

Fears of ‘Creeping Sharia’

By [Matthew Schmitz](#)

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On May 7, the Kansas House voted unanimously in favor of a bill barring judges and government agencies from basing decisions on sharia or other “foreign” legal systems. Four days later, the Senate voted 33 to 3 in favor of the measure, which was then carried through the capitol building, past John Steuart Curry’s famous painting of John Brown, to the office of Governor Sam Brownback, who signed it into law. This bill is only the latest manifestation of the growing anti-sharia movement in this country, which endangers our national security by alienating loyal Muslim citizens and assaults religious liberty by putting contracts with a religious motivation on an unequal footing with contracts that have no religious motivation.

Kansas’s new law forbids courts and agencies to respect contracts drawn up under “any law, legal code or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals” if the legal system does not grant the same “fundamental liberties, rights and privileges granted under the United States and Kansas constitutions.”

Sharia, of course, does not grant all the rights that the U.S. Constitution does; neither does Christian canon law or Jewish Halakic law (or English or French law, for that matter). But why should this fact prevent a court from honoring a contract made under the provisions of one of these “foreign” legal systems if the contract does not itself violate any U.S. or state regulations, laws, or constitutional provisions? Under one reading of the Kansas law, a contract that makes reference to canon law or sharia — but is otherwise perfectly legal — would be thrown out, while an identical one that makes no such reference would be upheld. The other possible reading of the law is that it only bars rulings based on foreign legal systems when the rulings themselves would violate constitutional rights. But in that case, as Professor [Douglas Laycock](#) of the University of Virginia Law School has argued, the law is meaningless, for courts will not tolerate or enforce violations of constitutional rights in any case.

The assumption undergirding the Kansas law, and similar laws enacted or being considered in other states, is that America faces a serious threat from “creeping sharia.” While some Western countries do face real difficulties from large, radicalized Muslim populations, evidence for the Islamization of America is terribly thin. Sharia, moreover, is not one rigid legal system but rather an immensely varied set of legal, cultural, and ethical understandings. It varies between countries and regions, encompassing social custom and dietary habits as well as what Westerners consider matters of law.

Advocates for the Kansas law pointed to the divorce case of Hussein Hamdeh, a professor of physics at Wichita State University, and his wife, Hala, who were married in Lebanon. The way sharia is usually discussed, one might think there was some threat of a stoning, a beheading, or the lopping off of some less essential body part. In reality, the Hamdehs’ divorce proceedings have been typified by the usual wrangling that takes place under America’s current divorce laws (which themselves are very far from perfect).

Mr. Hamdeh requested that his wife receive no assets aside from a “bride gift” of approximately \$5,000, offering as support his interpretation of Lebanese marriage law and the terms of their prenuptial agreement. Neither argument can survive scrutiny. Even under most readings of sharia, the bride gift does not exhaust the husband’s [financial](#) obligations, according to Kansas attorney Ron Nelson, who spoke to reporter Andy Marso of the *Topeka Capital-Journal*. Nelson added: “The husband’s claims that dower should satisfy his marital obligation are simply his positioning — much the same as nearly every other person who is going through a divorce and makes a goodly sum of money tries to do. But that’s not a sharia question. And it’s certainly not a position limited to men with Islamic beliefs or a Middle East background. What it comes down to is that in any divorce pending in Kansas, the courts apply Kansas divorce and property division law and Kansas law on the support of spouses and children.”

The Hamdehs' divorce was never going to be decided, finally, on terms of sharia, but rather on settled American understandings of property and visitation rights. A contract based on sharia, just like a contract based on anything else, is enforceable only when it complies with the Constitution and applicable laws and regulations. A private contract does not become any more constitutional or legal because of an appeal to sharia, nor — barring discriminatory laws like those just passed by Kansas — does it become any less constitutional or legal.

Mr. Hamdeh's appeals to Islamic law should be of no more concern to a state legislature than the exaggerated claims and counterclaims heard in many divorce proceedings. And so the one concrete justification for Kansas's anti-sharia bill crumbles. In response to a fantastical need, Kansas has placed otherwise legal religious contracts on an unequal footing with identical ones entered into without a religious purpose.

The needlessness of such restrictions is underlined by another prominent case. In 2009, a New Jersey judge, in deference to his own reading of sharia, refused to grant a restraining order for a woman seeking protection from an abusive husband. The decision was overturned on appeal, not because the judge had misread sharia, but because he had misread American law, which trumps the terms of any private contract — whether it is made according to sharia, canon law, Halakhic law, or the whims of the two parties.

The *New Jersey Star-Ledger* summed up how the New Jersey case showed the needlessness of anti-sharia measures: "In 2009, a Hudson County judge gave too much weight to the religious beliefs of a Moroccan man accused of sexually assaulting his wife. The decision was overturned on appeal, and now the convicted defendant, who lives in Bayonne, faces up to 20 years in state prison." What we see here is a judicial error, not the vulnerability of American law to "creeping sharia."

Yet for months, prominent conservative politicians like Newt Gingrich and Michele Bachmann dignified the disreputable anti-sharia movement by mentioning the threat of sharia in campaign appearances. Rick Santorum, an erstwhile supporter of religious liberty, signed an anti-sharia pledge. This is a great political miscalculation. Anti-sharia measures like Kansas's risk discrediting the political effort to fight the Obama administration's unprecedented attack on religious liberty via the contraceptive and abortifacient mandate.

Other leading conservatives have recognized this danger. Tom Lynch, an officer of the conservative Thomas More Law Center, drew a sharp response from prominent conservatives when he tweeted, "Believe Islam a religion, then support the Becket Fund. Believe it will destroy US, then supt thomasmore.org."

The Becket Fund for Religious Liberty replied by calling on the Thomas More Law Center to end its involvement with the anti-sharia movement, and Robert P. George of Princeton University issued a statement saying, "This is no time for people of faith to be fighting amongst ourselves or casting unjust aspersions on each other. If the Thomas More Law Center professes itself to be a defender of religious liberty, let it follow the lead of the Becket Fund in standing up for the rights of all. Religious-freedom organizations should be leading the fight against religious bigotry; they should not be practicing it against our Muslim fellow citizens or anyone else."

It is particularly disappointing to see Sam Brownback — a committed Catholic with deep ties to the evangelical-Protestant community and a strong record on religious-liberty matters — signing an anti-sharia bill. Addressing the 2006 Religious Liberty Dinner in Washington, D.C., Brownback said that people denied religious liberty "deserve our efforts" to vindicate their rights. He cited the Epistle to the Hebrews in calling on those who possess liberty to remember "those who are mistreated as if you yourselves were suffering." Brownback's point is as true today as ever: American Christians must stand for the religious liberty of Muslims if they are to argue persuasively for their own.

Perhaps the most acute irony of the anti-sharia movement is that it undermines our national security, in particular our ability to constructively engage peaceful Muslims and to take action against terrorists. In ways various and immeasurable, the anti-sharia

movement’s implication that all Muslims are radicals amplifies resentments and fuels hate by encouraging Americans to view their neighbors with suspicion and distrust. Even worse, it threatens to turn our Muslim fellow citizens, and our Muslim allies abroad, against America.

The anti-sharia movement also undermines national security in much more concrete ways. Tom Lynch recently linked to a [post](#) by one Gary DeMar contending that instruction in the Arabic language in a New York City public school was part of a program of deliberate Islamization. Now, the real reason the school selected Arabic was to help it gain certification from the prestigious International Baccalaureate (IB) program, but DeMar brushed this fact aside: “I suspect that the IB program is more about the Islamization of America than anything else.”

Teaching Arabic in our schools, of course, is precisely the kind of thing that will help Americans combat terrorism. The fact that the anti-sharia people so readily oppose it shows they are much more concerned about the specter of “creeping sharia” than about readying our nation to intelligently counter immediate and ongoing terrorist threats. They would rather win a chimerical battle in the culture war than support policies that could provide critical aid to Americans engaged abroad who stand in need of agents, officers, and interpreters with a firm grasp of Arabic.

Unhinged rhetoric, if long enough tolerated, will eventually impose real costs. The National Conference of State Legislatures says anti-sharia measures already have been considered in 20 states, and Oklahoma, Arizona, Louisiana, and Tennessee have all enacted such measures. These bills put religious contracts on an unequal footing with secular ones without extending any new constitutional or legal protections to women in Muslim communities. Their conservative advocates embarrass the very name of “religious liberty” and endanger our national security.

Anti-Muslim bigots and their public apologists must be vigorously opposed by Americans who recognize the value of a religious voice in the public square and the imperative that all Americans be treated equally under the law, whether they are religious or irreligious, Christian, Muslim, or Jew.

— *Matthew Schmitz is the deputy editor of First Things and can be reached via his Twitter handle, @matthewschmitz.*

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