

Prof. Dr. Alexander Trunk

# **Vorlesung / Course**

*Einführung in die Rechtsvergleichung*  
***Introduction to Comparative Law***

**Winter term (WS) 2015-2016**

**<http://www.eastlaw.uni-kiel.de>**

20.10.2015: Basic questions and structures of comparative law  
27.10.2015 Basic structures of comparative law (contd.)  
03.11.2015: Methods of comparative law  
10.11.2015: Methods of comp. law (cont'd.). Legal families (overview)  
17.11.2015: German legal family (deutscher Rechtskreis)  
24.11.2015: French legal family  
01.12.2015: Anglo-American legal family  
*08.12.2015: Exercise (voluntary test)*  
15.12.2015: The legal systems in Northern and Eastern Europe  
12.01.2016: Legal systems in Asia. Religious laws (overview)  
**19.01.2016: Islamic law**  
26.01.2016: Contracts law  
02.02.2016: Torts law (*date under reservation*)  
09.02.2016: Property law (Sachenrecht)  
16.02.2016: Civil procedure and arbitration

# Religious laws

- **Christian law**
- **Jewish law**
- **Hindu law**
- **Islamic law**

# Islamic law

- Islam (some basics)
- Sharia – Fikh (= Islamic legal scholarship and knowledge)
- Sources of Islamic Law
- Methods of Islamic Law
- Sunnite – Shiite law
- (Sunnite) Legal schools
- The role of the State
- Jurisprudence

# Islam (basics)

- Islam (= submission to God)
- Monotheistic religion based on revelations by God to Prophet Muhammad around 600 CE.
- Holy book Koran (Quran) [= revelation], 113 suras in Arabic, written in the last 23 years of the life of Muhammad. Relevance for law.
- Unity of religion, state and society
- Life of Muhammad and succession. 4 „righteous“ caliphs.
- Sunnis – Shiites (Sunni – Shia muslims)
- Islamic countries

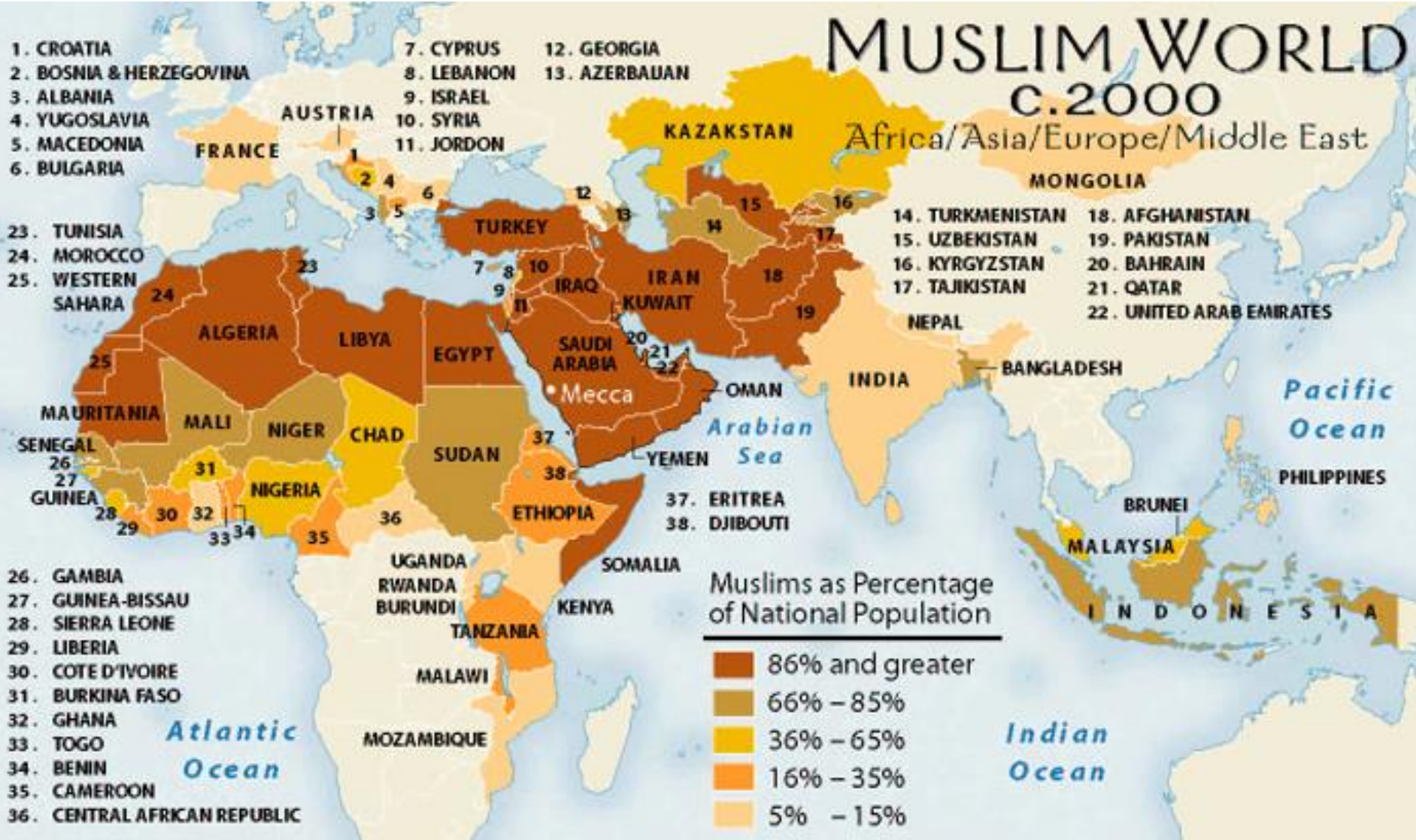
# MUSLIM WORLD C.2000

Africa/Asia/Europe/Middle East

- 1. CROATIA
- 2. BOSNIA & HERZEGOVINA
- 3. ALBANIA
- 4. YUGOSLAVIA
- 5. MACEDONIA
- 6. BULGARIA
  
- 23. TUNISIA
- 24. MOROCCO
- 25. WESTERN SAHARA
  
- 26. GAMBIA
- 27. GUINEA-BISSAU
- 28. SIERRA LEONE
- 29. LIBERIA
- 30. COTE D'IVOIRE
- 31. BURKINA FASO
- 32. GHANA
- 33. TOGO
- 34. BENIN
- 35. CAMEROON
- 36. CENTRAL AFRICAN REPUBLIC

- 7. CYPRUS
- 8. LEBANON
- 9. ISRAEL
- 10. SYRIA
- 11. JORDAN
  
- 12. GEORGIA
- 13. AZERBAIJAN

- 14. TURKMENISTAN
- 15. UZBEKISTAN
- 16. KYRGYZSTAN
- 17. TAJIKISTAN
  
- 18. AFGHANISTAN
- 19. PAKISTAN
- 20. SAUDI ARABIA
- 21. QATAR
- 22. UNITED ARAB EMIRATES



Muslims as Percentage of National Population

- 86% and greater
- 66% - 85%
- 36% - 65%
- 16% - 35%
- 5% - 15%

# Sources of Islamic law

- Koran (Quran): „holy book“
- Sunnah – Hadith: sayings and deeds of Muhammad
- Idjma: consensus of Islamic community
- Quiyas: analogy
- Ijtihad: independent reasoning







الموقع الإشرافي والإرشادي

إشراف معالي الشيخ : صالح بن عبدالعزيز بن محمد بن إبراهيم آل الشيخ



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَاللَّهُمَّ صَلِّ وَسَلِّمْ وَارْحَمْنَا إِنَّكَ أَعْلَمُ بِمَا نَحْنُ فِيهِ

عربي English Français Deutsch Türkçe Melayu Indonesia

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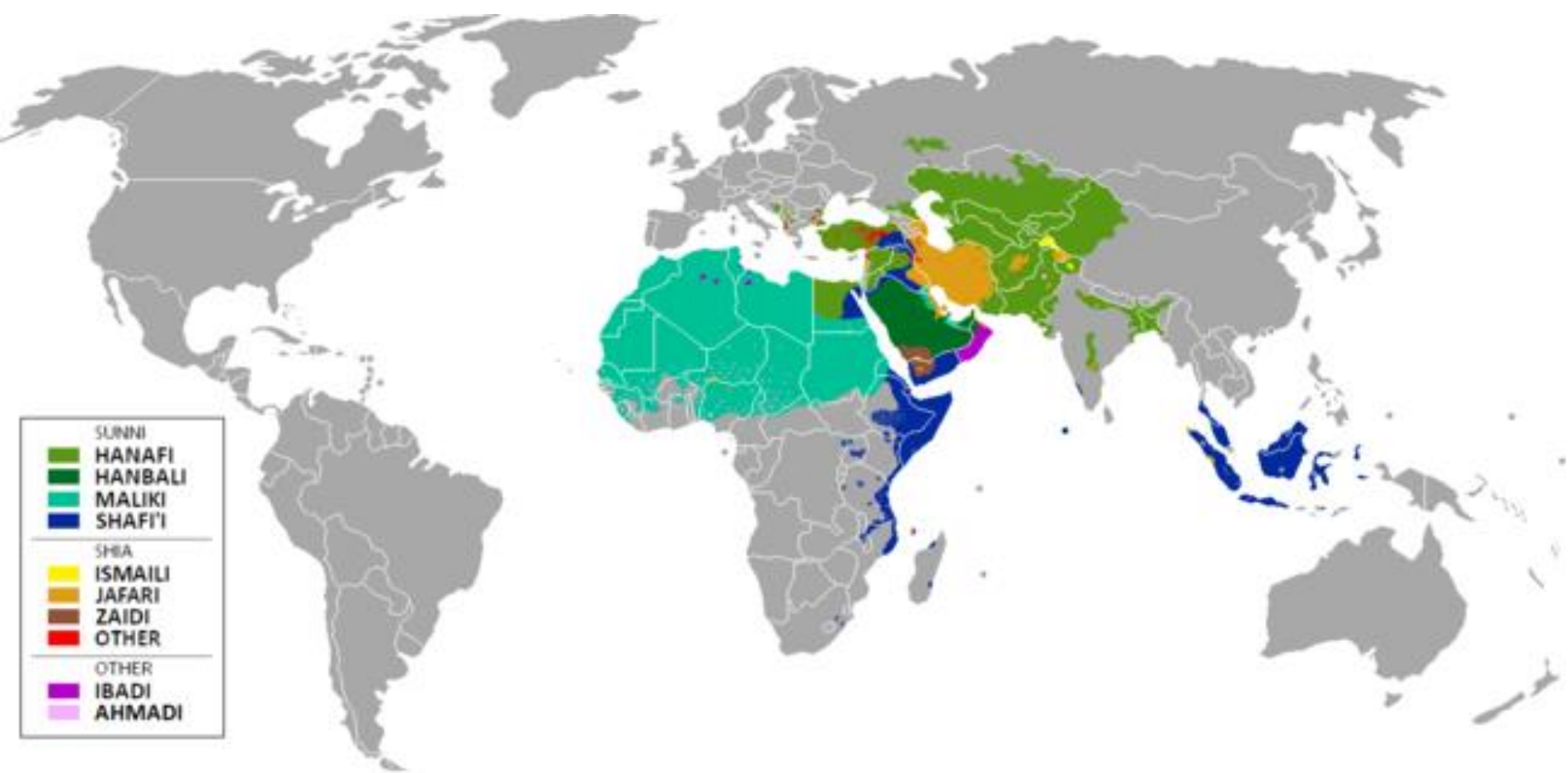
Quran Subjects

- ◆ Faith
- ◆ Knowledge
- ◆ Previous Nations
- ◆ Biography of the Prophet (Sirah)
- ◆ Quran
- ◆ Morals and Manners
- ◆ Acts of worship
- ◆ Foods and Drinks
- ◆ Dress and Adornment
- ◆ Personal status
  - ◆ Children
  - ◆ Marriage
  - ◆ Break-up of marriage
  - ◆ Man divorcing his wife by calling her his mother
  - ◆ Inheritance
- ◆ Transactions
  - ◆ Commutative contracts
  - ◆ Donations
  - ◆ Authorization
  - ◆ Restrictions
  - ◆ Documentation
  - ◆ Guarantees
- ◆ Rulings and Judgments
  - ◆ Sharie Legal administrator
  - ◆ Judgment decisions
  - ◆ Testimony
- ◆ Crimes

# Schools of Islamic Law

- (Sunnite) legal schools
- Hanefit: Abu Hanifa (died 767 CE): Turkey, Central Asia, India
- Malikit: Malik Ibn Anas (died 795 CE): North Africa, West Africa, Persian Gulf
- Shafiit: Al-Shafii (767 — 820 CE): Indonesia, Egypt, Somalia ...
- Hanbalit: Ahmad ibn Hanbal (780 – 855 CE): Saudi Arabia

See also: Wahhabism, Salafism



SUNNI	
	HANAFI
	HANBALI
	MALIKI
	SHAFI'I

SHIA	
	ISMAILI
	JAFARI
	ZAIDI
	OTHER

OTHER	
	IBADI
	AHMADI

# Islamic Law and the State

- Role of state laws („kanun“, turk.)
- Mejlle (Ottoman Empire, 1876 et seq.)  
= the Civil Code of the Ottoman Empire in the late 19th and early 20th centuries. It was the first attempt to codify a part of the Sharia-based law of an Islamic state.

**See also Anglo-Muhammadan law.**

# Mecelle (Mejelle etc.)

- 1.1 Book 1: Sale
- 1.2 Book 2: Hire
- 1.3 Book 3: Guarantee
- 1.4 Book 4: Transfer of Debt
- 1.5 Book 5: Pledges
- 1.6 Book 6: Trust and Trusteeship
- 1.7 Book 7: Gift
- 1.8 Book 8: Wrongful Appropriation and Destruction
- 1.9 Book 9: Interdiction, Constraint and Pre-emption
- 1.10 Book 10: Joint Ownership
- 1.11 Book 11: Agency
- 1.14 Book 14: Actions
- 1.15 Book 15: Evidence and Administration of an Oath
- 1.16 Book 16: Administration of Justice by the Courts

# Law of Iraq

- **Constitutional law:** The **current Constitution of Iraq** was approved in a national referendum in **October 2005** and stipulates the format of the new republican government, and the rights, and responsibilities of the Iraqi people. The Constitution promises **several civil liberties** including freedom of speech, freedom of religion, freedom of peaceful assembly, freedom of expression, a free press, and a right to have a private life. All such personal liberties contain two main exemption clauses: the Iraqi Council of Representatives has the power to define what these freedoms mean, and, that no freedom may conflict with Islamic morality. **Islam is the official state religion, and no law may be enacted or enforced that violates the "undisputed" teachings of Islam.**
- **Civil Code:** The Iraqi Civil Code was principally drafted by [Abd El-Razzak El-Sanhuri](#), a French-educated Egyptian jurist who was also the principal drafter of the Egyptian Civil Code. In **1943**, almost a decade after the push for a comprehensive modern code began in Iraq, Al-Sanhūrī was invited to Iraq by the Iraqi government and asked to complete the Civil Code. Working as the chairman of a committee of Iraqi jurists, **using the Egyptian Civil Code as a model**, he completed a draft of what would become the **modern Iraqi Civil Code**. The Iraqi Code is based on the Egyptian and before that French Code Civil. **Although it incorporates Islamic elements**, its overall structure and substance is principally based on **continental civil law**.

# Examples of rules of Islamic Law

- Contracts law: „keep the contracts“ (Quran), prohibition of taking interest in loans (Islamic banking)
- Family law: limited validity of marriages with Non-Muslims, tetragamy, talaq, mahr
- Law of inheritance: limited validity of wills, limited inheritance rights of women

{275} الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَخَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَاتَّقَهَا فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

Those who devour usury will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are Companions of the Fire; they will abide therein (forever).

{276} يَمْحَقُ اللَّهُ الرِّبَا وَيُزِيهِ الصَّدَقَاتِ وَاللَّهُ لَا يُحِبُّ كُلَّ كَفَّارٍ أَثِيمٍ

Allah will deprive usury of all blessing, but will give increase for deeds of charity; for He loveth not creatures ungrateful and wicked.

{277} إِنَّ الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ

Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord: on them shall be no fear, nor shall they grieve.

{278} يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ

O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.

{279} فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

If ye do it not, take notice of war from Allah and His Messenger: but if ye turn back, ye shall have your capital sums; deal not unjustly, and ye shall not be dealt with unjustly.

{280} وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.



# Procedural law

- Qadi
- Mejlle (Ottoman Empire, 1876 et seq.)
  - **Book 14: Actions**
    - This book is based on actions, where an action is a claim against a person made by another person in court. This book includes conditions and fundamental rules relating to an action and the defense, as well as limitations to actions.
  - **Book 15: Evidence and Administration of an Oath**
    - This book is composed of four chapters that include law on the nature of evidence, documentary evidence and presumptive evidence, administering an oath, and preferred evidence and administration of an oath to both parties.
  - **Book 16: Administration of Justice by the Courts**
    - This final book of the Mecelle is based on the legal administration of justice including codification of judges, judgement, retrial, and arbitration.
- Sharia courts in different countries