Holy Spirit, African traditions and beliefs the concept of ubuntu that privileges care, reciprocity, acceptance and equality, local control and authority, and human dignity.

[Pentecostal Fellowship of Nigeria \(PFN\)](#)

The PFN is an umbrella organization for Pentecostal churches in Nigeria. It is the national body which binds together all Christian Churches, organizations and believers who believe; experience, practice and cherish the Pentecostal experience

[Reformed Church of Christ in Nigeria \(RCCN\)](#)

The Reformed Church of Christ in Nigeria was founded in 1973. In 1993 the church changed its name from EKAN Takum to the Reformed Church of Christ in Nigeria. It is comprised of 60 congregations in 11 districts, with 55 pastors and 900 evangelists serving 277,000 members and 200,000 regular attenders from the Ichen, Tiv, Jukuns, Mumuye, Jenjo, and Tigum tribes.

[Stephanos Foundation](#)

The Stephanos Foundation was created in Nigeria under the auspices of Release International UK and exists to serve persecuted Christians in Nigeria and around the world. It has provided aid and support to

Christians who have suffered from sectarian violence in the northern states

International Foundations

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/organizations/international-foundations/>

[Ford Foundation, West Africa Region](#)

Based in Lagos, Nigeria, the Ford Foundation's West Africa division works to improve governance systems and livelihood opportunities for the poor in the region. We support efforts to engage government on behalf of the marginalized and underrepresented, and help civil society empower these communities. It focus primarily on Nigeria, as the largest economy in the subregion and Africa's most populous country and projects have included monitoring the Nigerian elections of 2011.

[Heinrich Boell Foundation in Nigeria](#)

"The Foundation is active world-wide with more than 25 regional and country offices. It is active in Nigeria since 1994 and established a Nigeria Country Office in Lagos in May 2002. Since April 2011, the Foundation works from its Abuja office. Programs on sustainability, women's rights and good governance form the core of the Foundation's work in Nigeria."

[MacArthur Foundation in Nigeria](#)

The John D. and Catherine T. MacArthur Foundation in Nigeria is one of four offices of the Foundation that are located outside of the United States. The others are in Mexico, India, and Russia. The Foundation strives to encourage investment by other funders and to promote creative partnerships among those in the public, private and nonprofit sectors. work to defend human rights, advance global conservation and security, make cities better places, and understand how technology is affecting children and society.

Resources

by nigeriasharia - Friday, November 05, 2010

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[Academic Resources](#)

[Policy Reports](#)

[Multimedia](#)

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Academic Resources

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<http://blogs.law.emory.edu/nigeriasharia/resources/academic-resources/>

[Africa-America Institute](#)

[African Studies Association](#)

[Future of Shari'a Project](#)

[Gallup, Inc. "Measuring the State of Muslim-West Relations," November 28, 2010](#)

[Islamic Family Law Project \(best viewed in Mozilla Firefox\)](#)

[Pew Forum on Religion and Public Life , "The Future of the Global Muslim Population," January 27, 2011](#)

[Pew Forum on Religion and Public Life, "Resources on the Future of the Global Muslim Population," February 28, 2011](#)

[Pew Forum on Religion and Public Life, "Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa," May 2010](#)

[Dataset for Pew Forum on Religion and Public Life, "Tolerance and Tension: Islam and Christianity in Sub-Saharan Africa," April 15, 2010](#)

Policy Reports

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/resources/policy-reports/>

American Civil Liberties Union

[Nothing to Fear: Debunking the Mythical 'Sharia Threat' to Our Judicial System](#) (05/18/2011)

Amnesty International

[2009 Country Report on Nigeria](#)

Center for American Progress

["Understanding Sharia Law," Issue Brief, 2011/03/31](#)

["Understanding Sharia Law," 2011/03/31](#)

Council on Foreign Relations

["Electoral Violence in Nigeria"](#)

["Islam: Governing Under Sharia"](#)

[Nigeria: The Morning After](#) (05/02/2011)

Fund for Peace

[Failed State Index, Nigeria Report](#) (08/20/2010)

Human Rights Watch

[2009 Country Report on Nigeria](#)

["How Come You Allow Little Girls to Get Married?"](#) (12/08/2011)

["Political Sharia?: Human Rights and Islamic Law in Northern Nigeria," September 21, 2004](#)

["Policing Morality: Abuses in the Application of Sharia in Aceh, Indonesia," November 30, 2010](#)

International Crisis Group

[Nigeria Page](#)

[Northern Nigeria: Background to Conflict: Africa Report No. 168](#) (12/12/2010)

National Democratic Institute

[Nigeria Election Watch 2011](#) (02/2011)

United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the High Commissioner on Human Rights (OHCHR)

[Harmful Traditional Practices and Implementation of the Law on Elimination of Violence Against Women in Afghanistan](#)(12/09/2010)

[A Long Way to Go: Implementation of the Elimination of Violence Against Women Law in Afghanistan](#)(11/2011)

United States Commission on International Religious Freedom

[Nigeria Chapter--2012 Annual Report](#)

[Nigeria Chapter--2011 Annual Report](#)

[Nigeria Chapter--2010 Annual Report](#)

[Nigeria Chapter--2009 Annual Report](#)

[Nigeria Chapter--2008 Annual Report](#)

[Nigeria Chapter--2007 Annual Report](#)

[Nigeria Chapter--2006 Annual Report](#)

2010/09/24 "[Prospects for Justice in Northern and Central Nigeria: Government Responses to Root Causes.](#)" Testimony of USCIRF Chairman Leonard Leo to International Religious Freedom Caucus, United States Congress, House of Representatives

United States Department of State, Office of International Religious Freedom

[2012 International Religious Freedom Report on Nigeria](#)

[2011 International Religious Freedom Report on Nigeria](#)

[2010 June-December International Religious Freedom Report on Nigeria](#)

[2010 International Religious Freedom Report on Nigeria](#)

[2009 International Religious Freedom Report on Nigeria](#)

[2008 International Religious Freedom Report on Nigeria](#)

[2007 International Religious Freedom Report on Nigeria](#)

[2006 International Religious Freedom Report on Nigeria](#)

[2005 International Religious Freedom Report on Nigeria](#)

[2004 International Religious Freedom Report on Nigeria](#)

[2003 International Religious Freedom Report on Nigeria](#)

[2002 International Religious Freedom Report on Nigeria](#)

[2001 International Religious Freedom Report on Nigeria](#)



Media Reports

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/resources/media-resources/>

[BBC Special Report, "Nigeria at 50"](#)

[BBC Religions, "Islam: Sharia"](#)

[The Economist, Country Briefing on Nigeria](#)

[New York Times, Times Topics: Nigeria](#)

[New York Times, Times Topics: Shariah \(Islamic Law\)](#)

[Nigerian Tribune, Islamic News Section](#)

[PBS Frontline, "Muslims: Portraits of Ordinary Muslims: Nigeria"](#)

[PBS Frontline, "The Road North"](#)

[PBS Newshour, "Nigeria in Transition: The Emergence of Sharia Law"](#)

[PBS Newshour, "Sharia in Nigeria"](#)

[Religion and Ethics Newsweekly, "Eliza Griswold on Muslim-Christian Relations"](#)

Archived Resources

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/resources/archived-resources/>

[2008/02/08 Archbishop of Canterbury Website, "Sharia Law--What did the Archbishop Really Say?"](#)

[2008/02/08 Archbishop of Canterbury, "Civil and Religious Law in England"](#)[2007/05/08 Council on Foreign Relations Event Transcript, "Contemporary Religious Dynamics in Nigeria" Session 1](#)

[2007/05/08 Council on Foreign Relations Event Transcript, "Contemporary Religious Dynamics in Nigeria" Session 2](#)

[2006/02/23 Council on Foreign Relations Event Transcript, "Islamic Law in Nigeria"](#)

Multimedia

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/resources/multimedia/>

["The Edge of Joy" \(Director, Dawn Sinclair Shapiro, May 2010\)](#)

Readings

by nigeriasharia - Monday, April 04, 2011

<http://blogs.law.emory.edu/nigeriasharia/reading/>

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An-Na'im Article

by nigeriasharia - Thursday, November 11, 2010

<http://blogs.law.emory.edu/nigeriasharia/reading/an-naim-article/>

Sharia Cannot Be Enforced as State Law

Abdullahi Ahmed An-Na'im

Part I: A General Framework

The position I am advancing in my contribution to this project is that Sharia (the normative system of Islam) cannot, and not only should not, be enforced as the law of the state, even where Muslims constitute the predominant majority of the population. This view is premised on the religious nature of Sharia itself, as I will briefly explain below, but also indicated by the nature of the state where all Muslims live today. I will begin in this brief piece with a statement of the general framework of the relevance of religious and customary norms to modern legal systems, and then present my Islamic argument against the fallacy that Sharia can ever be enforced as state law.

I should note in relation to the broader concept and scope of this project on religion, family and democracy that the argument I am presenting here is probably applicable to other religious and customary law traditions. However, I will limit my remarks here to the relationship between Sharia and state law in particular not only because this is the focus of my own work, but also as a matter on which I hope to make a difference as a Muslim from Sudan who has closely witnessed the tragic consequences of confusion among present-day Muslims on this question. My aim is therefore to address this specific question for its relevance to Muslims throughout the world, including Nigeria which is the primary case study for this project. I also hope, however, that what I have to say about Sharia and state law can be helpful in clarifying the relationship between religious and customary law in general and state law.

The premise of the general framework of the relevance of Sharia (and other religious or customary norms) to family law is that the law and administration of justice of any state should reflect the values, priority concerns and interests of the population. In that process of self-governance, the democratic principle indicates that the political will of the majority of the population should prevail in such matters, subject to the constitutional rights of the minority or minorities. Religious, ethnic and other communities have the right to organize and act collectively in contributing to the formulation and implementation of public policy and legislation through the democratic political process, but such collective action should not have a monopoly or veto power over such matters, even when acting in the name of the predominant majority of the population. The importance of this limitation of the will of the majority with the rights of the minority is in converse relationship to the predominance of the majority, that is, the larger and stronger the majority the more important it is to subject its political will to the constitutional rights of the minority or minorities. Another aspect of this approach is that notions of majority and minority are not only fluid, contingent, and contested, but also relative to structural and contextual power relations. Notions of majority and minority are ambiguous because we are all members of the majority of our societies in some respects, and members of minorities in other respects. I may be in the majority in ethnic

or religious terms, but in the minority in political terms, or vice versa. A numerical minority can be a political majority, as was clearly seen in the case of Apartheid South Africa, and is probably true in many parts of the worlds today, though in more subtle or ambiguous ways.

These and other corollaries of the principle of majority rule subject to rights of minorities are so foundational for social and political organization in all human societies, everywhere, that none of us can ever “get his or her own way” in matters of public policy and legislation. We all have to live with policies and laws we oppose, even when adopted in our collective name, until we can change them through the same democratic political process that is made possible by constitutional limitations on the prevalent political will of the day. The basic moral and political justification of majority rule, I believe, is the possibility for the political minority of today to become the political majority of tomorrow. For that to be a plausible possibility for minorities to engage in the legitimate and peaceful political process, instead of resorting to violent rebellion or submitting to dehumanizing apathy and subordination, the constitutional rights of all citizens must be equally vigorously protected by and for all of us, because each of us do need these rights for ourselves and our communities, even when that may seem unnecessary for those in power at the time. The basic principle to emphasize here is that the more vulnerable and politically or socially marginalized a person or group is, the more deserving of the protection of constitutional rights against the “democratic” tyranny of the majority.

Another aspect of my approach is that the term “normative pluralism” is more appropriate than legal/judicial pluralism in reflecting the reality of normative diversity, with a moral and political commitment to respecting that diversity, while preserving the integrity of the uniformity of state legal systems. The term “religious” includes native/traditional religions and customary normative systems. My focus on family law is due to the fact that it is probably the most widely practiced or proposed field of religious/customary law for application through state legal systems. Accordingly, the term “law” here refers to rules governing family relations under state legal systems, as distinguished from other normative systems in a broader sense. In other words, when religious or customary norms are enforced as state law, they are no longer religious or customary. This means that the religious or customary rationale of the norms should not be invoked to lend additional authority to what is really an integral part of secular state law. In this light, I would challenge invoking religious or customary authority to exempt family law from constitutional and human rights limitations on all aspects of state law.

This point is important for the distinction I am drawing between state law and religious or customary normative systems as two different and separate types of systems that should not be confused by calling all of them “law”. Norms regulating family relations can be religious or customary as long as they are not enforced through state law, but once so enforced they become simply state law rules, regardless of their perceived religious or customary sources. This is not to suggest or imply that state law is superior or more effective than other normative systems. On the contrary, religious and customary norms may often be more effective than state law in shaping the behavior of believers or members of a community. Rather, the point is that since the source and authority of state law are different from that of religious normative systems, it is confusing to use the term “law” for both types of normative systems. It seems that preference for the term “law” is to indicate the sense of binding norms that seek to regulate human behavior and organize social institutions. But this purpose can be realized by using the term “normative system”, as rules that are binding and authoritative in a *different manner* than state law, without confusing normative and legal systems.

Finally on this general framework and approach, there are clear overlaps between state law and other normative systems of any society, but the two types of systems should be distinguished from each in order to better regulate their dialectic relations. For instance, religious norms can enhance the legitimacy and efficacy of state law which, in turn, may facilitate compliance with religious and customary norms among their respective communities. At the same time, however, state law may need to intervene to bring community-based compliance into conformity with constitutional and human rights standards. For the purposes of such regulation and mediation of competing normative claims, the state may seek to influence social change by facilitating internal cultural transformation, as I will briefly explain later in Part III of this posting, but should not attempt to achieve its legitimate objectives coercively. The less normative change is intrusive and more reliant on internal agents of social change the more effective and sustainable will the outcome be.

Part II: The Argument from Sharia

I should first emphasize that although my argument focuses on current notions of the state and state law as globally applicable ideas that have spread far beyond their European origins, I would emphasize the distinct historical and contextual workings of these institutions throughout the world. Subject to historical and contextual factors, all human societies today live under the same basic model of the centralized, bureaucratic, hierarchical, territorially bounded so-called “nation states”. This does not mean that these states are working well everywhere, or that they must operate in the same way in every setting, but the basic model is the same, as practiced in the historical territorial, and demographic context of each country. It is not possible to evaluate or discuss here the distinctive ways in which state institutions work and evolve in various settings, but the need for such analysis is fully acknowledged.

My general argument is that the nature of Sharia as a religious normative system, on the one hand, and state law as a secular political institution, on the other, requires clear differentiation between the two in theory and separation in practice. However, the methodological and normative similarities between Sharia and state law, and the fact that they both seek to regulate human behavior in the same social space, raise possibilities of interaction and cross-fertilization between the two. Methodologically, though Sharia evolved among independent Muslim scholars and their communities, outside state institution, the methods of interpretation the Quran and Sunna – traditions- of the Prophet used by those scholars are similar to modern techniques of textual construction and reasoning by analogy and precedent. (Hallaq 2009, 100-124) Normative similarities between Sharia and state law can be seen in such fields as property, contracts, and civil liability for damage to or misappropriation of property. (Hallaq 2009, 239-245, 296-306) It is therefore not difficult to envision a dynamic process of mutual interaction between Sharia and state law principles through what I call ‘civic reason,’ as I will discuss further below. As a result of such interactions, state law can be legitimized by Sharia among religious believers, while ways in which Muslims perceive and practice the social aspects of Sharia can be influenced by constitutional and human rights norms.

For that possibility of positive interaction, however, it must be clear that Sharia as such cannot be enforced as state law and remain religiously authoritative for Muslims for the following reasons: First, whatever the state enforces is bound to be the view of the ruling elite of the rules of Sharia they choose to apply and never Sharia itself because any human understanding of Sharia is only human and cannot be divine or religious as such. Second, since the ruling elite will have to select from among equally legitimate competing views of the rules of Sharia, as interpreted by Muslim scholars over time, state

officials would be coercively enforcing their choice upon the Muslim population, regardless of what those Muslims believe Sharia to be on the issue at hand. For instance, Wahabi Sunnis of Saudi Arabia are imposing their views on Shia citizens of the country who believe the Wahabi view to be heretical. Imami Shia rulers of Iran are imposing their views of Sharia on citizens of Iran who disagree with the official state ideology of the state. Third, whatever is being enforced through state law and administration of justice is authorized by the coercive power of the state, and not the religious validity of the rule. Since it is impossible to enforce the totality of Sharia, according to all possible interpretations, some aspects would be enforced because the state decreed that, while others will remain unenforced because the state so determined.

It is therefore clear that the outcome of state enforcement will always be secular, not religious, regardless of claims of the state in some Muslim-majority countries like Iran or Saudi Arabia that it is enforcing Sharia as state law. (An-Na'im 2008, pp. 30-36) Muslim citizens may influence formulation of state law and public policy from a Sharia perspective if they can summon sufficient political support of such propositions through the democratic political process, but that does not mean that the norms so incorporated into state law are still religious norms. Sharia norms can be one of the normative sources from which state law is derived but not cannot as such constitute state law because Muslims believed them to be Sharia.

This view does not dispute the *religious* authority of Sharia, which must necessarily exist outside the framework of the state. As a Muslim, I believe Sharia is always relevant and binding on Muslims, but only as each of us believes it to be and not as declared and coercively enforced by the state. For any act to be religiously valid, the individual believer must comply voluntarily, with the necessary pious intent (*nya*), and without violating the rights of others. This focus on the individual believer is integral to Islam. (The Quran, 6:164; 17:15; 35:18; 39:7; 52:21; 74:38; Taha 1987, 62-77) Still, principles of Sharia should be relevant to the public discourse, provided one can make the argument for that through what I call 'civic reason' and not simply by assertions of what one believes to be the will of God. By civic reason I mean that the rationale and purpose of public policy or legislation is based on the sort of reasoning that the generality of citizens can accept or reject, which cannot happen when such matters are demanded as categorical religious mandate. The process of civic reason also requires conformity with constitutional and human rights standards in the adoption and implementation of public policy and legislation. All citizens must be able to make their own legislative proposal or object to what others are proposing through public and fully inclusive public debate, without having to challenge each others' religious convictions. Moreover, by its nature and rationale, civic reason is not limited to Sharia principles and can apply to other religious normative systems. Civic reason and reasoning, not personal beliefs and motivation, are necessary whether Muslims or members of any other religion or tradition, constitute the majority or the minority of the population of the state. (An-Na'im 2008, 92-101)

I am suggesting that these two types of relationships can exist between Sharia and state law when the two systems apply to the same human subjects within the same space and time. It may therefore be helpful to see Sharia and state law as complementary but different normative systems, instead of requiring either to conform to the nature and role of the other. In other words, this dialectic relationship is premised on a distinction (not dichotomy) between Sharia and state law to avoid confusing the function, operation, and nature of outcomes when the two systems co-exist in the same space and apply to the same human subjects. If state law incorporates a principle of Sharia for coercive enforcement by state courts and executive powers, the outcome is a matter of state law and not Sharia because it will not have the

religious significance of compliance with a religious obligation. Conversely, compliance with Sharia cannot provide legal justification for violating state law. For Sharia and state law to be complementary, instead of being mutually antagonistic, each system must operate on its own terms and within its field of competence and authority.

Part III: Sharia and Religious/Cultural Self-determination

As I have argued in the preceding parts of this posting, Sharia principles cannot be state law as such because of the distinction, not dichotomy or hierarchy, between Sharia and state law. This true, I believe, whether Muslims constitute the predominant majority or minority of the population because the reason is conceptual, not only political. Sharia cannot be state law because of the religious nature of Sharia, which is inherently and permanently different from state law, which does not claim divine authority. Other conceptual reasons include the unavoidable need to select among equally legitimate views of Sharia for the purposes of determining positive state law. The need for the state to definitively set the law and coercively enforce it on the totality of the population subject to its jurisdiction is inconsistent with the religious nature of Sharia because no human being can decide religious truth for human beings. At the same time, however, Muslims can exercise their fundamental democratic right to religious/cultural self-determination through the complementary relationship between Sharia and state. I will now briefly clarify how this might happen in practice.

In my view, there are three main elements to this framework of religious/cultural self-determination for Muslims:

- (1) Private social practice of Sharia within the framework of state law and its constitutional safeguards;
- (2) Consideration Sharia as normative source for state law through civic reason in the democratic political process, without claiming that Sharia can be state law as such;
- (3) Religious discourse and cultural transformation to mediate tensions between historical interpretations of Sharia and modern constitutional and human rights principles.

On the first count, Muslims can in fact behave in conformity with the vast majority of Sharia principles without coming into conflict with state law in a democratic society. For example, Muslims can refrain from taking or charging interest on loans (*riba*), prohibited by Sharia, and can establish financial institutions that enable them to do that, within the framework of existing state law that permits charging interest. Muslims can also observe Sharia requirements about marriage and divorce voluntarily without having those requirements imposed on all by state law. Space does not permit further elaboration on this, but whatever conflicts or tensions that may exist between Sharia and state law can be mediated through the second two approaches.

The premise of the second count is that, as noted earlier, the law and administration of justice of any state should reflect the ethical values, priorities and interests of the majority, subject to the constitutional rights of the minority or minorities, however small, including members of the Muslim majority who disagree with other Muslims. Muslims and other religious or cultural communities have the right to organize to act

collectively in contributing to the formulation and implementation of public policy and legislation through civic reason and the political process, provided they do not claim to have a monopoly or veto power over such matters, even when acting in the name of the predominant majority of the population. For instance, Muslims can lobby for a legal ban on charging interest if they can persuade other citizens of the economic or social benefits of such a ban by giving reasons that all can debate freely, rather than asserting their own religious conviction or cultural affiliation as categorical justification. Muslims can also propose legislation to provide for Sharia principles of marriage and divorce, through the same process and subject to constitutional and human rights safeguards. This possibility does not mean that Sharia as such can co-exist as a parallel legal system competing with state law of any country, or that it retains its religious authority when incorporated into state law. In view of the centralized, bureaucratic, and coercive nature of the modern 'territorial' state, the secular legislative organs of the state must have exclusive monopoly on enacting state law, and secular judicial administrative organs must also have exclusive authority to interpret and apply state law.

The third and critically important approach to religious/cultural self-determination for Muslims, whether they are the majority or minority of the population of the state where they live, is through Islamic discourse on the interpretation of Sharia in the modern context. Since what Muslims uphold as Sharia today was the product of human interpretation of the Quran and Sunna of the Prophet, as noted earlier, that can be modified through re-interpretation of the same sources. The outcome would be as legitimate from an Islamic point of view as any earlier interpretation of those principles if Muslims accept them as such. What I call inter-generational consensus was the only manner in which any principle of Sharia came to be established in the past, and remains the valid today. There is possibility of a human institution that can "declare or amend Islamic doctrine" on behalf of the general Muslim population of the world. (An-Na'im 2008, 12-15) It is not possible to discuss here the current and future agenda, methodologies and processes of such re-interpretation, (An-Na'im 1990) but the purpose here is to explore ways of addressing problematic aspects of historical interpretations of Sharia regarding, for example, the rights of women and freedom of religion. For instance, there is no question that Sharia requires men to take more than one wife, but whether it permits polygamy today or not has been a matter of debate among Muslims scholars and opinion leaders since the 19th century. There is also heated debate about the presumed right of a Muslim husband to repudiate his wife unilaterally and without having to show good cause. Resolving such issues through public debate among Muslims will enhance the legitimacy of state laws prohibiting polygamy and requiring equality between men and women in matters of divorce and its legal consequences.

It must be emphasized in conclusion, however, that none of these approaches would permit Muslims to opt out of the application of secular state law, or have Sharia principles enacted as state law except through the regular democratic process and subject to constitutional safeguards. Neither would Muslims be entitled to plead Sharia as justification of violation of state law. Rather, the object is to enable Muslims to exercise their right to religious/cultural self-determination within the framework of state law and its constitutional safeguards, like any other religious/cultural community. The same or equivalent approaches are equally available to other religious/cultural communities to exercise their right to self-determination within the same framework and subject to the same safeguards.

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Sharia, Family, and Democracy in Nigeria and Beyond

Religious and Legal Norms in Pluralistic Democratic States

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