

# I. Law And Faith

A. All societies are bound by legal rules and institutions

1. All legal systems are characterized by rules of conflict resolution and rules of facilitation that provide incentives for stable social and economic relationships

2. All religions embed legal systems that claim regulatory power over mundane society. The question is the nature and extent of

enforceability of those religious rules  
a Christianity and Islam (Sharia)

3. Religious or Sacred Law is never complete but is always supplemented by the law of a ruler who may or may not enforce religious law  
an example - Europe - 1000 - 1800 A.D.

B. Case Study - Sharia -  
Sharia Is A Comprehensive  
Legal System That Claims A  
Broad Regulatory Role Over Islamic  
Society (Not a monopoly) To  
Make & Enforce Legal Judgments  
Based on Islamic Principles

1. Sharia Is focused on minimizing  
conflict & facilitating cooperation  
In order to create the foundation  
of a "Just" Islamic Society  
2. Sharia Does Not Depend On  
But Draws Support From the  
Law (Qanun) of "Secular" Rulers

as Sharia Judgments Typically  
Involve Legal Opinions (Fatwa)  
From Clerics & Jurists And

Executing Judgments By  
Secular Authorities Or Local  
Leaders.

b. Sharia Does Not Depend  
On the State And Therefore  
Can Operate Anywhere

II. The Substance of Sharia

A. Sharia Is A System of  
Civil / (Socio-economic) And  
Criminal Law - Most Sharia  
Cases Are Civil Cases That  
Involve Property Rights, Marriage  
Inheritance And Commercial  
Law. This Distinction Is

Registered by the Claims of Man  
(Murder, violent crime) & Claims of God (Public  
Offenses)

A. 2 These Claims Are  
Supplemented By Civil  
Law

2. Shari Involves Substantial  
Self-Help By Claimants And  
Victims

a. Example - Murder Cases  
Are Initiated In Shari By  
Victims Kin Groups And

Judgments Are Executed  
By Victim Kin Groups (OR Analogues)  
Including Death Penalties  
That Can Be Carried Out Or  
Waived For Economic  
Reasons

b. This Aspect of Shari Is  
Common In Africa.

## Q Civil Law - Sharia Features

1. Strong Property Rights

2. Enforceability of Contracts

3. Facilitator of Commerce

4. Subject To One Constraint

of Three Prohibitions

a. Riba - Usury - Money + Interest

b. Gharb - Speculation,

Monopoly

c. Maysir - Gambling

## III. Sources OF Sharia

A No New Legal Rules (No

Legislation) - Novelty Is

Managed Through The Application

of Existing Rules To New Problems

→ The Issue of Adaptation

\* Examples of Political  
Religion in Islam (Mobilization  
of Religious (Faith) Institutions  
on behalf of transformative projects

A. The Iranian Revolution  
(1979) - The role of clerical radicalism

B. The Muslim Brotherhood  
(1950-2000) From law to politics

C. The Mujahadeen Against  
the U.S.S.R. - 1979-89 - Warriors  
for family, nation, and faith

d. Radicalism And 9/11

Islam

## Sources of Sharia

### III. B. Fatwa, Cases - One

#### Four Schools of Sharia

C. Quran

D. Most Importantly,

Sunna (Ways of the Prophet)

Hadith (Record of Prophet's

Life, Problem-Solving

Example - adultery

E. Supplemented by Quran

(State Law) -

F. Conflict Between Sharia

& Quran - Interpretation

of Some Sharia in Muslim

State Constitutions

of Iran (Shia) Saudi Arabia.

Indonesia, Pakistan, Malaysia etc. (Sunni)