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Divine Law vs. Human Construct: The Unbridgeable Divide Between Sharia Law and Roman Law

القانون الإلهي في مواجهة الصياغة البشرية: الهوة السحيقة بين الشريعة الإسلامية والقانون الروماني

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Abstract:

This paper examines the profound ideological divide between Sharia law and Roman law, exploring the irreconcilable differences between a divine law and a human construct. The historical context of Sharia's expansion highlights its integration into all aspects of life, transcending the rigidity of Roman law, which was secular and fragmented. The central problematic addresses whether a legal system rooted in divine authority could ever be shaped by a framework founded on human ingenuity and political pragmatism.

The research methodology is analytical, dissecting the foundational principles, sources, and legal classifications of both systems. The paper is structured into three sections: (1) the concept of rights, contrasting Sharia's fusion of legal and spiritual duties with Roman law's secular approach; (2) the sources of law, comparing Sharia's divine origins with Roman law's reliance on custom and codification; and (3) the classification of legal rules, focusing on Sharia's holistic integration of moral, legal, and spiritual obligations, as opposed to Roman law's compartmentalization of public and private spheres.

Findings reveal that the foundational roots of these legal systems are inherently distinct, with Sharia emerging from divine will and Roman law from human production. The analysis dismantles any superficial claims of influence between the two, emphasizing that Sharia's divine origin and comprehensive ethical framework set it apart as a visionary legal system, alien to Roman law's human-centered pragmatism. This exploration reaffirms the originality and ethical depth of Sharia law,

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asserting its unbridgeable divide from Roman legal traditions.

Keywords: Divine authority, Holistic jurisprudence, Legal sources, Roman positivism, Secular law.

المستخلص:

تتناول هذه الورقة الفجوة الأيديولوجية العميقة بين الشريعة الإسلامية والقانون الروماني، حيث تستعرض الاختلافات التي لا يمكن التوفيق بينها بين التشريع الإلهي والبناء البشري. يبرز السياق التاريخي لتوسع الشريعة الإسلامية تكاملها في جميع جوانب الحياة، متجاوزة الجمود الذي اتسم به القانون الروماني العلماني والمجزأ. تُطرح في هذه الدراسة إشكالية مركزية تتساءل ما إذا كان بإمكان نظام قانوني قائم على السلطة الإلهية أن يتأثر بإطار يعتمد على الذكاء البشري والبراغماتية السياسية. يعتمد البحث على المنهج التحليلي، حيث يتم تفكيك المبادئ الأساسية والمصادر والتصنيفات القانونية لكلا النظامين. يقسم البحث إلى ثلاثة مباحث: (1) مفهوم الحقوق، مع إبراز التباين بين دمج الشريعة للواجبات القانونية والروحية، ومنهج القانون الروماني الذي يتسم بالطابع العلماني. ؛ (2) مصادر القانون، حيث يتم مقارنة أصول الشريعة الإلهية مع اعتماد القانون الروماني على العرف والتقنين؛ و(3) تصنيف القواعد القانونية، مع التركيز على التكامل الشامل للشريعة بين الالتزامات القانونية والروحية، مقارنةً بتقسيم القانون الروماني بين المجالات العامة والخاصة.

تكشف النتائج أن جذور هذه الأنظمة القانونية متباينة بطبيعتها، حيث تنبع الشريعة من الإرادة الإلهية، بينما يستند القانون الروماني إلى الإنتاج البشري. يفكك التحليل أي ادعاءات سطحية تتعلق بالتأثير بين النظامين، مؤكدًا أن أصل الشريعة الإلهي وإطارها الأخلاقي الشامل يجعلانها نظامًا قانونيًا مبتكرًا وغريبًا عن براغماتية القانون الروماني المتمركز حول الإنسان. هذه الدراسة تؤكد أصالة الشريعة وعمقها الأخلاقي، مشددةً على الفجوة غير القابلة للجسر بينها وبين التقاليد القانونية الرومانية.

الكلمات المفتاحية: السلطة الإلهية، الفقه الشامل، مصادر القانون، الوضعية القانونية الرومانية، القانون العلماني.

Introduction

The clash between Sharia law and Roman law is not merely a historical comparison—it's a profound ideological collision between divine will and human invention.

Between 632 A.D. and 732 A.D., the Islamic world witnessed a seismic transformation, marked by an unprecedented expansion of both territory and ideology. In just a century, Islam surged across continents, reaching from Spain to India. However, more than the spread of faith, this expansion heralded the imposition of Sharia. Unlike the fragmented and rigid Roman law, Sharia entered these lands as a fluid, divine command that transcended territorial boundaries, embedding itself in every facet of the Islamic empire's social, political, and legal framework[1].

In this context, the comprehensive body of Islamic law, which constitutes the "core and kernel"[2] of Islam, is often referred to as Sharia. The term Sharia originally meant "a path leading

[1] Gregory C. Kozlowski, Islamic Law in the Modern World, Update on Law-Related Education, Vol. 16, n. 3, 1992, pp. 8-49, p. 8.

[2] Mark L. Movsesian, Fiqh and Canons: Reflections on Islamic and Christian Jurisprudence, Seton Hall Law Review, Vol. 40, n. 3, 2010, pp. 861-888, p. 863.

to water", a concept deeply symbolic in the arid environment of the Arabian Peninsula, where Islam was born. In this context, water, as a source of life, came to represent divine guidance and sustenance[3]. Just as water is essential for the survival and flourishing of life, so, too is Sharia vital for leading humanity along the path ordained by God[4].

Unlike Roman law, which fixates on legal norms and procedural clarity, Sharia fuses law with ethics, intertwining moral imperatives and ritual obligations into a singular framework. This holistic nature of Sharia reflects its role as a complete way of life, addressing not only legal matters but also guiding personal conduct and spiritual practices[5]. Every action, whether personal or public, falls within the scope of this divinely prescribed path, illustrating the all-encompassing nature of Islamic jurisprudence[6].

In contrast, Roman law—arguably the foundation of many modern Western legal systems—was more secular in nature[7]. Furthermore, Roman law stands rigid, structured, and incapable of grasping the holistic nature of Sharia's divine mandate[8]. The Romanesque legal system, now glorified as Modern Civil Law, has undeniably stamped its authority across continents, from Quebec to Cairo, Budapest to Buenos Aires. Born from Roman tradition, it has been mythologized as a universal legal blueprint, bending and twisting to fit diverse cultures and legal landscapes.

The widespread adoption of the Roman-inspired legal system reflects its emphasis on codification and its ability to provide a structured, predictable framework for modern governance[9]. Despite its reach, it remains bound by the secular, procedural rigidity that Roman law perfected[10]. While Roman Law may have molded legal systems far and wide, it remains just that: a mold, confined to shaping laws but never able to touch the moral and ethical fabric of society the way Sharia does[11].

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[3] Farooq A. Hassan, The sources of Islamic law, Proceedings of the Annual Meeting (American Society of International Law), Vol. 76,1982, pp. 65-75, p. 66.
[4] Asifa Quraishi-Landes, The Sharia Problem with Sharia Legislation, Ohio Northern University Law Review, Vol. 41, n. 3, 2015, pp. 545-566, p. 561.
[5] Bernard Weiss, The search of God's Law, Revised edition, The University of Utah Press, 2010, p. 1.
[6] Asifa Quraishi-Landes, The Sharia Problem with Sharia Legislation, Ohio Northern University Law Review, Vol. 41, n. 3, 2015, pp. 545-566, p. 548.
[7] T.W. Lapin, On the Origins of Islamic Law, Forum Law Journal, Vol. 6, n. 2, 1975, pp. 21-23, p. 23.
[8] Asifa Quraishi-Landes, The Sharia Problem with Sharia Legislation, Ohio Northern University Law Review, Vol. 41, n. 3, 2015, pp. 545-566, p. 563.
[9] William C. Morey, Outlines of Roman Law, Comprising Its Historical Growth and General Principles, G. P. Putnam's Sons., 1906, p. 154.
[10] Arthur Emmett, Introduction to Roman law, Bar News, Winter 2008, pp. 69-70, p. 70.
[11] Mahomed U. S. Jung, The Roman-Muslim Law, Allahabad Law Journal, Vol. 23, n. 1, 1925, pp. 1-8, p. 1.

Accordingly, this paper presents an analysis of the fundamental distinctions between Roman law and Islamic Sharia, aiming to refute a recurrent claim often made by Orientalists in the late 19th and early 20th centuries, and still echoed in some contemporary Western legal circles, that Sharia law is either influenced by Roman law or, worse, merely Roman law in an Arabic guise[12]. The core objective of this paper is to emphasize the inherent, fundamental differences in the foundations, codes, and "genetics" of Sharia and Roman law.

Therefore, the central question addressed is: **Can a legal system rooted in divine authority ever be shaped by or borrowed from a framework born of human ingenuity and political pragmatism? How can Sharia law, with its foundation in divine revelation, be anything but fundamentally distinct from Roman law, a product of human design and statecraft?**

To answer this, the paper employs an analytical methodology to explore the divergent roots of these two legal systems, ultimately demonstrating that they are like two trees emerging from entirely different soils and roots. The paper is structured into three sections:

- Concept of Rights: This section delves into the significant differences in how "rights" are conceptualized in Sharia and Roman law (Section 1).

- Sources of Law: Here, the discussion focuses on the fundamental divergences in the sources of Sharia and Roman law (Section 2).

- Classification of Legal Rules: This final section highlights how legal rules are categorized differently in Sharia and Roman law (Section 3).

1. Divergence in the concept of “Right”

1.1. The Roman concept

Roman law, although initially influenced by religious norms, evolved into a secular, positivist system over time. Early Roman law, like Islamic law, had religious underpinnings with rituals and divine references embedded in its legal texts[13]. However, as Roman society evolved, especially during the Republic and Empire, its laws became more pragmatic, codified, and centered on civil administration. This shift culminated in the Corpus Juris Civilis under Emperor Justinian, emphasizing legal formalism and human reasoning over religious doctrine[14].

[12] Ahmed Akgunduz, Introduction to Islamic law, Iur Press, Rotterdam, 2010, p. 35.
[13] Bernard F. Deutsch, Ancient Roman Law and Modern Canon Law, Jurist, Vol. 27, n. 3, 1967, pp. 297-309, p. 297.
[14] E. W. Thomas, Fairness and Certainty in Adjudication: Formalism v Substantialism. Otago Law Review, Vol. 9, n. 3, 1999, pp. 459-488, p. 459.

In this respect, Roman law focuses on codified rules governing human relations and societal order. Roman law categorizes rights into proprietary (ownership-related) and non-proprietary (personal rights), both rooted in legal relationships between individuals or entities. This system embodies a formal, human-centered legal structure where rights and obligations are defined within a secular, state-administered framework[15].

Thus, in Roman law, a clear separation is often made between religious matters and legal regulations. For this reason, "Right" in the West is generally viewed as a secular construct, dealing primarily with human relations and societal governance, while religion is regarded as a personal or moral sphere[16].

1.2. The Sharia's concept

Islamic jurisprudence extends into the realm of the divine, a domain untouched by Roman law. It boldly integrates the sacred into the concept of rights, intertwining religious duties with legal obligations in a way that is utterly foreign to the rigid, secular frameworks of Roman tradition. When Islamic jurists invoke the term "*haqq*" (right), they are not merely echoing a Roman or Western concept. In fact, the notion of *haqq* is not just different; it defies any direct comparison to its Western counterpart. While Roman law reduces rights to calculable legal entitlements, Islamic law elevates them, embedding them in a higher, divine order where the distinction between law and morality dissolves. This profound integration of the sacred and the legal renders Sharia system entirely alien to the Roman legal mind.

More precisely, in Islamic jurisprudence, the term *haqq* is employed in a broad sense to encompass all forms of rights—both proprietary and non-proprietary. This includes the rights of God (*huquq Allah*), capturing "interests that serve the public well-being (e.g. order, security)", and the rights of mankind (*huquq al-'ibad*), which pertain to personal and societal dealings[17].

This broader Islamic understanding of *haqq* lays bare a profound chasm between Islamic and Roman legal systems. In Roman law, rights are born from secular contracts and state-imposed legal structures, where obligations exist purely between individuals or entities. But in Islamic law, the very source of all rights, even contractual ones, is rooted in the divine. Every agreement, every obligation, carries not just

[15] Edgar S. Shumway, Justinian's Redaction, The American Law Register, Vol. 49, n. 4, 1901, pp. 195-214, p. 198.
[16] Bernard F. Deutsch, Ancient Roman Law and Modern Canon Law, Jurist, Vol. 29, n. 1, 1969, pp. 10-25, p. 17.
[17] Anver M. Emon, Huquq Allah and Huquq Al-Ibad: A Legal Heuristic for a Natural Rights Regime, Islamic Law and Society, Vol. 13, 2006, pp. 325-391, p. 326.

legal weight but spiritual consequence[18]. A breach of contract in Roman law is a violation of civil order; in Islamic law, it's an affront to the divine will[19]. What Roman law treats as a mere technical infraction, Sharia elevates to a moral and religious breach[20].

By incorporating both divine and human elements into legal principles, Islamic law offers a more holistic view of justice and responsibility. For instance, a breach of obligation (*iltizam*) not only creates a personal liability (*daman*) but also has spiritual consequences, as fulfilling one's promises and commitments is a core value in Islam[21].

This is justified by the fact that Islamic law operates within a moral-legal matrix derived from divine sources. It evaluates human actions not solely based on their legal consequences but within the broader ethical dimension of their permissibility or prohibition under Sharia. Actions are classified into five categories: obligatory (*fard*), recommended (*mustahabb*), permissible (*mubah*), disliked (*makruh*), and forbidden (*haram*)[22]. This classification reflects not only legal obligations but also the spiritual and moral implications of human behavior[23].

For this reason, from one angle, the definition of law in Islamic jurisprudence overlaps with the Roman understanding. However, this overlap is limited to a minimal or basic conception of law, as Islamic law encompasses a far broader scope. Islamic jurisprudence not only addresses legal matters that resemble those in Western legal systems but also integrates issues considered religious or moral in the Western context[24]. This includes rules related to faith, vows, rituals such as ordinary and animal sacrifices, as well as personal conduct involving permissible (*halal*) and prohibited (*haram*) sets of divine obligations related to foods and drinks, hunting, dress codes, and adornment[25].

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[18] For example, *huquq Allah* involve obligations to God, such as paying *zakat* (charity), while *huquq al-'ibad* pertain to individual rights, such as contractual obligations and property rights.

[19] Mustapha Tajdin, Natural law and Shariʿa, a quest for the universal in the particular, International Journal of Business, Economics and Law, Vol. 14, I. 5, 2017, pp. 1-7, p. 1.

[20] Anver M. Emon, Huquq Allah and Huquq Al-Ibad: A Legal Heuristic for a Natural Rights Regime, Islamic Law and Society, Vol. 13, 2006, pp. 325-391, p. 388.

[21] Nicholas H. D. Foster, Owing and Owning in Islamic and Western Law, Yearbook of Islamic and Middle Eastern Law, Vol. 10, 2003-2004, pp. 59-96, p. 71.

[22] Shamil Shovkhalov and Hussein Idrisov, Economic and Legal Analysis of Cryptocurrency: Scientific Views from Russia and the Muslim World, Laws, Vol. 10, n. 2, 2021, pp. 1-17, p. 12.

[23] Stephen C. Hicks, The Fuqaha and Islamic Law, American Journal of Comparative Law Supplement, Vol. 30, 1982, pp. 1-14, p. 3.

[24] Louay M. Safi, Islamic law and society, The American Journal of Islamic Social Sciences, Vol. 7, n. 2, 1990, pp. 177-191, p. 177.

[25] Yulun Wu, Halal or Haram - The Permissibility of Bitcoin and NFTs in Sharia, Singapore Law Review, Vol. 39, 2021-2022, pp. 229-252, p. 233.

The impact of Islamic law, therefore, extends beyond the temporal, earthly realm. Its ultimate aim is not only to regulate behavior in this world but to ensure a harmonious relationship between individuals and their Creator, guiding them toward salvation in the Hereafter[26].

Consequently, the effectiveness of upholding a "Sharia right" surpasses that of a Roman (secular) right due to its dual binding authority. In Sharia, legal compliance is reinforced not only by a structured legal framework governing conduct in this life but also by a deeply ingrained moral compass that ensures accountability in the afterlife. This duality—legal obligation paired with spiritual responsibility—renders rights recognized under Sharia law more compelling and enduring than their purely secular counterparts[27].

2. Distinct sources of legal authority

2.1. Sources of Roman law

2.1.1. Custom and practices

In early Roman society, law stemmed largely from established customs, with a formal theory of customary law emerging only in the early post-classical era[28]. These customs, deeply rooted in Roman society, served as an unwritten code that governed social interactions and obligations[29]. Hence, it is undeniable that, during the classical period of Roman law, custom (mores) served as the foundational basis for much of its substantive legal content, particularly in shaping the *ius civile*[30].

2.1.2 Decisions of popular assemblies and the Senate

One important source of Roman law was the enactments of popular assemblies, the *Comitia* (assemblies) and the *Senatus Consulta* (resolutions passed by the Senate). These bodies had legislative power, especially during the Republic.

First, the earliest assembly, the *comitia curiata*, was followed by the *comitia centuriata*, the main legislative body of the early Republic. This military-structured assembly elected top officials like consuls, praetors, and censors. Later came the *comitia tributa*, responsible for appointing minor officials (curule aediles, quaestors) and holding legislative powers. It should be emphasized that Roman law could only be enacted by citizens in official assemblies, which existed in two forms: the *comitia centuriata*, where citizens voted by

[26] Hyder Gulam, The application of shariah (Islamic law) in some different countries and its implications, Jurnal Syariah, Jil. 24, Bil. 2, 2016, pp. 321-340, p. 321.
[27] Rehanna Nurmohamed, Shari'a Law and Its Impact on the Development of Muslim and Non-Muslim Business Relations in the United Arab Emirates, Law and Development Review, Vol. 13, n. 2, 2020, pp. 443-472, p. 444.
[28] G. C. J. J. van den Bergh, Legal pluralism in Roman law, Irish Jurist, 1969, Vol. 4, n. 2, 1969, pp. 338- 350, p. 344.
[29] Olga Tellegen-Couperus, A short history of Roman law, Routledge,1993, p. 18.
[30] J. A. C. Thomas, Custom and Roman Law, Tijdschrift voor Rechtsgeschiedenis/Legal History Review, Vol. 31, n. 1, 1963, pp. 39-53, p. 44.

wealth "(the principal legislative body of the early Republic)", and the *comitia tributa*, where they voted by tribe (*Tribus)*[31].

The fourth assembly, the *concilium plebis*, differed as it represented only the plebeians[32], unlike the others, which included all Roman citizens (*populus Romanus*)[33].

Initially, consuls proposed laws to the *comitia centuriata*, but its inefficiency led to most legislative measures being presented to the *comitia tributa*. Statutes passed by either assembly were binding on all citizens, regardless of class[34].

Second, it is important to note that "under the early Empire the legislative power was transferred from the Comitia to the Senate"[35]. In fact, the combined influence of patricians and plebeians in the Senate played a pivotal role in shaping legislation. Magistrates, who initiated statutes through rogationes, customarily sought Senate approval before presenting proposals to the assemblies. Many of these legislative initiatives were likely formulated within the Senate. The Senate's advisory opinions were formalized as *senatus consultum*—the "advice of the Senate"[36].

2.1.3. Edicts of the Consuls the Praetors

Edicts, particularly in the late Republic and early Empire, were key legal sources. Issued by Roman officials at the start of their tenure, edicts set the legal framework for their office. The most important were the consuls (*consules*) followed by the praetors[37].

First, the Roman Republic's consuls, its chief magistrates, held supreme civil and military power, a position traditionally traced to 509 BCE after the fall of the monarchy. However, this role likely evolved over time, solidifying around 367–366 BCE. Elected by the centuriate assembly, consuls held *imperium*, i.e. the highest commanding and executive authority, and followed a structured career path known as the *cursus honorum*[38].

Second, during the Roman Republic, the *praetor* emerged as a key figure in administering justice. Ranked just below the consul, the *praetor* also held *imperium*[39]. Unlike consuls, praetors did not operate as a collective body or possess veto

[31] Olga Tellegen-Couperus, A short history of Roman law, Routledge,1993, p. 15.
[32] The *concilium plebis*, exclusive to plebeians, excluded the patrician class.
[33] Ditlev Tamm, Roman law and European legal history, Dfoj Publishing, 1997, p. 12.
[34] George Mousourakis, A legal history of Rome, Routledge, 2007, p. 16-26.
[35] Frederick Parker Walton, Historical Introduction to the Roman Law, William Green & Sons., 1903, p. 95.
[36] A. Arthur Schiller, Texts and Commentary for the Study of Roman Law: Mechanisms of Development, Columbia University School of Law, 1936, p. 207.
[37] Ditlev Tamm, Roman law and European legal history, Dfoj Publishing, 1997, p. 14.
[38] Fransisco Pina Polo, Consul, 2021, Available on: Consul | Oxford Classical Dictionary (oxfordre.com).
[39] Olga Tellegen-Couperus, A short history of Roman law, Routledge,1993, p. 41.

powers. Multiple praetors served simultaneously, but independently[40].

It bears mentioning that the praetor's edict played a crucial role in shaping Roman private law. Issued annually upon the new praetor's accession, the edict evolved over time with established guidelines[41].

The law introduced by the Praetor, whether addressing substantive law or procedural rules, was primarily established through their general or special edicts. General edicts were issued in the Praetor's legislative role, applying broadly to all cases of a specific class without reference to any particular dispute. In contrast, special edicts were issued in the Praetor's judicial capacity, directed at individuals involved in specific cases and tailored to those particular circumstances. Thus, general edicts provided overarching legal guidelines, while special edicts dealt with individual cases[42].

Initially, praetors merely administered the *jus civile*, but gradually recognized the need to issue special orders to establish formulae for *interdicta*[43] and later for *actiones* (actions). The *praetor urbanus* applied both the *jus civile* and *jus gentium* to Roman citizens, while the *praetor peregrinus* resolved disputes involving non-citizens (*peregrini*) or between citizens and non-citizens, based on the *jus gentium*. Through their annual edicts, these praetors introduced new rules for specific cases, which gradually formed a body of law. Cicero famously remarked in his discussion of Roman law, "praetoris edictum legem annuam dicunt esse"[44], reflecting the annual legal authority of the praetorial edicts[45].

2.1.4. Codified law

"As Sir Henry Maine points out, Roman law began with a code, the Twelve Tables, and ended with a code, the Corpus Juris Civilis"[46]. Indeed, as Roman society evolved, codified law began to emerge. The earliest known Roman legislation is the *Law of the Twelve Tables* (*Leges Duodecim Tabularum*), enacted in 451–450 BCE. This code, considered the bedrock of Roman legal tradition, was a monumental step

[40] Bart Wauters, Marco de Benito, The history of law in Europe – An introduction, Edward Edgar Publishing, 2017, p. 17.
[41] Ditlev Tamm, Roman law and European legal history, Dfoj Publishing, 1997, p. 15.
[42] John Austin; Robert Campbell, ed., Lectures on Jurisprudence or the Philosophy of Positive Law, London: John Murray., 3, p. 611.
[43] Interdicts provided fast access to summary proceedings, issued as praetorian bans or orders for the defendant to restore or honor a legal status. Upon compliance, the case moved to a tribunal, resembling a standard lawsuit.
[44] This sentence can be translated as: "It is said that the praetor's edict constitutes a law with a duration of one year."
[45] Gilbert T. Sadler, Roman Praetors, London: Stevens and Sons., 1922, p. 29.
[46] Joseph W. Planck, The Survival of Roman Law, American Bar Association Journal, Vol. 51, n. 3, 1965, pp. 259-261, p. 259.

in transitioning from customary law to written statutes[47].

At the opposite end of the historical spectrum, the *Corpus Juris Civilis*, as finalized under Justinian, emerged through the gradual evolution and expansion of the Twelve Tables, shaped by three key forces: the jurisconsults, the praetors, and legislative developments[48].

2.1.5. Imperial Constitutions

During the Imperial era, the Roman emperors exercised significant legal authority through the issuance of *constitutiones* (imperial constitutions)[49].

Imperial enactments in Roman law, commonly referred to as "Constitutions", specifically include "Decrees" and "Edicts," each holding the force of law. These imperial constitutions were later compiled into official collections, the most significant being the *Theodosian Code* of Emperor Theodosius II, the *Justinian Code*, and the *Justinian Novels*[50].

2.1.6. Legal Opinions or Interpretations by Jurists

The opinions and interpretations provided by respected jurists, known as the *Responsa Prudentium*, were an essential source of Roman law. Jurists were highly regarded legal scholars, whose expertise and interpretations were often sought in complex legal matters[51]. Although not binding as law in themselves, these opinions had significant persuasive authority and contributed to the development of Roman legal principles. In fact, emperors adopted the practice of granting *responsa prudentium*—binding legal responses from privileged jurists—to assist judges in novel cases. When a judge encountered a new legal issue, he would refer the pleadings to a privileged jurist, whose decision became binding[52]. Furthermore, through the issuance of *responsa* and engaging in various related practices, these Roman jurists played a crucial role in shaping the development of private law. Over time, Roman jurists began to document their *responsa*, systematically organizing them and eventually publishing these records. This body of work emerged as one of the most significant contributions of Roman legal culture[53].

2.1.7. Works of Jurists

[47] Andrew Stephenson, History of Roman L with a Commentary on the Institutes of Gaius & Justinian (Boston: Little, Brown., 1912), p. 138.
[48] Andrew Stephenson, History of Roman L with a Commentary on the Institutes of Gaius & Justinian (Boston: Little, Brown., 1912), p. 148.
[49] Ditlev Tamm, Roman law and European legal history, Dfoj Publishing, 1997, p. 30.
[50] Francesco Lardone, Imperial Constitutions of Theodosius II and the Council of Ephesus, Georgetown Law Journal, Vol. 20, n. 4,1932, pp. 456-474, p. 458.
[51] Ditlev Tamm, Roman law and European legal history, Dfoj Publishing, 1997, p. 16.
[52] William Seal Carpenter, Foundations of Modern Jurisprudence, Appleton-Century-Crofts., 1958, p. 87.
[53] Olga Tellegen-Couperus, A short history of Roman law, Routledge,1993, p. 49.

The writings and treatises of prominent jurists, such as Gaius, Papinian, and Ulpian, further solidified Roman legal thought. Their contributions were monumental in shaping the legal doctrines and principles that would later influence not only Roman law but also many modern legal systems. These jurists compiled, interpreted, and systematized Roman law, offering clarity and guidance on various legal issues, including property, contracts, and inheritance[54]. Indeed, alongside the primary stream of Roman jurisprudence, a secondary stream emerged. This secondary tradition focused on organizing and clarifying the vast body of legal material accumulated by earlier jurists. It prioritized producing concise, accessible legal treatises, simplifying complex doctrines for broader understanding and practical application[55].

2.2. Sources of Islamic Law and their characteristics

2.2.1. The Sunni orthodox schools

2.2.1.1. The Holy Quran

The Qur'an stands as the unshakable cornerstone of Islamic law, a divine mandate that transcends all human legal systems. It is not merely a reference—it is the literal word of God, infallible and eternal. Revealed to Prophet Muhammad (PBUH) over 23 years—13 in Mecca, 10 in Medina—this is no gradual evolution of legal thought, as seen in Roman law's secular progress. Instead, it is a divinely orchestrated, comprehensive legal framework that reshapes every facet of life. While Roman law is rooted in human authority, prone to change and reinterpretation, the Qur'an is the final, immutable legal authority[56]. This foundational difference makes Sharia law not just different, but incomprehensible within the narrow, earthly scope of Roman jurisprudence.

The Quran consists of 114 surahs (chapters), with *Surah Al-Nas* being the final chapter[57]. There is a general consensus among scholars that the number of legal verses (*āyāt al-aḥkām*) in the Qur'an is approximately 500. These verses, despite being a fraction of the Qur'an's total 6,236 verses (excluding Bismillah), hold immense significance in Islamic

[54] Zohdi Yakan, Roman law and Sharia law, Yakan legal publishing, Beirut, 1975, p. 88.
[55] A. Arthur Schiller, The Nature and Significance of Jurists Law, Boston University Law Review, Vol. 47, n. 1, 1967, pp. 20-39, p. 35.
[56] Asifa Quraishi, Interpreting the Qur'an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence, Cardozo Law Review, Vol. 28, n. 1, 2006, pp. 67-122, p. 74.
[57] Issam Saliba, Islamic Law: Traditional Law of Islam. Washington, D.C., Law Library of Congress, 2004, p. 1.

jurisprudence[58]. However, the qualitative weight and importance of these legal verses remain subjects of ongoing debate among scholars, leading to two contrasting perspectives. Some scholars argue that the legal content in the Qur'an is incidental or secondary, given the small proportion of legal verses compared to the broader thematic content. They point out that, at first glance, only about 8% of the Qur'an consists of explicit legal injunctions, such as regulations on inheritance, marriage, trade, and criminal matters. These scholars emphasize the Qur'an's primary focus on spiritual guidance, morality, theology, and reflections on human life rather than legal instructions[59].

On the other hand, critics of this simplistic quantitative approach argue that fixating on the number of legal versus non-legal verses fundamentally misrepresents the weight and significance of the legal material within the Qur'an. While the legal verses may be fewer in number, they are far more substantial in both length and complexity, carrying a profound practical impact. In contrast, many non-legal verses are brief and often repetitive, diminishing their numerical significance. Accordingly, legal verses are specific and foundational to the very architecture of Islamic law, proving that their qualitative depth far outweighs their quantitative minority[60]. This nuance is precisely what makes Sharia an inherently complex and layered system, unlike Roman law's emphasis on rigid structures and numbers. It is often argued that legal verses in the Qur'an are proportionally more significant than non-legal ones. This perspective highlights that, while repetition frequently occurs in other thematic areas of the Qur'an, it is uncommon within legal verses. This distinction underscores the unique role and significant impact of legal verses within the Qur'anic text[61].

It is noteworthy that the Qur'anic injunctions, much like the Roman XII Tables, laid the foundational legal framework for their respective systems. Both served as early codifications that paved the way for more advanced legal developments. However, a key distinction lies in their scope: while the XII Tables were fragmented and limited in their coverage[62], the Qur'an is viewed by Muslims as

[58] Renat I. Bekkin, Islamic Insurance: National Features and Legal Regulation, Arab Law Quarterly, Vol. 21, n. 1, 2007, pp. 3-34, p. 4.
[59] Shafi Fazaluddin, Conciliation Ethics in the Qur'an, International Journal for the Semiotics of Law, Vol. 29, n. 2, 2016, pp. 333-358, p. 335.
[60] Abdul-Hakim Al-Matroudi, The Relationship between Legal and Non-Legal Verses in the Qur'an: An Analytical Study of Three Themes of the Qur'an, International Journal for the Semiotics of Law, Vol. 29, n. 2, 2016, pp. 261-284, p. 262.
[61] Abdul-Hakim Al-Matroudi, The Relationship between Legal and Non-Legal Verses in the Qur'an: An Analytical Study of Three Themes of the Qur'an, International Journal for the Semiotics of Law, Vol. 29, n. 2, 2016, pp. 261-284, p. 262.
[62] Ditlev Tamm, Roman law and European legal history, Dfoj Publishing, 1997, p. 21.

a comprehensive and divinely revealed guide, addressing not only legal matters but also encompassing moral and ethical conduct[63].

2.2.1.2. The Sunnah

The Prophet fulfilled a dual mission, teaching both the *Kitab* and *Hikmah* (Sunnah) in a simultaneous and complementary manner[64]. The *Sunnah*, or the lived practice of the Prophet Muhammad (PBUH), represents a foundational source of Islamic law, embodying the actions, statements, and tacit approvals of the Prophet[65]. The *Sunnah* has been compiled into what is known as *Hadith*. These narratives serve as concrete examples for interpreting and applying Islamic principles[66]. This reveals a crucial point about the evolution of Islamic legal theory: it followed a natural progression, where practice existed before formal theorization. The Prophet's practices and the legal rulings derived from them were initially applied in real-time, reflecting an organic process where societal needs dictated the law. Over time, scholars engaged in systematization and codification, organizing these precedents into a coherent legal framework[67]. The Sunnah is classified into three main categories:

1 - Verbal Sunnah (Al-Sunnah Al-Qawliyyah**)**: the tradition of the words and speeches of the Prophet Muhammad (PBUH), also known as Al-Hadith[68]. For instance, it includes his guidance on matters of faith, moral conduct, and legal principles.

2 - Practical Sunnah (Al-Sunnah al-Filiyyah**)**: the actions performed by the Prophet, which serve as a model for Muslims to follow, such as his manner of prayer and fasting.

3 - Tacit Sunnah (Al-Sunnah al-Taqririyah**)**: the Prophet's approval of actions performed by others, expressed through his silence or implicit endorsement, indicating that these actions are in accordance with Islamic teachings[69].

2.2.1.3. Consensus (*Ijma'*)

The concept of *ijma'* is a pivotal mechanism in Islamic jurisprudence used to determine the legal status of particular issues through the collective agreement of scholars and individuals with authoritative knowledge. The practice of *ijma'* began after the death of the Prophet

[63] Mahomed U. S. Jung, The Roman-Muslim Law, Allahabad Law Journal, Vol. 23, n. 1, 1925, pp. 1-8, p. 8.
[64], S. M. Yusuf, The Sources and Development of Islamic Law, Journal of Malaysian and Comparative Law, Vol. 3, n. 1, 1976, pp. 59-80, p. 62.
[65] David S. Powers, On Judicial Review in Islamic Law, Law & Society Review, vol. 26, no. 2, 1992, pp. 315-342, p. 318.
[66] Wael B. Hallaq, An introduction to Islamic law, Cambridge University Press, 2009, p. 16. See also, Ahmad Alomar, Credibility of Sunnah, European Journal of Law Reform, Vol. 18, n. 4, 2016, pp. 341-395, p. 347.
[67] Majd Kuadduri, Herbert Liebesny, Law in the Middle East – Origin and development of Islamic law, The Middle East Institute, 1955, p. 90.
[68] Mahmud Saedon Awang Othman, Islamic Law and Its Codification, IIU Law Journal, Vol. 1, n. 1, 1989, pp. 51-82, p. 52.
[69] S.M. Yusuf, the sources and development of Islamic law, Journal of Malaysian and comparative law, Vol. 3, n. 1, 1976, pp. 54-80, p. 70.

Muhammad (PBUH), marking the end of the formative period of the *Sunnah*. In its earliest form, *ijma'* was based on the opinions of a distinguished group of men known as the Companions of the Prophet[70].

In this context, initially, *ijma'* was regarded as highly authoritative but not infallible. It was understood that individual scholars might err in their judgments; however, the collective judgment of the *ummah* (the entire Muslim community) was believed to be divinely protected from error in significant matters of religion[71]. This belief is rooted in the conviction that God would not allow the *ummah* to unanimously agree on a wrong decision in crucial religious matters, ensuring the correctness of their consensus in such cases[72].

From a jurisprudential standpoint, *ijmaʿ* is essential because it allows Islamic law to maintain continuity and consistency while accommodating changes in societal conditions. The consensus of the *aʾimma*, or leading jurists, is particularly important in the development of *fiqh*, as these scholars are tasked with interpreting and applying the principles of *Sharia* to new and evolving situations[73]. Notably, consensus is only binding in cases where there is no clear text from the Quran or a prophetic hadith addressing the matter at hand[74].

There are two types of consensus:

- **Explicit Consensus** (Qawli): This occurs when all scholars clearly express their agreement on a particular ruling, with no dissenting opinions[75].
- **Implicit Consensus** (Sukut): This occurs when some scholars remain silent on a legal issue, and their silence is interpreted as tacit approval. This form of consensus is considered valid, provided that no scholar openly rejects the ruling[76].

2.2.1.4. Analogical Reasoning (*Qiyas*)

Literally meaning "measuring" or "comparing", *qiyas* allows the extension of rules from clear texts (*Nass*) in the Quran or Sunnah, or those sanctioned by *Ijma'*, to cases not explicitly

[70] Aliyu Hamidu Alkali and Amadu Hammawa Song, The Relevance of Ijma in Solving Jurisprudential Problems in Islamic Law, IIUM Law Journal, Vol. 14, n. 1, 2006, pp. 1-14, p. 3.
[71] Wael B. Hallaq, An introduction to Islamic law, Cambridge University Press, 2009, p. 17.
[72] T.W. Lapin, On the Origins of Islamic Law, Forum Law Journal, Vol. 6, n. 2, 1975, pp. 21-23, p. 23. See also, Gamal Moursi Badr, Islamic Law: Its Relation to Other Legal Systems, The American Journal of Comparative Law, 1978, Vol. 26, n. 2, pp. 187-198, p. 191.
[73] Majd Kuadduri, Herbert Liebesny, Law in the Middle East – Origin and development of Islamic law, The Middle East Institute, 1955, p. 95.
[74] Farooq A. Hassan, The sources of Islamic law, Proceedings of the Annual Meeting (American Society of International Law), Vol. 76,1982, pp. 65-75, p. 67.
[75] Fukiko Ikehata, Yasushi Kosugi, Ijmaʿ in Islamic Law and Islamic Thought: Tradition, Contemporary Relevance, and Prospects, Kyoto Bulletin of Islamic Area Studies, Vol. 14, 2021, pp.5–29, p. 14.
[76] Aliyu Hamidu Alkali and Amadu Hammawa Song, The Relevance of Ijma in Solving Jurisprudential Problems in Islamic Law, IIUM Law Journal, Vol. 14, n. 1, 2006, pp. 1-14, p. 12.

addressed, based on material similarities[77]. Therefore, qiyas serves as a pivotal mechanism for extending established legal rulings to cases not explicitly addressed by *nass*[78]. By employing qiyas, jurists exercise analogical reasoning, linking established rulings with emerging issues. This process preserves the adaptability and relevance of Islamic law, enabling it to respond to evolving societal conditions while maintaining its foundational principles[79].

In this way, *qiyas* serves as a bridge between past rulings and contemporary legal problems, embodying both continuity and adaptability within the legal tradition. On this point, the learned judge opines that *ijtihad*[80] is exercised through the principles of *qiyas*. As an independent juristic effort to interpret the law, *ijtihad* becomes especially crucial when no clear precedent or ruling can be found in the four established sources[81].

2.2.2. Twelver Shi'a tradition

While much of the above applies to both Sunni and Twelver Shi'a traditions, three significant differences emerge. First, both traditions accept the Qur'an and the Prophet's *Sunnah*, but they diverge in recognizing an infallible source after the Prophet's time. For Sunnis, this source is the Consensus of the Community, often derived from earlier generations, especially the Companions. In contrast, Twelver Shi'a Islam emphasizes the role of the infallible Imams, such as the Prophet's cousin, Ali Ibn Abi Taleb. Consensus in Shi'ism must include the Imam, but since the Imam's word is always correct, consensus is less crucial in Shi'i thought[82].

Second, Sunni and Shi'i Islam differ in their views on human intellect (*'aql*) as a source of law. Sunni Islam limits human reasoning to interpretive tools like *qiyas* (analogical reasoning), rather than recognizing it as an independent source. Shi'i Islam, however, sees divine command and human reasoning as complementary. Right and wrong are accessible through both revelation and reason, granting intellect a greater role in legal interpretation. Shi'a jurists are encouraged to engage in independent reasoning to derive legal rulings,

[77] Ali Quresh, The Concept of Ijtihad & Its Implications in Islamic Literature, Journal of Law and Society - University of Peshawar, Vol. 4, n. 4, 1985, pp. 63-68, p. 64.
[78] T.W. Lapin, On the Origins of Islamic Law, Forum Law Journal, Vol. 6, n. 2, 1975, pp. 21-23, p. 22.
[79] Wael B. Hallaq, An introduction to Islamic law, Cambridge University Press, 2009, p. 22. See also, Mohd Daud Bakar, A Note on Qiyas and Ratio Decidendi in Islamic Legal Theory, IIUM Law Journal, Vol. 4, 1994, pp. 73-86, p. 73.
[80] Jurists (*fuqaha'*) engage in *ijtihad* (independent reasoning) to deduce legal rulings, but always within the boundaries set by the Quran and Sunnah.
[81] Farooq A. Hassan, The sources of Islamic law, Proceedings of the Annual Meeting (American Society of International Law), Vol. 76,1982, pp. 65-75, p. 67.
[82] Theodore A. Mahr, An Introduction to Law and Law Libraries in India, Law Library Journal, Vol. 82, n. 1, 1990, pp. 91-128, p. 98.

particularly in the absence of explicit textual guidance from the Qur'an or the *Sunnah*. This reliance on reason underscores the flexible and dynamic nature of Shi'a legal thought, allowing it to adapt to changing circumstances while maintaining its fidelity to the core principles of Islamic law[83].

Third, Shi'ism rejects *qiyas*, a foundational tool in Sunni orthodox schools, viewing it as too speculative. Instead, Shi'i jurisprudence insists that the legal reasoning must remain within the explicit meanings of sacred texts[84].

3. Structural divergence in the taxonomy of rights

3.1. Roman law classification

3.1.1. Written law and customary law

Roman law distinguished between written law (*Jus Scriptum*), which encompassed statutes, decrees, and edicts, and unwritten customary law (*Jus Non Scriptum*), derived from traditions and long-standing practices. In this context, in its earliest form, law emerged from custom—*jus non scriptum*—which preceded the formalization of written law, *jus scriptum*[85].

Put differently, written law included codified legal texts, such as the Law of the Twelve Tables or the Corpus Juris Civilis, while customary law was based on collective societal practices that gained legal recognition over time[86].

3.1.2. Internal or Civil Law

The term "civil law" comes from the Latin "*jus civile*", referring to laws initially reserved for Roman citizens (cives). Non-citizens were governed by the jus gentium[87]. More specifically, while often equated with civil law, *jus civile* specifically pertains to laws for Roman citizens, the Quirites, making quiritarian law (*jus quiritum*) a more precise term[88].

On this point, Roman jurists classified the legal system (*jus civile*) into public law (*jus publicum*), private law (*jus privatum*), and sacred law (*jus sacrum*). As Rome's influence declined, *jus publicum* lost its relevance, while *jus privatum* evolved into *jus civile*, which now represents the whole of Roman law in Western

[83] Majd Kuadduri, Herbert Liebesny, Law in the Middle East – Origin and development of Islamic law, The Middle East Institute, 1955, p. 97.
[84] Bernard Weiss, Interpretation in Islamic Law: The Theory of Ijtihād, The American Journal of Comparative Law, Vol. 26, n. 2, [Proceedings of an International Conference on Comparative Law, Salt Lake City, Utah. February 24-25, 1977], 1978, pp. 199-212, p. 210-212.
[85] Donald R. Kelley, Lord deliver us from justice, Yale Journal of Law & the Humanities, Vol. 5, 1993, pp. 159-168, p. 159.
[86] S.V. Fitzgerald, The Alleged Debt of Islamic to Roman Law, Law Quarterly Review, Vol. 67, n. 1, 1951, pp. 81-102, p. 95.
[87] Joseph Dainow, The Civil Law and the Common Law: Some Points of Comparison, The American Journal of Comparative Law, Vol. 15, n. 3, 1966 - 1967, pp. 419-435, p. 420.
[88] V. V. Akinfieva and S. G. Vorontsov, Public, Private, Civil Law, and Jus Civile: Content of the Concepts in Ancient Roman and Modern Doctrinal Sources, Perm University Herald Juridical Sciences, Vol. 48, 2020, pp. 226-247, p. 236.

Europe. In other words, *jus civile* originally included public, private, and sacred law but has shifted primarily towards private law[89].

3.1.3. Public Law and Private Law

As highlighted before, Roman law divided legal matters into *Jus Publicum*, which dealt with the state's governance, administration, and public affairs, and *Jus Privatum*, which regulated individual relationships in areas such as contracts, property, and personal rights[90]. Indeed, Emperor Justinian, after establishing the foundational principles of Roman law, distinguished two main branches of law: public law and private law[91]. He famously stated, "*Publicum jus est, quod ad statum rei Romanae spectat; privatum quod ad singulorum utilitatem pertinet*"[92].

3.1.4. International Law

The *Ius gentium* "law of nations" was an ancient Roman legal concept, forming the basis of international law and influencing Western legal traditions[93]. While *Ius gentium* represents the universal law applicable to all nations, the *Ius civile* pertains exclusively to Roman citizens. *Ius gentium* binds both Romans and foreigners alike, grounded in the principle of "*naturalis ratio*"[94].

More specifically, the term *Ius gentium* could be defined in two ways, distinguishing *between Ius gentium* as public international law—covering war and treaties—and *Ius gentium* as a form of private international law. This latter aspect governed private relations between Roman citizens and non-citizens (*peregrini*) in specific legal contexts[95].

3.2. Islamic jurisprudence and its distinct classifications

3.2.1. Acts of Worship (*Ibadat*)

In Islamic law, *Ibadat* refers to acts of worship, often described as the "Rights of God". These religious duties encompass the relationship between a Muslim and Allah, addressing obligations such as prayer, fasting during Ramadan, and pilgrimage to Mecca. For this

[89] V. V. Akinfieva and S. G. Vorontsov, Public, Private, Civil Law, and Jus Civile: Content of the Concepts in Ancient Roman and Modern Doctrinal Sources, Perm University Herald Juridical Sciences, Vol. 48, 2020, pp. 226-247, p. 236.
[90] Zohdi Yakan, Roman law and Sharia law, Yakan legal publishing, Beirut, 1975, p. 95.
[91] Frederick Parker Walton, Historical Introduction to the Roman Law, Edinburgh: William Green & Sons., 1903, p. 216.
[92] This sentence can be translated as: "Public law is that which concerns the affairs of the Roman state; private law is that which pertains to the benefit of individuals".
[93] Jacob Giltaij, The rediscovery of the Roman jus gentium and the post 1945 international order, Leiden Journal of International Law, Vol. 35, 2022, pp. 521–533, p. 521.
[94] Robert Brtko, Gaius' Concept of The Law of Nations (Ius Gentium) and Natural Law (Ius Naturale), Miscellanea Historico-Iuridica, Vol. 17, n. 2, 2018, pp. 39-53, p. 40.
[95] Jacob Giltaij, The rediscovery of the Roman jus gentium and the post 1945 international order, Leiden Journal of International Law, Vol. 35, 2022, pp. 521–533, p. 522.

reason, unlike *Mu'amalat* (transactions), which govern social and legal relationships among individuals, *Ibadat* focuses on a purely spiritual connection[96]. Moreover, the unique nature of *Ibadat* lies in its non-justiciable character; its observance is a matter of individual conscience, not subject to enforcement by legal authorities. Failure to perform these duties, such as neglecting the five daily prayers, constitutes a violation of divine law, but this breach remains beyond the jurisdiction of earthly courts[97]. The believer is solely accountable to God, with the ultimate reckoning deferred to the Day of Judgment. This distinction highlights a fundamental characteristic of Islamic law: while *Ibadat* prescribes clear rules for worship, its legal force diverges from secular law's positive and enforceable nature[98]. By focusing on personal accountability rather than public adjudication, *Ibadat* reinforces the spiritual core of Sharia, underscoring the intimate link between faith and law in Islam[99].

3.2.2. Transactions (*Mu'amalat*)

Mu'amalat refers to transactions or dealings that govern the relationships between individuals, making it a vital component of Islamic law's civil and social dimensions. Hence, *Mu'amalat* is concerned with human interactions and is therefore often referred to as the "rights of men"[100]. This category of Islamic jurisprudence encompasses a broad array of civil matters, including marriage, divorce, alimony, business partnerships, contracts of sale, and other transactional dealings.

The legal framework of *Mu'amalat* is designed to regulate societal order by ensuring fairness, justice, and ethical conduct in human interactions. Unlike *Ibadat*, which is not subject to judicial scrutiny, violations of *Mu'amalat* can be adjudicated in courts and have tangible consequences[101].

Nevertheless, it is crucial to highlight that while Roman law drew a sharper distinction between the religious and civil spheres, Islamic law presents a holistic integration of the religious and civil spheres, where governance is not merely a secular responsibility but a divinely mandated duty that encompasses both *ʿibādāt*

[96] Maurits S. Berger, Understanding Sharia in the West, Journal of Law, Religion and State, Vol. 6, n. 2-3, 2018, pp. 236-273, p. 241.
[97] Hossein Esmaeili, The Nature and Development of Law in Islam and the Rule of Law Challenge in the Middle East and the Muslim World, Connecticut Journal of International Law, Vol. 26, n. 2, 2011, pp. 329-366, p. 340.
[98] Maurits S. Berger, Understanding Sharia in the West, Journal of law, religion and state, Vol. 6, 2018, pp. 236-273, p. 273.
[99] Issam Saliba, Islamic Law: Traditional Law of Islam. Washington, D.C., Law Library of Congress, 2004, p. 6.
[100] Fajri Matahati Muhammadin, Contemporary Muslims and Human Rights Discourse: A Critical Assessment." IIUM Law Journal, Vol. 27, n. 2, 2019, pp. 571-579, p. 575.
[101] Issam Saliba, Islamic Law: Traditional Law of Islam. Washington, D.C., Law Library of Congress, 2004, p. 7.

and *muʿāmalāt*[102]. Moreover, the Roman legal tradition's fragmentation into distinct branches—such as public versus private law, and internal versus international law—reflects a compartmentalized view of human conduct. This division often results in legal systems that prioritize procedural clarity and state interests over a cohesive moral vision.

Conversely, the duality of ʿibādāt and muʿāmalāt within Sharia law transcends the Roman distinctions between private and public spheres, internal and international affairs. By encompassing every aspect of life, Islamic law ensures that both individual and collective responsibilities are aligned with divine principles.

Conclusions:

In comparing Islamic law and Roman law, one must reject the temptation of superficial parallels and instead confront the stark, irreconcilable differences in their legal foundations, sources, and frameworks. While some scholars may attempt to draw weak connections, suggesting that Islamic law borrowed from Roman traditions, such claims collapse under rigorous scrutiny. The truth is far more provocative: these two systems evolved in isolation, driven by fundamentally divergent philosophies of lawmaking, legal reasoning, and governance. Roman law, born of statecraft and human consensus, pales in comparison to the divinely ordained, morally infused architecture of Sharia. The analysis throughout the three sections of this paper has laid bare the deep-rooted traditions that have shaped these legal systems. These insights decisively dismantle any simplistic notion that Islamic law is an offshoot of Roman influence, asserting instead the unparalleled originality, divine authority, and profound ethical depth of Sharia law—a system alien to Roman legal thought in every conceivable way:

The first section highlighted how Roman law evolved as a human-centered system shaped by reason and societal needs, while Islamic law's sacrosanct nature creates a unique fusion of legal and moral obligations, making it distinct from the secular legal framework of Roman law. This inseparability of duties in Islamic law enhances respect for and adherence to its legal rules, as the observance of law is seen not only as a societal obligation but as a divine mandate.

The second section delves into the sources of legal authority in both Roman and Islamic law, highlighting the fundamental distinctions between the two. Roman law gradually evolved over centuries through a complex interplay of custom, legislative codification, and juristic

[102] Majd Kuadduri, Herbert Liebesny, Law in the Middle East – Origin and development of Islamic law, The Middle East Institute, 1955, p. 100.

interpretation. However, this process underscores the fragmented nature of Roman law, in which certain sources were replaced or superseded by others, reflecting the pragmatic and often piecemeal development of the legal framework.

In stark contrast, Islamic law draws its authority from immutable, transcendent sources—primarily the Qur'an and Sunnah. These divine texts provide a stable foundation, unaltered by time or geography, ensuring that the core principles of Sharia remain consistent across eras and regions. Supplementary methodologies, such as *ijma'* (scholarly consensus) and *qiyas* (analogical reasoning), provide a structured means of flexibility, enabling scholars to interpret and apply the law in response to new circumstances. Yet, unlike Roman law, these interpretive tools never compromise the divine origin of Islamic legal authority, thus maintaining the law's intrinsic coherence and timelessness. This contrast illustrates the enduring stability of Islamic law, where divine revelation serves as the unchanging bedrock, as opposed to the more fluid and adaptable—yet inherently fragmented—nature of Roman legal sources.

The third section examined the classification and structural differences between Roman and Islamic legal systems. Roman law's categorization into public and private spheres, along with civil and international law, was largely based on practical needs. In contrast, Islamic law integrates legal, moral, and spiritual obligations into a cohesive whole, where public and private rights are not distinctly separable, and all actions are subject to religious and ethical evaluation. This section underscores the distinct nature of Islamic legal taxonomy, further dispelling any notion of Roman influence.

In conclusion, the examination of Sharia and Roman law reveals not merely a difference, but an ideological chasm between two systems that continue to shape their respective legal cultures. Sharia law, with its divine foundation, stands in stark opposition to the human-centered pragmatism of Roman law. This analysis refutes any claim that Islamic law borrowed from Roman jurisprudence; rather, Sharia embodies a visionary legal system—one that transcends human limitations and delivers a comprehensive, ethical, and spiritual legal order. While Roman law may have laid the foundations for secular legal systems, Sharia continues to provide a profound and timeless framework, bridging the temporal with the eternal and offering a truly holistic vision of law[103].

[103] Michael Zhou, Giving Moral Advice in Sharia-Compliant Finance, Georgetown Journal of Legal Ethics, Vol. 27, n. 3, 2014, pp. 1021-1041, p. 1023.

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