

# Sharia – A Flexible Notion<sup>1</sup>

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## Three approaches to Sharia

Sharia, or Islamic law, is a term that evokes strong emotions. For many Westerners and non-Muslims, it denotes a system of medieval times that imposes a harsh code of behaviour sanctioned by draconic punishments. For many – not all! – Muslims, on the other hand, it represents a system that promotes goodness and justice. Does that mean that these Muslims equate goodness and justice with harsh rules and sanctions? Some do, but many don't. But how, then, must we view such contradicting views and interpretations of Sharia? In order to understand both the emotional value and the facts of Sharia, I suggest to distinguish three meanings.

First, there is Sharia as an ideology. Sharia serves as a powerful slogan, like the demonstrators in Cairo demanding the implementation of Sharia, with the cry 'Islam is the solution!', but also like the Dutch leader of the Christian Democrats who in parliament denounces Sharia as a system of punishments and rules on women that are contrary to Dutch values. In both cases, the users of the term Sharia have little, if any clue on its exact meaning. For them, that is of little importance: they primarily want to convey what they do, or do not want. When the demonstrators in Cairo are asked what they exactly mean by the Sharia that needs to be implemented, they will mumble their ignorance and refer the interrogator to an *alim*, a religious scholar. When the parliamentarian is asked what he means by Sharia, he will refer to practices in contemporary Muslim countries like Saudi-Arabia and Iran.

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<sup>1</sup> This article is based on Berger's latest book, *Sharia: Islam tussen recht en politiek* ('Sharia: Islam between Law and Politics'), (Boom Juridische uitgevers, The Hague, 2006). (Soon to be published in English.)

The second notion of Sharia is as a legal science. Sharia is of divine origin, but as we will see in the next paragraphs, both its content and theoretic structure was mostly developed by scholars. In doing so they developed a vast corpus of legal literature, which was to be read in addition to the Word of God (the Quran) and the words of the prophet Muhammad (the Sunna). All this literature together comprised the Sharia. Sharia in its physical form, therefore, is not a single book. One may compare it with Roman law, which also contained numerous volumes of legal texts and literature that were continuously elaborated upon for centuries, even after the demise of the Roman Empire.

Third, there is Sharia as applied since the past century and in particular since the 1970s. In this sense, Sharia has entered a new and even revolutionary phase. This has to do with the rupture that took place during the nineteenth century, namely the transformation of the Muslim world into modern states. Before this, the existence of the Islamic caliphate, however nominal due to a *de facto* multitude of Muslim countries, sultanates and emirates, presumed the existence of Islamic law, even if these laws had little to do with the Sharia but were mere decrees from the rulers. During the late nineteenth and early twentieth century, the Muslim states took a secular approach to legislation, i.e., did not feel the need to justify their legislation with Sharia. Since the 1970s, however, we see a gradual tendency to re-Islamize the existing secular laws, or to re-introduce Sharia law. The countries that have actually done so, however, provide hardly examples of justice. Countries that already applied Sharia law, like Saudi Arabia, or countries that have introduced it, like Iran, Pakistan or Sudan, have bad human rights and democracy records. Does that mean that Sharia is therefore contrary to human rights and democracy (as many Westerners argue)? Or is it merely proof of a wrong implementation, or even complete misrepresentation of what Sharia is all about (as quite some Muslims argue)?

These three approaches to Sharia law should help us to guide us through the labyrinth of Islamic law. Before doing so, a word of caution is in order. Translating Sharia with 'Islamic law,' as I have done above, does not do credit to Sharia. Sharia is more than law; it is a code of conduct for the every day life of the Muslim. When a Muslim therefore claims to be favourable to Sharia, he or she does not necessarily mean that Sharia needs to be implemented as a system of state law. It may very well mean that he refers to living every day life as a good person – some will say by praying five times a day and observing rules of behaviour and dress code, others will argue that merely being polite and helpful already is an implementation of the social justice ordained by God.

## Sharia as a science

Since Sharia is not entirely 'law', it is a concept quite elusive to lawyers. Law is a Western concept denoting, among others, a system of regulating society and conflict resolution based on written rules. When discussing Sharia the Western trained lawyer will therefore look for clear systems and statutes. These are mostly absent: yes, Sharia contains a multitude of rules that can be found in an extensive corpus of written literature but no, Sharia is not a practical system of regulations construed by practical lawyers. Sharia, as we will see below, is in essence a scientific legal system developed by religious scholars.

### *The sources*

Pious Muslims will state that the Sharia is to be found in the Quran (the word of God, according to Islamic orthodoxy) and the Sunna (the words and acts of the prophet Muhammed, recorded after his death). These are indeed the only two primary written sources available to retrieve the Sharia. Upon perusal, however, we will find quite some rules on human conduct but very few legal rules, i.e. rules applicable to the regulation of society and its members. First, because many traditional fields of law are not or only partially covered, such as state law, administrative law, criminal law (with the exception of a few specifically mentioned crimes and their punishments), commercial law, procedural law. In most cases, key concepts are mentioned but not elaborated or explained. The only fields that are fairly extensively covered are the laws of marriage, divorce and inheritance.

This leaves a lot open to interpretation. According to Islamic orthodoxy, however, Sharia was perhaps not entirely revealed by the sources but it was entirely contained by the sources. It meant that one had to actively look for it. This could only be undertaken by intellectual exercise. Hereto an elaborate science was developed during the first two centuries of Islam (eight and ninth century AD), called the *fiqh*.<sup>2</sup> This science can best be explained in the flowery language that the scholars themselves used: the sources were the roots of Sharia that needed to be tended carefully in order to grow into a plant of well-developed rules, the gardeners being the scholars who used their intellect to feed the plant. This use of the human intellect to retrieve the rules of Sharia is called *ijtihad*, an important notion that we will return to later.

The difference between rules found directly in the sources and rules that had to be retrieved from the sources translated itself into a hierarchy of

2 For extensive descriptions of the science of fiqh see Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge University Press, Cambridge, 1997); Mohammed Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society, Cambridge, 1991).

rules. On top of the pyramid stand the few rules that are clearly mentioned in the two sources. These rules are considered divine and are therefore timeless and unchangeable. Under these is the vast set of rules that have been retrieved by scholars from the sources. These rules may change with time and place, depending on needs and circumstances. Within this set of rules, sub-hierarchies exist as developed by 'schools' of lawyers (*madhhab*, pl. *madhahib*) who will give priority to specific scholars over others.

The process of *ijtihad*, i.e. elaborating the corpus of Sharia by retrieving its rules from the sources, formally came to an end after two centuries of scholarly work. It was said that the 'doors of *ijtihad* are closed', implying that the sources of Sharia had been exhaustively studied for new rules and that that process had come to an end. From then on, one was to work with the existing corpus of rules. This in itself became a scholarly tradition, with an extensive use of commentaries.

What remained, and even gained in importance, was the use of jurisconsultation: specific and concise questions on Sharia were posed to individual scholars who would give their answers (*fatwa*'s) based on an elaborate and scientifically prescribed analysis of the sources. The *fatwa*'s by famous jurisconsults (*mufti*'s) were often compiled in manuals, resulting in new additions to the already vast corpus of Sharia literature.<sup>3</sup>

### *The lawyers*

As mentioned before, the corpus of rules developed by the scholars was more a science than a system of law. This was the result of both the purpose of the scholars' work as well as their approach. One must bear in mind that the scholars were not lawyers: they were not primarily concerned with the organization of a societal structure, but with the intentions of God as laid down in the Quran and Sunna. Metaphorically speaking they were looking upward to the sky rather than downward to earthly matters. This does not hold true for all scholars, of course, but was formative for their approach. Consequently, the scholars were essentially more concerned with the process of retrieving the rules of Sharia than with the rules themselves. Their emphasis, in other words, was on the science rather than its outcome. The result was – to the Western trained legal eye – an apparently disorganized array of rules, to be found in extensive scholarly works that were not easily accessible.

In short, law as a practical and organizing instrument was not what the scholars of Sharia were occupying them selves with. This was the realm of the rulers. They were the ones who were issuing decrees and laws, they were the

3 See for a compilation of classical and modern *fatwas*: Muhammad Khalid Masud, Brinkley Messick, and David Powers (eds.), *Islamic Legal Interpretation. Muftis and their Fatwas* (Harvard University Press, Cambridge, 1996).

ones creating a legal infrastructure. They were also the ones who employed the judges. The scholars were therefore effectively a separate entity that monopolized the knowledge on Sharia, giving them a moral voice in state affairs that were formally run in name of Islam. This gave them a position of relative independence vis-à-vis the state, functioning as a self-appointed censor.<sup>4</sup> The state of course tried to co-opt the scholars, but they were often fiercely proud of their autonomy. This two-track approach to legal affairs can be best illustrated by the way judges functioned. Judges were state functionaries who did not necessarily need any skills or knowledge relating to Sharia. For that they referred to the religious scholars, often asking legal advice in the form of a *fatwa* on specific issues. But here also there were exceptions in the form of scholars who accepted a government position as judge.

## Sharia in contemporary times

### *Legislature and judges*

By the end of the nineteenth century the monopoly position of the scholars started to become undermined by legislative actions undertaken by the Muslim states. It was a period of modernization which in terms of law meant that the legal systems were radically restructured.<sup>5</sup> For many fields of law European codes were adopted, and court systems were introduced based on those in England or France. One of the few exceptions was family and inheritance law: both the law and the court remained Islamic. However, the Islamic family and inheritance law were for the first time codified, i.e. the rules from the scholarly corpus were reduced to articles in modern legal codes. This legislative exercise was also undertaken in the modern way, namely through preparation by ministries and parliamentary committees and the final voting and amending taking place in parliament. The monopoly on the interpretation and selection of Sharia rules had shifted from the religious scholars to the legislature. And it did not stop there; the interpretation of the promulgated Sharia law was left to the judges who were trained in a Western-styled legal approach, and needed therefore little reliance on outside consultancy to interpret the laws, even if such a law was based on Sharia.

4 Patricia Crone, *God's Rule: Government and Islam* (Columbia University Press, New York, 2004); I.M. Lapidus, 'The separation of state and religion in the development of early Islamic society,' in: *International Journal of Middle East Studies* (1975, nr. 6).

5 Much has been written on these developments. See for a comprehensive and comparative overview J.M. Otto, *Sharia en nationaal recht: Rechtssystemen in moslimlanden tussen traditie, politiek en rechtsstaat* ('Sharia and national law: Legal systems in Muslim countries between tradition, politics and rule of law'), (Amsterdam University Press, Amsterdam, 2006 (soon to be published in English)).

*'Lumpen intelligentia'*

The religious scholars did not only receive competition from the state, but also from their fellow-Muslims. With the rise of literacy and the establishing of universities, a growing number of intellectuals took the stage. Some of them – and their number grew rapidly after the 1970s – turned to studying the Islamic literature. This was in itself perfectly justified because Islam officially knows no clergy. The establishment of religious scholars had traditionally grown, but was not an institution comparable to the Catholic Church. Knowledge of one's Islamic religion and searching for the true meanings of the Sharia was in principle the right – some claimed the obligation – of every Muslim. The fact that only few possessed such knowledge was in itself not a reason for them to also monopolize that knowledge.

Aside from being bypassed by untrained intellectuals, the real shock for the religious scholars was that the intellectuals enthusiastically took up the study of the sources without adhering to the centuries old scholarly traditions. The delicate and complicated hierarchy of rules, for instance, even within the Quran and Sunna themselves, was often disregarded. Where centuries' generations of scholars by consensus had agreed on the primacy of a certain rule, some intellectual may set aside that rule for another that appears to him of equal status because it is also mentioned in the Quran. The arbitrary use of the sources has given rise to a new generation of self-made scholars who have been labelled 'lumpen-intelligentia',<sup>6</sup> paraphrasing the foot soldiers of Communist ideology. The freedom of interpretation led to diverse results. Militant radicals like Osama ben Laden justify their indiscriminate attacks on Muslims and non-Muslim with quotations from the Quran. So do also the Muslim feminists, however, who upon a re-reading of the sources come to the conclusion that the bad position of women in Islam is a result of centuries of misogyn male interpretations rather than what the sources actually say and mean. In fact, the growth of popularity of Islam during the last decades has opened the box of Pandora with regard to the interpretations of the numerous and diverse rules of Islam.

*Liberal interpretations*

It must be noted that the discourse on interpretation of Islamic rules is dominated by the conservatives. Enlightened or liberal Muslims have little response, or are even threatened with their lives for giving interpretations that are so liberal that they are considered heretical. Still, it is interesting to briefly address the discourse of these liberals in order to understand their methodology as applied to the Sharia.<sup>7</sup>

6 Nazih Ayubi, *Political Islam: Religion and Politics in the Arab World* (Routledge, London, 1991).

7 See for examples of 'liberal' thinkers: Donehue and Esposito, *Islam in Transition: Muslim Perspectives* (Oxford University Press, Oxford, 1982); Ch. Kurzman, *Liberal Islam. A Sourcebook* (Oxford University Press, Oxford, 1998); A. Rahnema (ed.), *Pioneers of Islamic Revival* (Zed Books, London, 1994).

First and foremost, these liberals will claim that they are pious Muslims and intend to adhere to the Sharia as strictly as possible. They also claim, however, that after fourteen centuries of Islam the world has changed considerably so that new developments and achievements of modern civilization must be taken into account. Their point of departure is that these two positions do not conflict – to the contrary: isn't the purpose of God's message to establish a just society for all?

There are different degrees to which the liberals suggest new approaches to the Sharia. These run parallel with the hierarchy of Sharia rules. According to the traditional approach, a Muslim adheres to one of the five (four Sunni, one Shia) schools, and will follow the rules that within that school have been established as authoritative. Even conservatives nowadays agree that one does not have to limit oneself to a single school, but may choose the appropriate rules from among the various schools. This is the approach taken by most Muslim legislatures when codifying their national family laws: they choose from the various legal schools the rules that fitted them best.

One step further, then, is not to limit oneself to the authoritative rules of these legal schools, but to access *all* legal literature of these schools. This opens a vast range of options, because every school contains in its archives conflicting rules and opposing views.

Still, the previous approaches imply that, in order to formulate rules of Sharia that are adapted to modern times, a basis should be found on existing rules formulated by the scholars of yore. A more liberal approach, therefore, is to grant oneself the authority of starting anew the process of what the early scholars had done, i.e. retrieving the new rules directly from its sources. In other words, these liberals advocate the re-opening of the doors of *ijtihad*. Still, this method has its limits to the extent that some of these rules are mentioned explicitly in the Quran and Sunna, meaning that they are God's own Word, and are therefore immutable and are not to be interpreted. The sanction of equal rights of men and women, and some other human rights that contradicted the explicit injunctions of the Quran are therefore out of bounds for these liberals. It is only a few liberals who are willing to take on this issue. The Sudanese lawyer An-Naim, for instance, advocates a restructuring of the hierarchy of Quranic rules.<sup>8</sup> His argument is that God's Word was given to the people, but that the people had structured this Word in writing by means of the Quran and imposed upon it a hierarchy. It is therefore perfectly justified, An-Naim argues, if the believers shift the verses of the Quran into another hierarchy. The Moroccan philosopher Al-Djabri goes further than An-Naim.<sup>9</sup> He has propagat-

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

9 Muhammad Abid al-Djabri, *Din, dawla wa tatbiq al-Shari'a* ('Religion, nation, and the application of the Shari'a'), (Markaz Darasat al-Wahda al-'Arabiyya, Beirut, 1996).

ed that the initial source of Sharia rules is the 'soul' or metaphysical meaning and intention of God's Word. Since this soul is justice, one should re-interpret all Sharia-rules in terms of justice. For example, where it was just in times of nomadic desert life in harsh conditions without jails to cut the thief's hand, justice in contemporary times demands a new approach to punishing the thief.

### *Expansion of Sharia*

The religious resurgence of Islam has carried in its wake a political resurgence that called for societal and political changes based on Islamic precepts. This translated into the powerful, but ever so vague call for the implementation of Sharia. What was this Sharia? Did one actively have to change laws, or dress codes, speech, architecture, etc. into something that was considered typically Islamic? Or could one, as the Egyptian government had done, claim that most Egyptian laws are 'not in violation' of Sharia and hence congruent with Sharia? The 'Islamization' of society that gradually took hold of Muslim countries took different forms. The most threatening form was that of a revolution to establish an Islamic state. This happened first in Iran, and was repeated in a less dramatic form – although the consequences could sometimes be as severe, or even worse than Iran – in Pakistan (1977), Sudan (1983), Afghanistan (1994) and Somalia (2006). These countries were, and still are not examples of the just society that the Islamic state claims to be since they are definitely not any better than the average dictatorship.

A politically more conspicuous form of Islamization was the changes in the legal systems of the Muslim countries.<sup>10</sup> Almost all these systems, including the laws, were based on European models. With regard to the laws, some argued that these needed to be substituted by Sharia laws. The most apparent example hereof is the introduction of Islamic penal law, which was first re-introduced in Libya (1974), and later in Iran, Sudan, Pakistan, Afghanistan and Nigeria. Others argued that Islamizing the existing laws was in itself sufficient. This happened mostly through newly introduced constitutional clauses that demanded all future laws to be in conformity with Sharia. Interestingly enough, the call for Islamization focused exclusively on the laws and hardly ever on the judiciary system. Moreover, even the concept of 'law' itself – i.e. a corpus of rules promulgated by the legislature and to be enforced by the judiciary – which was quite different from the Sharia legal corpus, was never challenged.

10 See for the most recent study of Islamization (or lack thereof) of national laws in Afghanistan, Egypt, Indonesia, Iran, Malaysia, Mali, Morocco, Nigeria, Pakistan, Saudi-Arabia, Sudan, Turkey: Jan Michiel Otto, Albert Dekker, Liesbeth van Soest-Zuurdeeg (eds.), *Sharia en nationaal recht in twaalf moslimlanden* ('Sharia and National Law in Twelve Muslim States'), (Amsterdam University Press, Amsterdam, 2006). (Soon to be translated.)



Islamization also took on forms without any state initiative. Examples are 'Islamic banking' and the 'Islamic state', but also what might be called 'Islamization of the street'. What typifies all three examples is that they are recent developments, although its advocates claim that they are based on principles dating from the early times of Islam, i.e. the seventh and eighth century AD.

Islamic banking<sup>11</sup> was introduced in the 1970s as a private enterprise, and has gained immensely in popularity ever since. Critics contend that few Islamic banks hold on to the true financial tenets of Islam, i.e. participatory investment and absence of interest, but circumvent these with all kinds of Islamic rules that effectively allow the banks to do business like any other bank. It could be argued that the popularity of the banks therefore has not so much to do with the application of principles but with the label of Islam which appears to be a trademark for everything that is considered 'good' and 'rightful'.

This also holds for the 'Islamic' of the Islamic state. It is a notion that was developed in the early 1950s, and is based on a few general concepts mentioned in the Sharia.<sup>12</sup> Indeed, the Sharia does not provide for a blueprint of the organizational structure of an Islamic state, except for concepts like 'consensus' and 'consultation'. The wide range of interpretations given have led to a variety of models for the Islamic state: some are theocracies with absolute power to the clergy, while others hold to different forms of democracy. As mentioned, the developments in thinking on this issue have largely taken place outside the scope of the official governments. It is only a few times that Islamic movements professing the establishment of an Islamic state took power. The Islamic states that have been established are quite dissimilar, however: Iran has a peculiar mix of theocracy and republic devised by Khomeini and modelled on Shiite tradition, Pakistan has kept its English state structure but introduced Sharia law, and Sudan has again another system.

'Islamization of the street' is of a completely different nature than the previous examples. This kind of Islamization takes two forms. First, as small com-

11 Much has been written on this subject, especially on the internet. For a comprehensive analysis of classical Sharia concepts and contemporary application of Islamic banking, see: Timur Kuran, *Islam and Mammon: the Economic Predicaments of Islamism* (Princeton University Press, Princeton, 2004).

12 See, e.g., I. Ahmed, *The Concept of an Islamic State. An Analysis of the ideological Controversy in Pakistan* (Frances Pinter, London, 1987); A.K.S. Lambton, *State and Government in Medieval Islam* (Oxford University Press, Oxford, 1981); M. Tamandofar, *The Islamic Polity and Islamic Political Leadership. Fundamentalism, Sectarianism and Pragmatism* (Westview Press, Boulder, 1989). See on the role of democracy in an Islamic state: Bahgat Korany, Rex Brynen, and Paul Noble (eds.), *Political Liberalization and Democratization in the Arab World* (Lynne Rienner, Boulder, 1999); Larry Diamond, Marc F. Plattner, and Daniel Brumberg (eds.), *Islam and Democracy in the Middle East* (John Hopkins University Press, Baltimore, 2003); John L. Esposito & John O. Voll, *Islam and Democracy* (Oxford University Press, Oxford, 1996).

munities in city quarters that turn away from the state in disappointment of its ineffectiveness and corruption, and apply Sharia on a voluntary basis. This may range from segregation of men and women in the public sphere to arbitration and financial schemes to meet the needs of the locals. Second, there is a gradual introduction of 'Islamic' dress, vocabulary, morality and behaviour in the public sphere, to the extent that one feels pressured to conform to it.

### **Sharia as an ideology**

#### *The need for justice*

The most powerful use of Sharia is as an ideology. More often than not, it is hardly necessary to mention *what* is meant by Sharia – it serves merely as a battle cry. Still, the lack of knowledge regarding the exact content of the term Sharia does not deter anyone, whether favourable or against, to hold strong views on it. With regard to Muslims who favour Sharia, probably the best way to translate the emotional value of the word is with the term 'justice'. Indeed, when this term is used in a Western context, one will see the exact same reactions as with the Sharia and the Muslim demonstrators: yes, we all favour Sharia and yes, we all demand implementation of justice (who wouldn't?!), but no, we do not know exactly what justice means. For that, we refer to our scholars, the lawyers and philosophers. It is remarkable that this lack of knowledge does not daunt anyone to use the term justice indiscriminately, and to strive for its implementation. On the contrary: we all somehow 'know' that justice is something good and worth to aspire.

The need for justice is particularly strong in Muslim countries, and for good reason. Most of these countries are failed socialist regimes that have not been able to fulfil their socialist promises of free health care and education for all and a just society that guarantees jobs and wellbeing for all. Instead, many of them have turned into dictatorships that hold on to power. The vacuum they have left in society has been filled by mostly Islamic organizations: they are the ones who now provide the basic needs of the people by running health clinics, schools, and small financial institutions. By doing so, they actually apply the social justice that the Sharia promises. This has given both the Islamic organizations and their message of Sharia a legitimacy that the governments have lost.

#### *The other side of justice*

The attractive power of Sharia serves also as a deterrent. The mere claim to do something the Sharia way is bound to yield supporters but also to quiet dissenters. Who would dare to contradict the one who claims to act in name of Sharia? Who would disagree with Sharia itself, the grand scheme that God

has ordained? Even if the Sharia that is being applied contradicts the Sharia as mentioned in the scholarly works, few will dare to oppose the regime who claims to hold on to the true Sharia. Hence, Sharia can be abused or misrepresented with impunity.

An example is that of Islamic criminal law. Countries like Iran, Pakistan, Sudan and Nigeria, who have all introduced Islamic criminal law, have applied it in ways that have not only caused outcries in the international community for its harshness and arbitrariness, but are also inconsistent with basic premises as stipulated in the scholarly corpus of Sharia. Still, its application was met at first with enthusiasm by the general public in those countries. This can be largely explained by the lawlessness and disorder in those countries: the introduction of Sharia was welcomed in its meaning of order and justice.<sup>13</sup>

Another, more general example of the misuse of Sharia and Islam is the indiscriminate utilization of the adjective 'Islamic' which denotes anything 'good' or 'just'. Replace these terms for the 'Islamic' in Islamic state, Islamic banking, Islamic ruler or Islamic morals, and one may understand the powerful attraction it retains to many. However, the adjective 'Islamic' may then also serve as a blanket for any activity that does not necessarily meet the requirements of Islam or Sharia. An example is the fraudulent financial schemes that were undertaken in Egypt during the 1970s under the name 'Islamic banking', and which caused thousands of common people to lose their savings which they had entrusted to these financial institutions. Still, this has somehow not stained the name of Islamic banking among the general public.

Where 'Islamic' may stand for just and good, 'non-Islamic' has become the connotation for anything contrary to justice and goodness. Due to the strong current of Islamization in all its facets, this has resulted in the use of the adjective 'non-Islamic' as a powerful accusation. In several countries, for instance, court cases have been successfully filed against filmmakers, authors and academics, who were accused of un-Islamic opinions. In some countries these developments have reached the level of an Islamic McCarthyism, i.e. the slightest accusation of un-Islamic behaviour may cause the accused serious trouble.

Comparing the notion of Sharia to justice is therefore not to say that Sharia *is* justice. Practice often shows the contrary. Muslims who advocate Sharia as a source of justice and goodness therefore face the challenge of explaining what Sharia effectively *is* once it is being applied or implemented.

13 Ruud Peters, *Crime and Punishment in Islamic Criminal Law* (Cambridge University Press, Cambridge, 2005).