



## Muslims, Law and the Legal System

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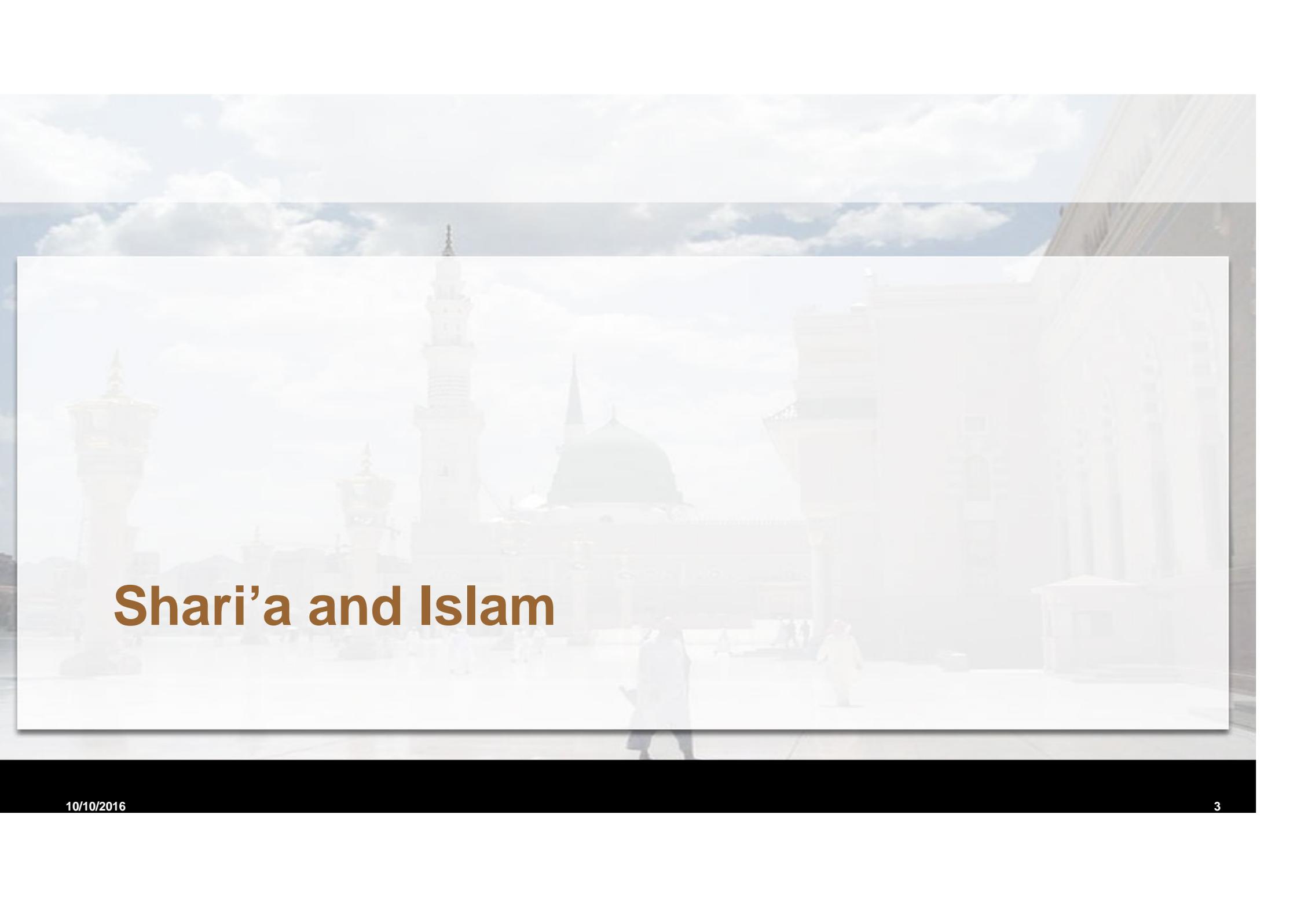
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# Muslims, Law and the Legal System

- Shari'a and Islam
- Diversity in Islam
- Core beliefs
- Sources of Islamic law
- Legal method
- Muslims and the Australian legal system
- Islamic and the Secular State





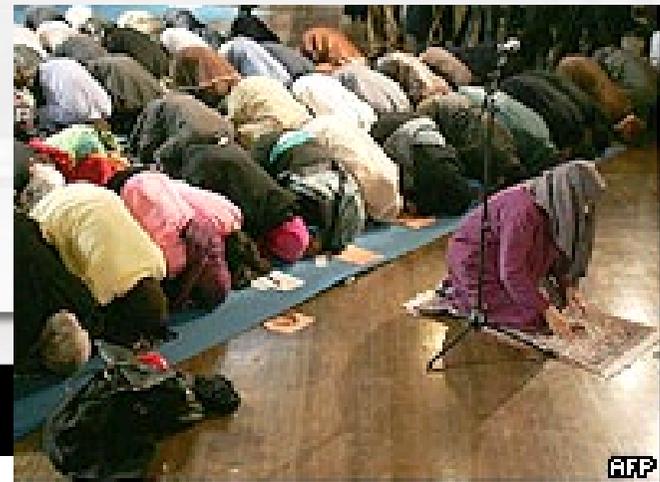
# Shari'a and Islam

# What is Shari'a?

- **Islam** - submission or surrender (to God)
- **Shari'a** is 'the way' of Islam, the legal principles that form the religion, the way Islam is understood
- The Shari'a is derived from the 'scriptures' of Islam:
  - **Qur'an** – literal word of God
  - **Hadith** – life of Muhammad (his sayings and deeds)
- But it is interpreted by jurists and scholars, to form **fiqh** (jurisprudence)
- In fact, fiqh provides most of the content of shari'a

# Shari'a and Other Laws

- Islam claims to be a complete and universal faith
- Therefore covers *all* aspects of life
  - including private life, commerce, politics and law etc
  - creates a need for comprehensive rules and a religious judicial system ([Qadi](#))
- Islam = a 'legal' religion, law central to faith
- Shari'a as God-given (or at least, God-derived) is therefore *always* a rival to secular state laws
  - In **theory**, Islam and secular laws cannot co-exist
  - In **practice**, almost always *do* co-exist (even in Iran and other 'Islamic' states)
- Consensus rare about content of Islamic law and interaction with secular laws

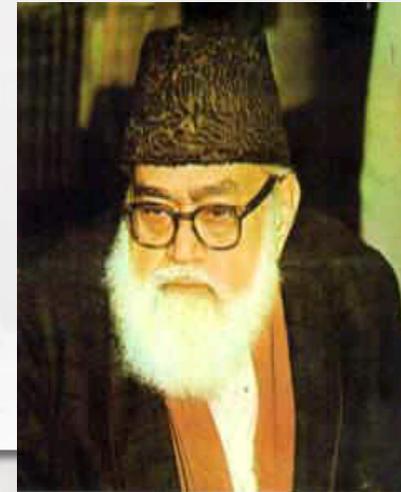




# DIVERSITY IN ISLAM

## A religion without a church

- In Sunni Islam religious leadership is non-hierarchical and not institutionalised
- There is no church, no ordination, no priests, no bishop, no pope, etc
- Religious leaders (*alim*) cannot bind or issue final interpretations
- Authority is given by **community consensus**, and is largely informal
- Central importance of education
  
- **Titles of Religious Leaders**
- Alim (ulama - pl) - religious scholar
- Imam - prayer leader
- Ustaz - teacher
- Mufti - alim who gives fatwa
- Sheikh - a respected figure



## Islam – a contested faith

- Islam is a highly contested religion
- Only God can be certain, man is fallible, much is open to interpretation
- ‘What God says is clear, what God means is not’
- Vast differences in *fiqh* interpretation common
- Islam is not monolithic
- No ‘Islam’, only ‘Islams’
- Diversity of belief in fact *characterises* Islam



# Degrees of Agreement

## 1: Core

- General agreement on some key ideas, beliefs, values, rituals, institutions

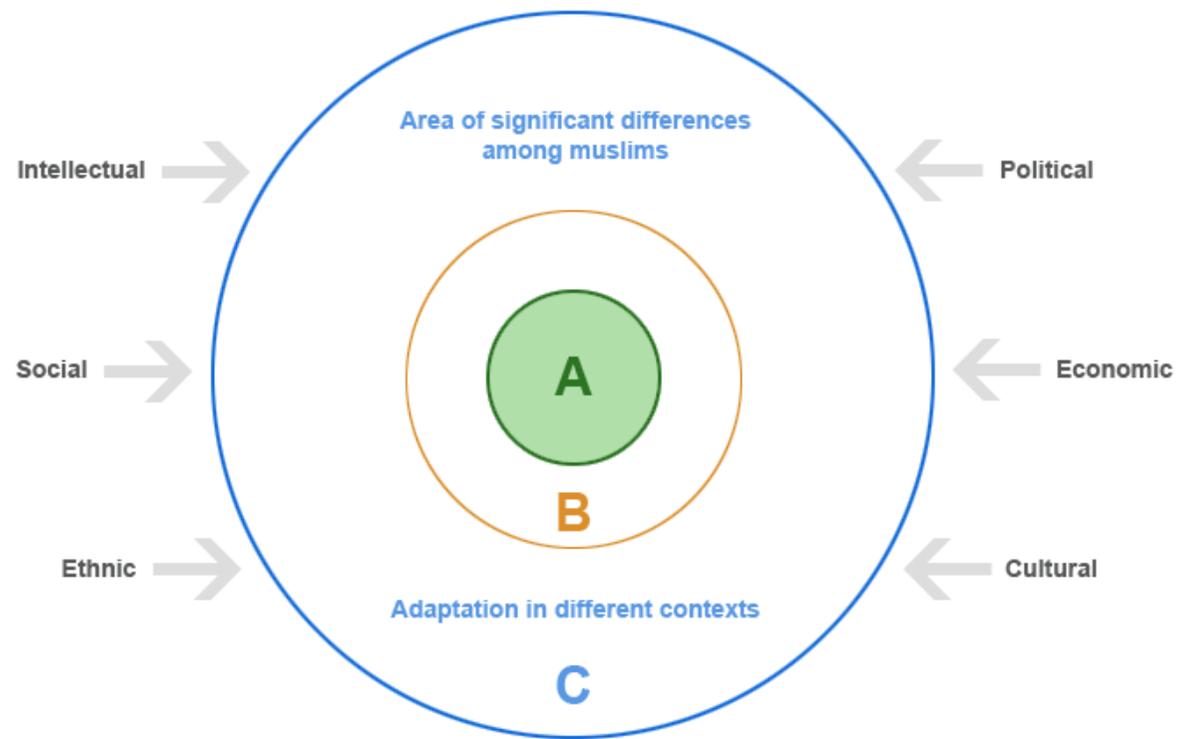
## 2: Concretisation/basic interpretation of the 'Core'

- Interpretation: differences in principle (interest payments)

## 3: Further interpretation/adaptation

- Specific cultural, political, economic, intellectual settings (veiling, polygamy)
- High degree of diversity dependent on context

# Islam: Core to Adaptation



# What Unites Muslims Around the World

- **Essential beliefs and practices**
  - Six pillars of faith
  - Five pillars of Islam
  - Other basic beliefs & practices
- **Common:**
  - brotherhood/sisterhood of all Muslims
  - ethical and moral principles
  - do's and don'ts
  - religious language: Arabic
  - sense of history (Islamic)
  - Normative behaviour of the Prophet as a model

# What Divides Muslims

- Differences:
  - Ethnic
  - Linguistic
  - Cultural
  - Theological
  - Legal
  - Approaches to interpretation of text/tradition
  - Approaches to issues of modernity
- These differences are present in every Muslim community

# Muslims: Interpretation

## Unity and Diversity in Islam: Modern



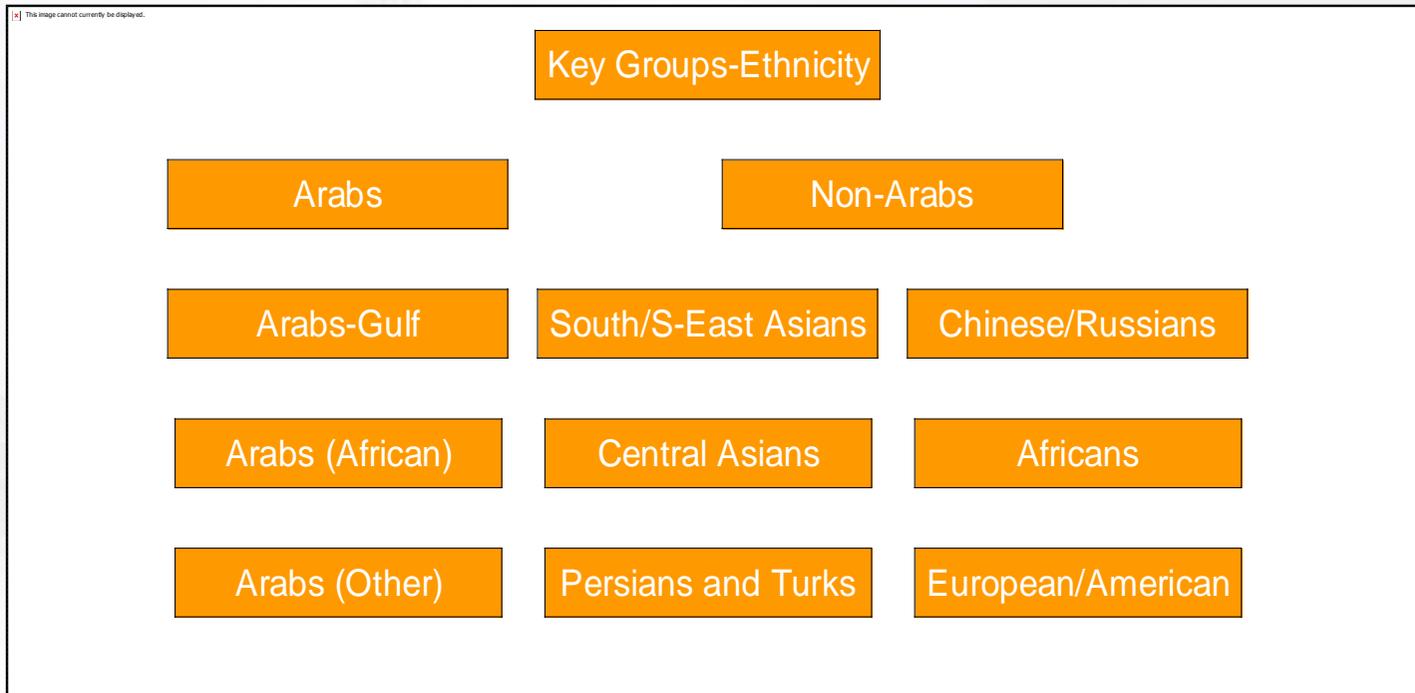
# Muslims: Traditions

## Unity and Diversity in Islam

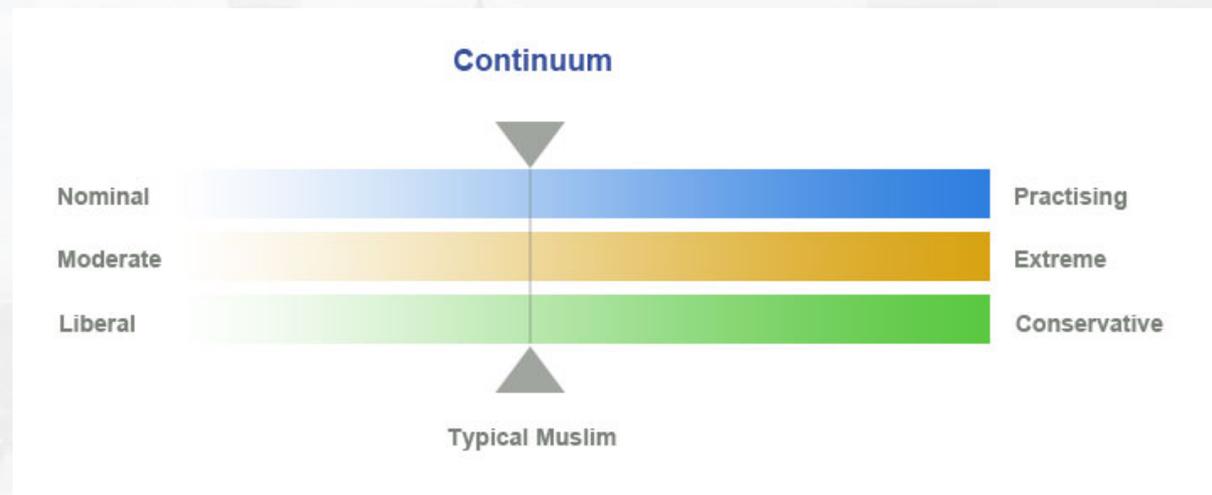
### Key Groups in Islam



# Muslims: Ethnicity



# 'Typical' Muslim: Does he/she Exist?



# Islam Does not Speak with One Voice

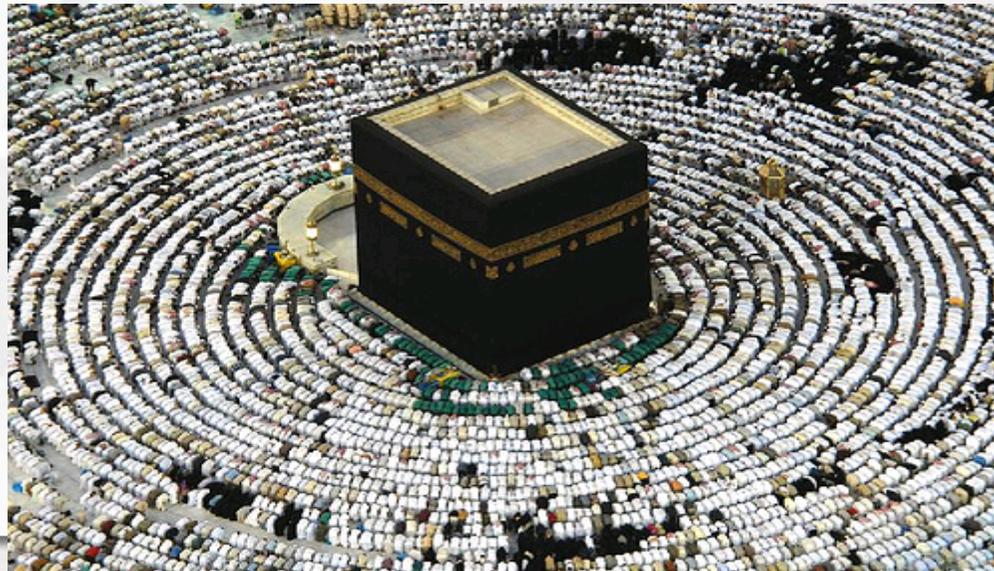
- No universally acceptable “Islamic” views on a large number of issues.
  - It is meaningless to say that Islam does or does not support human rights, women’s rights, anti-Western attitudes, democracy, free market.
  - ‘Islam says’ should be reduced to ‘this group of Muslims says’ or ‘this Muslim says’.
  - There is a large number of voices in Islam and great diversity among them.
  - Ethnicity is a key indicator of interpretations and attitudes
    - Somalian, Egyptian, Malaysian, Indonesian, Turkish?
  - Other important indicators: convert, revert, educated. first or second generation immigrant, etc



# CORE BELIEFS

# Abrahamic Origins of Islam

- Islam is built on Judeo-Christian foundations but is considered the final and complete revelation of God.
- **Muhammad** is the final prophet of God, after **Abraham** (Ibrahim), **Moses** (Musa) and **Jesus** (Isa)
- Muhammad saw himself as reviving the 'religion of Abraham'
- **Sacred places**
  - Mecca (Kabaa)
  - Medina
  - Jerusalem



## Relations with Other Faiths

- God is the same God as that of the Jews and Christians but these groups are considered to have entered into error
- Hence Muhammad's mission to 'perfect' the earlier revelations
- Muslims, Jews and Christians are 'People of the Book', superior to other religious groups, especially pagans and polytheists.
  - Special social status for Jews and Christians : *dhimmi*
  - Treaty/contract relations: Ottoman millet system
- **Principle:** Muslims should co-exist with other religions
- 'No compulsion in religion' (but no conversion from Islam)
- These traditions ignored by militants and ultra-conservatives

## Obligations of Muslims: common Abrahamic rituals

1. Confession of faith (there is no god but God and Muhammad is His Prophet).
2. Pray 5? times a day
3. Give alms to the poor and needy (*zakat*)
4. If you can, make the pilgrimage to Mecca at least once (*haj*)
5. Fast during Ramadan (Eid)



# Importance of Prayer as Public Ritual



## Key Don'ts: Food

- To drink intoxicants
- To eat pork or any pig products
- To eat or drink blood
- To eat meat of an animal that dies by itself,
- To eat meat of an animal in respect of which a name other than God is invoked when it is slain





# **SOURCES OF ISLAMIC LAW**



## Sources of Islamic Belief

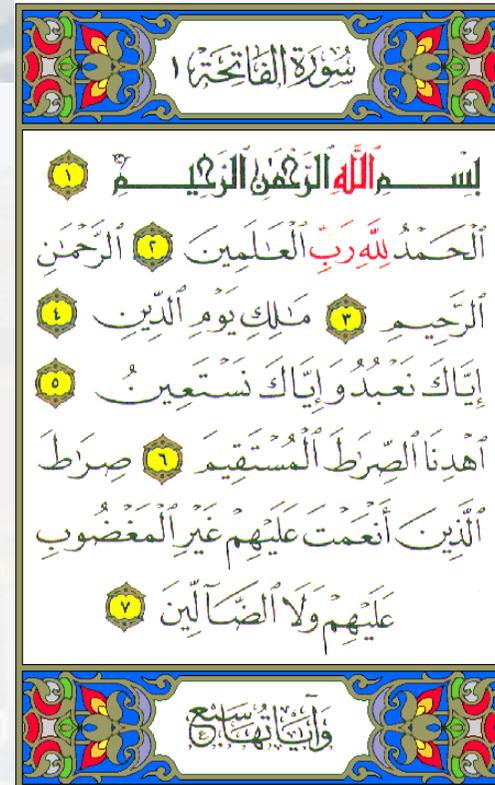
### Al Qu'ran (Koran)

- Not a gospel but the revealed word of **Allah** (God), transmitted verbatim to the Prophet **Muhammad** through the Angel Gabriel.
- Revealed in visions over a 23-year period in the 7<sup>th</sup> Century AD.
- The Qur'an is not a heavily legal document or a Constitution.
- Less than 10% of its content relates to law. It is written in Arab poetic metaphor
- The rest of the Qur'an sets out general principles to guide the life of the Muslim community (**umma**).
- Qur'an translation on the internet
  - <http://www.usc.edu/dept/MSA/quran/>



## The Qur'an: Example of a Short Chapter

- Chapter 1: Al-Fatiha (The Opening): 7 verses
  - 1 In the name of Allah, Most Gracious, Most Merciful.
  - 2 Praise be to Allah, Lord of the Worlds,
  - 3 Most Gracious, Most Merciful;
  - 4 Master of the Day of Judgment.
  - 5 You do we worship, and Your aid we seek.
  - 6 Show us the straight way,
  - 7 The path of those whom You have favoured;  
Not the (path) of those who earn Your anger  
nor of those who go astray.
- **Audio:** <http://www.quranexplorer.com/quran/>
- Revealed at Mecca





## Sources of Islamic Belief



### The Hadith

- Description of the practices (actions, sayings) of the Prophet.
  - More like the Christian Gospels
- Memorised by the original Companions of Muhammad and recorded over the next 2-3 centuries by their successors as heads of the Muslim community.
  - Subject to human error, so degrees of accuracy vary.
  - Poetic, often obscure and 'contradictory'
- 6 key collections of *Hadith* from 6 authoritative Companions - al-Bukhari, Muslim, Abu Dawud, al-Tirmidhi, etc (but in total hundreds of thousands of them).
- Open to debate: raged for centuries
  - Much of Islamic jurisprudence relates to the selection, verification and distinguishing of *hadith*
- Hadith on the internet:
  - <http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/>

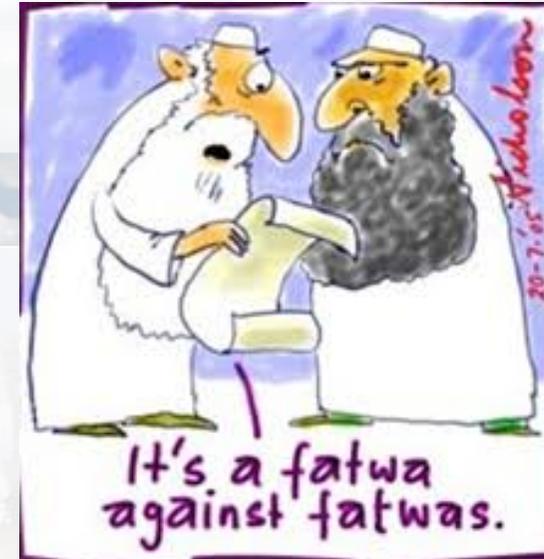


# ISLAMIC LEGAL METHOD

# Islamic Law: Syariah

- **Legal Reasoning:** 'effort'
- The method by which the principles established by the Qur'an, Sunna/Hadith and Ijma are extended and applied to the solution of problems **not expressly regulated therein - the key is Qiyas (anology)**
- Allows Islamic law to adapt to the needs of modern society
- Key method: **analogy:** Blood transfusion example
- In theory, 'doors of Ijtihad closed' when the classical texts were finalised between the 10<sup>th</sup> – 13<sup>th</sup> Centuries, so different schools have competing **ijtihad**.
- In reality, Ijtihad vigorous (ie. Jihad)
- Basis of great scholarly/legal tradition

# Fatwa



- An opinion or ruling on a point of law in response to a specific question.
  - **NOT** a death sentence!
- Result of a process of legal reasoning (*ijtihad*) based on the Qur'an, hadith and the classic law/*fiqh* textbooks produced by each Muslim school.
- **NOT** necessarily legally binding: may followed or rejected by choice.
  - Persuasive rather than binding authority: a lawyer's opinion.
  - 'Second opinions' are allowed.
- Can only be issued by a recognised religious scholar: a **mufti**
- There are also councils or **majelis** of scholars that issue collective fatwa.
- Some states make fatawa binding and enforceable



# MUSLIMS IN THE AUSTRALIAN LEGAL SYSTEM

# Community Profile

- **Muslims comprise:**
  - Almost 2 % per cent of the Australian population
- **The Australian Muslim community is relatively young:**
  - 49 per cent are under the age of 24.
- **Languages Spoken by Australian Muslims**
  - The three most important languages spoken at home by Australian Muslims are English, Arabic and Turkish.
- **English Language Proficiency**
  - The overwhelming majority of Australian Muslims are proficient in English.
- **Citizenship**
  - An overwhelming majority, approximately 79 per cent of Muslims in Australia, have obtained Australian citizenship.

# Community Profile



- **Most frequently cited countries of birth for Australian Muslims are:**
  - Australia, Lebanon and Turkey.
  - Muslims born in Australia now constitute almost 40% per cent of the total Muslim population.
- **By the beginning of the twenty-first century, Muslims from more than 60 different countries had settled in Australia:**
  - a very large number come from Turkey and Lebanon
  - there are also Muslims from Indonesia, Bosnia, Iran, Fiji, Albania, Sudan, Egypt, Palestine, Iraq, Afghanistan, Pakistan and India, among others

## Attitudes to the courts

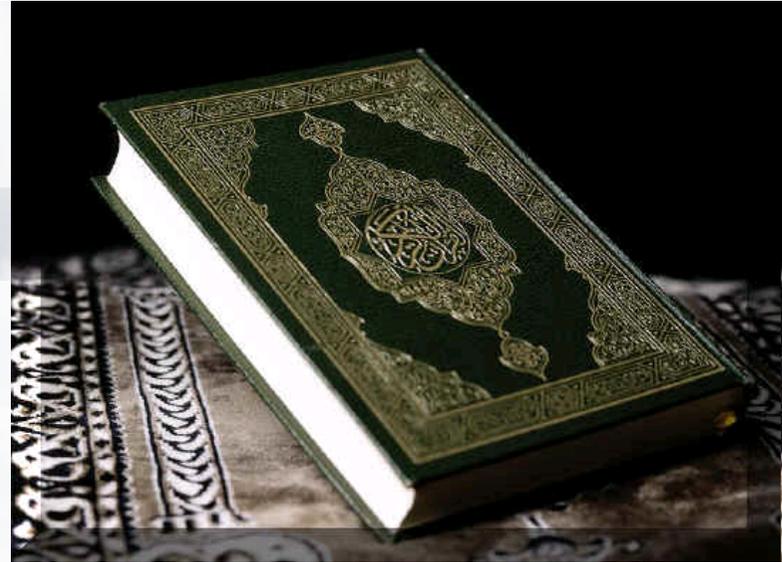
- Most Australian Muslims fully accept the authority of Australian courts
- Traditional *fiqh*:
  - just systems, even if non-Islamic, are preferable to unjust systems, even if Islamic
  - Rebellion is to be avoided, even against an unjust ruler
- Modern, conservative *fiqh* focused on *jihad* rejects these positions
  - Some extremists deny the authority of the court – not a mainstream position
  - Conservative Islamic beliefs can sometimes be deployed as a litigation strategy
- Many Muslims would like Islamic courts for private law disputes
  - not a mainstream demand
- ‘Transplanted’ fear of state authorities, courts, police etc

# Veiling

- Wide diversity of beliefs about covering of the face, body, hair etc
- Most Muslims accept the necessity for faces to be viewed in legal contexts (identity, demeanour).
  - Common requirement in many Muslim countries
  - Often managed for identity purposes by using female officers
- Can sometimes be challenging in court
  - Unveiling can be highly confronting for some Muslim women
  - Sometimes used strategically by witnesses, parties
  - Compromises: wear in court but not when taking evidence? Give evidence behind a screen visible to judge, counsel, jury only? No depictions? etc e



# Oaths



- Huge diversity of ritual practice across the Muslim world
- Swear on, by or beneath the Qur'an? Or by God?
- Storing and handling the Qur'an
- Practical approach



# ISLAM AND THE SECULAR STATE

# Islam vs Secular State

- Inherent tension between Islam and the state as rival sources of authority
  - In principle incompatible?
  - In practice almost always reconciled (Indonesia, Turkey, Iran, Saudi Arabia)
- **Critical Current Debate:** to what extent are *fiqh* (Islamic jurisprudence) and politics (temporal authority) distinct
  - Medieval political theory - prohibition on rebellion/Shura/tight restrictions on jihad
  - Versus: hard-line puritan, Islamist revivalism

# Clash of Civilisations?

- Or is the battle within Islam between liberalism and puritanism the real 'war' ?
- Is the West 'collateral damage' ?



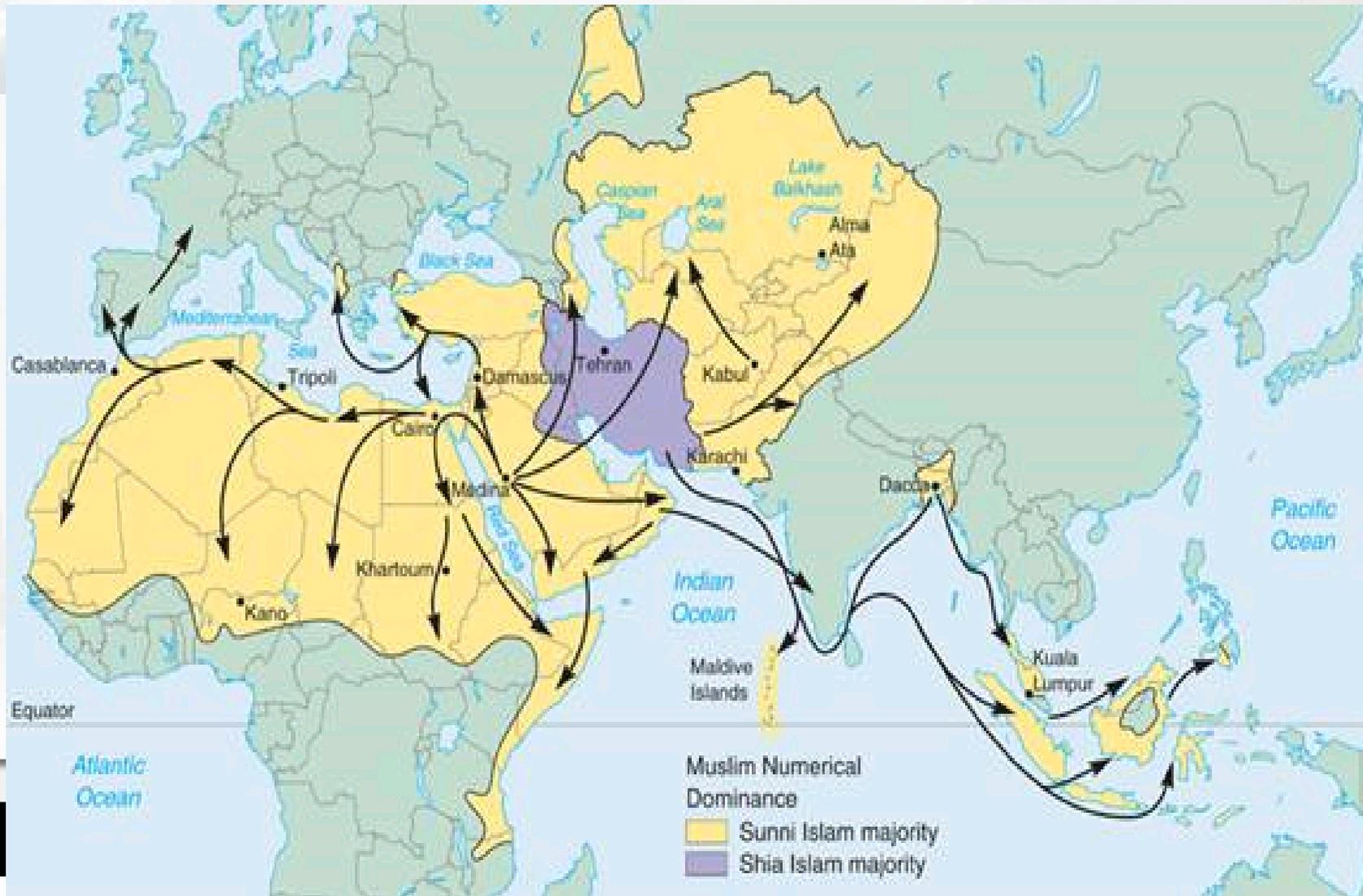
# Schools of Syariah

- The Islamic world is split into two main groups, **Sunni** and **Shia**.
- There are 4 Sunni schools of law (**Mazhab, Maddhab**) which recognise, and sometimes use, each other's textbooks:
  1. Hanbali (d. 855)
  2. Hanafi (d.767)
  3. Maliki (d. 795)
  4. Shafi'i (d. 820) the largest, applies in SE Asia)

# Shia Islam

- Schism: 7<sup>th</sup> Century over succession to the Prophet
- **Sunni** (all schools above) orthodox, adhere to agreed *hadith*); believed the successor could be elected or chosen
- **Shi'ites** argued for succession by divine right: supported the prophet's family to lead Islam
  - Represented by **Ali**, son-in-law of Prophet, killed in modern Iraq).
  - Descendants of Ali were the 12 **Imam**
- All direct descendants have now died out.
- *Shi'ites* now await return of the occluded Imam and, in the meantime, choose best person suited using **ijtihad**.
- Differences now more about about traditions and cultures than principles but
  - *Ayatollahs (ulama)* play more formal roles than in Sunni Islam
  - Evolved into very different - and sometimes hostile - traditions
  - Shi'ite sects: Ismaelis, Druze, etc

# Sunni and Shia



# Terminology: Islamism

- Term used to describe **movements that see Islam as a ideology.**
  - Usually political (ie. Islamic state)
  - May be radical, sometimes militant
  - May also be more accommodating of modern systems, in some instances (Turkey)
- By contrast, Salafism less concerned with Islamic state and more about private morality etc
- But terms used loosely and interchangeably
- Arguing for an Islamic polity is not a crime in itself. Terrorism is.
- Most terrorists are Islamists

## Terminology: Salafi

- **As-salaf as-salih:** the early generations of Muhammad's followers. Seen as models for pious Muslims
- An approach to Islam (**not** a school or sect) which seeks to return to 'Islam as practiced by the Salaf by reviving the 'fundamentals' of Islam.
- Very vague and loosely used term
- Can be equated with **radical conservatism**
- Should not be automatically always equated with terrorism
  - Most salafi are not terrorists
  - Not all terrorists are salafi

## Terminology: Wahhabism

- Conservative, literalist and ultra-puritanical revivalist movement originating from 18th C scholar Muhammad Ibn Abd al-Wahhab (1703-1792)
- Allied with Ibn Saud: became state ideology of Saudi Arabia
- Wahhabism today is a *salafi* movement (but not all salafis are Wahhabis)
- Has strong Islamist objectives
- Wahhabis on the whole reject terrorism but many terrorists are Wahhabi-oriented.

## Terminology: Sufism

- Mystical form of Islam
- An attitude, not a school
- Rejects literal reading of scriptures
- Seeks mystical connection with God
- Meditation, ecstasy, dancing, chanting etc
- Linked to ancient traditions, magic?
- Huge variety, widespread
- Strongly opposed by Wahhabism



## Azzam: Live by the Sword ...

- **1989:** Soviets withdraw
  - Intra-Afghan fighting (Communist government continues for 3 years)
- Mujahidin in squabbling over declining \$ from Pakistan, Saudis and US
  - Egyptian MBs (Zawahiri) saw Azzam as a rival, want a puppet leader
  - Saudis want an Arab in charge
  - Both chose Bin Laden
- **1988:** *Takfiri* 'court' in Peshawar removes Azzam as leader
- **1989:** November, Azzam killed in car bomb