

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 & extent of

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

3. Religious - 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 or 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. These Claims Are
Supplemented By Civil
Law

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

c. Example - Murder Cases
Are Initiated In Sharia 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 Sharia IS
Common In Africa.

B 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 At 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
1. 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
(1950-2000s) From da'wa 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

Source 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. (Sunnah)