

## Text Analysis:

### History & Origins of the Religious Law: Sharia

The Sharia is an Arabic word meaning "the right path", known in Islam by the term religious law; it comes from the Quran the sacred book of Islam, which Muslims consider the actual word of Almighty Allah, the Sharia stems from the Prophet Muhammad (Allah' peace and blessing be upon him) interpretations, Muslims believe that Allah revealed his true will to Muhammad, who then passed on Allah's commands to humans in the Quran; since then Muslims regard it as Divine Law. Between the seventh century when Prophet Muhammad died and the 10th century, many Islamic legal scholars attempted to explain the Sharia and to adapt it to the expanding Muslim Empire; the Islamic law of this century represented an important part of Islam's Golden Age. From that time, the Sharia has continued to be reinterpreted and adapted to changing modern daily circumstances and new social issues. Legally; the Quran is the first written formulation of Islam and the Malik's Muwatta is arguably that becomes Islamic law-in-practice, this book is more about the history and development of religious law, it lies on the methods used by Imam Malik in the Muwatta to derive the judgments of the law from the details of the Quranic interpretation; also include other main source of religious law the Sunnah of the Prophet Muhammad namely known as the prophetic traditions. It is the first book to develop the Malik school of Maliki's Rite as it is also the first to demonstrate in details the various methods used in interpreting the legal verses of the Glorious Quran. The religious law represents one of the world's great legal systems, a law originated as an important part of the religion of Islam.

***T / SH.ABBASSI***

## TEXT STUDY:

### Development of the Religious Law

Before Islam the nomadic tribes inhabiting the Arabian Peninsula worshiped idols, these tribes frequently fought with one another each tribe had its own customs governing marriage, and revenge...Crimes against persons were solved with personal retribution or sometimes by an arbitrator. The prophet Muhammad introduced Islam religion into this Arab world; which is affirmed only one true creator, a new religion ordered believers to obey only Allah's will and laws. The Quran sets down basic standards of human conduct; but does not provide a detailed law code and a few verses deal with legal matters.

During his lifetime, our messenger helped clarify the law by rules of the Quran and acting as a judge in legal cases, and then the Sharia became a part of the Muslim religion. By the prophet death, his companions ruled the Islamic state for about 30 years; these political–religious rulers, called caliphs, continued to develop Islamic law with their own decisions. The first caliphs also conquered territories outside Arabia including Iraq, Syria, Palestine, Persia, and Egypt. Islamic law grew along with the expanding Muslim Empire, the Umayyad dynasty caliphs, who took control of the empire, extended Islam into India, Northwest Africa, and Spain. They appointed Islamic judges to decide cases in all areas of the law involving Muslims Knowledgeable about the Quran and the Sunnah (Non–Muslims kept their own legal system.), Following a period of revolts and civil war, the Abbasids replaced them and the Sharia reached its full development under their absolute rule; the Abbasids transferred areas of criminal law to the government while the judge continued to handle cases involving religious, family, property, and commercial law. The Abbasids encouraged legal scholars to hold that only the divinely inspired Quran and teachings of the Prophetic Tradition should make up the Sharia. Thus; Sharia was not a code of laws, but a body of religious and legal laws that continued to develop for the long centimes.

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## Text Analysis:

### The judicial system in Islam

Almighty Allah says: *“We have sent Messengers with clear proofs, and sent down with them the Scripture and the Balance that mankind can establish justice...” (Quran 57:25)*

Islam –the religion that Allah wants for mankind from the time that He sent Muhammad, may the peace and blessings of Allah be upon him until the Day of Judgment– shows great concern for the judicial system and those appointed to carry out its responsibilities; for Islam is the religion of mercy, equality and justice; also is the religion that comes to remove people from oppression and bring them to the highest degree of justice and freedom and to determine right from wrong.

Allah’s Messenger was the greatest of judges, he used to act in the capacity of judge in the city of Medina, which was the first Islamic state, and he used to appoint people to be judges in other cities.; in the era of the Rightly Guided Caliphs, the head of state continued to be the one to appoint judges, to govern its affairs, to protect its independence, and to keep verdicts; and Umar Ibn Al-Khattab, the second Caliph was the first person to make the judge an independent entity and distinct from the governors. In this way, the judicial system continued to develop during the Islamic Era, where the Chief Justice became responsible for appointing and removing judges, He was responsible for supervising their behavior and monitoring their performance, the first person to be appointed to this post was Abu Yusuf, the student of the great jurist Abu Haneefa (May Allah have Mercy on them both) then, this office became widespread through the Muslim lands, it continued to exist up to the fall of the Ottoman Empire.

Many names of judges have been preserved in Islamic History, who devoted their lives and careers in applying the teachings of Islam in the best manner and gave us a fair example of how a Muslim judge is supposed to conduct himself in establishing justice among people as an obligation of the Islamic law; by following its guidelines originated from the sacred texts of the divine Quran and have been detailed by the apostolic Sunnah that are relevant for every time and place.

***T / SH.ABBASSI***

**Text Study:**

## **THEORIES OF LAW**

Man as a social being he cannot live on his own, he is completely independent of others; but when the individual rights crash with those of others and conflicts between them inevitably arise and the dispute might be between the strong party and the other is weak incapable of defending his rights; thus a law revealed to be both an obligation and a necessity of human life to prevent people from oppressing one another, to ensure that the weaker members of society receive justice.

Then, Law is a rule of conduct developed by government or society over a certain territories; it follows practices and customs in order to deal with: crimes, business, social relationships, property... etc, the law is controlled and enforced by the state's authorities, it is to be followed by everyone regardless of their status.

There are various definitions of law, the historians defined it as a matter of growth, it is not universal just like language, it varies with people and age and law should always conform to the popular consciousness, and the individual must know law and be aware of its purpose, the lawmaking is more important in human beings life and all the laws are been decided by a court of justice.

The sociologists stated it like “essentially and exclusively as a social fact.” also is “the form of the guarantee of conditions of life in society assured by state's power of constraint.” ; this definition has four important parts. One, the law is a means of social control. Two, the law is to serve the purposes of the society. Three, law due to its nature is coercive. Four, law as tool which is acting as a social institution where conflicting wings of political and economic interests, and ethical values constantly struggled for recognition, while in the Realistic definition: “the law is described as a judicial processes, a statement of the circumstances in which public force will be brought to bear upon through courts.”

According to the above definitions of law; the human behavior in the society is controlled with the help of law; it aids in the cooperation between members of a society, it also helps to avoid any conflicts and also helps to resolve them.

***T / SH.ABBASSI***

## Law Terminology:

English Terms	Arabic Terms	English Terms	Arabic Terms	English Terms	Arabic Terms
Constitution	دستور	Council of Government	مجلس الوزراء	Legislation 1: Law 2: Ordinance 3: Legislative	تشريع القانون /1 المرسوم /2 التشريعي /3
Organic Law	القانون العضوي	Council of Ministers	مجلس الحكومة		
Decree	مرسوم	Presidential Decree (Decision)	المرسوم الرئاسي (القرار)	Executive Decree	مرسوم تنفيذي
Ministerial Order (Decision)	الأمر الوزاري (القرار)	Collective Ministerial Order	أمر وزاري جماعي	Wali's Decision	قرار الوالي
President Decision	قرار الرئيس	Circular	تعليمية	Note	مذكرة

### BRANCHES OF LAW

English Terms	Arabic Terms	English Terms	Arabic Terms	English Terms	Arabic Terms
Public Law		Private Law		Constitutional Law	
International Public Law		International Private Law		Penal / criminal Law	
Labor Law		Family Law		Civil Law	
Civil Status Law		Commercial Law		Nationality Law	
Law of the Sea		Maritime Law		Law of the Public Service	
Taxation Law		Customs Law		Treaties Law	
International Humanitarian Law		International Human Rights Law		International Criminal Law	

Civil & Administrative Proceedings Law		Penal Proceedings Law		Social Security Law	
Insurance Law		Banking Law		Civil Aviation Law	
Real Estate Law		Public Procurement Law		Martial Law	
Administrative Law		Urban Planning Law		Law of Political Parties & Associations	
Investment Law		Business Law		Money & Credit Law	
Economic Regulation Law		Judicial Organization Law		Registration & Stamp Law	
Proposition Law		Elections Law		Project of Law	
Legislation		Comparative Law		Law of Schools	

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## LEGAL TRANSLATION OF QUOTES:

<b>English Quotations</b>	<b>Arabic Quotations</b>
<p><b>_ Language Definition:</b> Law is any written rule or a collection of rules under the authority of the state or nation.</p>	
<p><b>_ Legal Definition:</b> Law is a complete body of rules, customs and norms and the court is governing the relations between individuals to the state.</p>	
<p><b>_ Sources of the Algerian Law:</b></p> <ul style="list-style-type: none"> <li>* The treaties or conventions ratified by the President of the Republic are higher than the Law;</li> <li>* The law;</li> <li>* The Islamic Law or the (Religious Law);</li> <li>* The custom;</li> <li>* Natural right and rules of equity if necessary...</li> </ul>	
<p><b>_ The Algerian Legal system:</b> is based on the separation of powers leads to a distribution of activities among the three branches of government, _ The President and his administration see to the implementation of the law; _ The Parliament is responsible for civil and criminal legislation; courts make the decisions on civil and criminal law.</p>	
<p><b>_ The separation of powers:</b> The judiciary branch generally does not make law (which is the responsibility of the legislative) or enforce law (which is the responsibility of the executive branch) but rather interprets law and applies it to the facts of each case.</p>	
<p><b>_ The judicial branch:</b> it has the power to change laws through the process of judicial review power; it may conceal the laws and rules of the state when it finds them incompatible with higher norms.</p>	
<p><b>_ The term "judiciary":</b> is also used to refer collectively to the staff or personnel such as: judges, as well as the magistrates and others, who form the elements of a judiciary systems working.</p>	

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## Text Study:

The Four Scholar's Teachings have adopted various theological doctrines for the interpretation of the Islamic Law and their Rites were established as further legislations.

They were the Hanafi Rite founded by Imam Abu-Hanifah of Kufa ; the Malikite Rite established by Imam Malik , the Shafii Rite by Imam Shafii and the Hambali Rite by Imam Ahmed Ibn Hambel. Despite these schools differ mainly in some details, however; in fundamentals matters their resemblance was most clear, yet Quran and Sunnah remained the two basic sources of Islamic legislation from which they derived their approaches. Whereas; the Legislators had divided the world into three areas or territories that are: the territory of safety [Dar Al-Islam] territory of covenants [Dar Al-Aâhd] and territory of war [Dar Al-Ahârb]. The first area governed by the Islamic Law and ruled by Muslim Authority, its inhabitants either Muslims or non-Muslims were under the protection of the Islamic State Law. The second was land ruled by neither the Islamic Law nor the Muslim Authority; but which had concluded a treaty for peaceful relations with the Muslim State. Third, is a country run by non-Muslims authority that had no treaty as well as a place where Muslims felt unsecure?

They also had split people into three types: the Muslims who were required to respect all Islamic obligations and prohibitions , the Dhumûs were non-Muslims lived in the Islamic States with a convention between them, the Mustamûns were foreigners who in general practice business or trade they had legal permission to remain temporally within the Islamic State.

***T/ SH.ABBASSI***

## The categories of Islamic Law

Quranic chapters and verses have dealt with few things that are allowed or forbidden in clear words; therefore, Islamic legislation has developed a system that divided all human actions in five categories:

First, prescribed rule is an action may be obligatory for the individual or the whole society not performing is punishable and its performance is rewarded like the daily prayers.

Second, recommended rule is preferable if the Muslim does not perform it he will not be punished; yet he will be rewarded when he does it like: fasting additional days.

Third, permissible rule the deed is neither rewarded nor punished such as: travelling by plane.

Fourth, reprehensible rule is not an accepted deed the person who does not perform it is rewarded; however its performance is not punished.

Fifth, prohibited rule is when a Muslim does not do it is rewarded and by doing it he will be punished as dealing with usury, robbery, etc..., besides the following ones:

Thus; the legislator has imposed on us obligations we must not neglect and limits we must not broke.

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## The Political Legitimacy Forms

### **English Definitions**

#### **Monarchy:**

In a monarchy, the divine right legitimacy of kings establishes the political legitimacy of the rule of the monarch (king or queen); legitimacy also derives from the popular perception (tradition and custom) and acceptance of the monarch as the rightful ruler of nation and country, like the royal family who have ruled and governed Saudi Arabia since the 18th century. Moreover, constitutional monarchy is a variant form of monarchic political legitimacy which means the monarch maintains nationalist unity (one people) and democratic administration (a political constitution).

#### **Constitutionalism:**

The legitimacy of constitutionalism derives from popular belief and acceptance that the actions of the government are legitimate because they are limited by the constitutional law effectively restrains the actions of the government by dividing political power among the organs of government; The constitutionalism establishes the law as supreme over the private will, it is based on checks and balances concept.

#### **Democracy:**

In a democracy government legitimacy derives from the popular perception that the elected government governs by democratic principles in and thus is legally accountable to its people.

#### **Nazism:**

The racial policy was a set of policies and laws imp based on a specific racist doctrine asserting the superiority of the Aryan Race, which claimed scientific legitimacy.

#### **Communism:**

The legitimacy of a Communist state derives from having won a civil war, a revolution, or from having won an election, such as the Presidency elections in Chile; thus, the Communist governments are legitimate, authorized by the people. In the early twentieth century, Communist parties based the arguments supporting the legitimacy of their rule and government upon the scientific nature of Marxism based on materialism concept.

#### **Fascism:**

The fascism based its political legitimacy upon the arguments of traditional authority; claimed that the political legitimacy of their right to rule derived from denying the elected liberal democratic governments.

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## Translation of legal definitions

### Legal professions: مهن قانونية

Are the legal studies required for someone choosing a career in law to first obtain a law degree or some other form of legal education in order to apply law ; among the categories practicing legal jobs are: the judges, the lawyers, the solicitors, the jurist, the notaries...etc.

### The Judge : القاضي

«Historically, this has been the first legal specialization in law countries; this is often a lifelong career, judges are recruited from practicing ».

### The Lawyer : المحامي

«Practicing law means advising and representing clients as a private practitioner, all lawyers who want to provide services to the public.»

### The Solicitor: الموثق

«Solicitors advise clients, draft contracts for them and represent them in courts of law.»

### The Barrister: المستشار

«Barristers, also called *counselors* are court specialists, who usually do not come into contact with their clients, but are instructed by solicitors.»

### The Jurists: رؤساء المحاكم

«People, who study, organize, teach, and through that also create law, often working at universities, are called jurists; their role is greater because the creation and interpretation of law has traditionally been the field of judges.»

### The Paralegal: النواب

«A paralegal or legal assistant is a person qualified by education training or work experience who is employed by a lawyer and law office or governmental agency who performs specifically a legal work for which a lawyer is responsible.»

### The prosecutors or Attorney: وكلاء الجمهورية

«Representing the Attorney General at the level of the Court who received the records, complaints and communications; And decide what to do with it ordering all necessary procedures for research and investigation...»

**T / SH. ABBASSI**