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# The Rule of Law in the Islamic Legal System

A photograph of a grand classical building facade, likely the University of Vienna. The image shows a row of five statues on a balustrade, a decorative frieze with names like 'SAUVIGNY', 'SONNETTES', 'ADAM SMITH', and 'WOLFFENBUTTEL', and a series of tall, arched windows supported by columns.

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## **Overview**

**Essential elements of ‘the Rule of Law’**

**The Rule of Law and  
the Islamic Legal System**

**Selected Problems**



## **Essential elements of ‘the Rule of Law’**

**See**

**Austrian initiative on ‘The role of the Security Council in Strengthening a Rules-based International System’ 2004-2008**

**UN World Summit 2005**

**Friendly Relations Declaration 1970**

**UN Millenium Declaration 2000**

**Two approaches:**

**Formal aspects (institutions, procedures)**

**Substantive goals (rights and justice)**



# Essential elements of ‘the Rule of Law’ (cont’d)

## Historical origins

**Ancient Greek philosophers (Platon, Aristoteles)**

**Regularise and limit powers of sovereign**

**Distinction from ‘rule of man’**

**to avoid influence by particular factors (self-interest, animosity, friendship,...)**

**Law is embodiment of ‘reason’ and, thus, superior to the ‘rule of man’**

**Distinction from ‘rule *by* law’**

**Power exercised by absolute ruler**

**The ruler is not bound by law**



**‘What combination of powers in society, or what forms of government, will compel the formation of good and equal laws, an impartial execution, and faithful interpretation of them, so that the citizens may constantly enjoy the benefit of them, and be sure of their continuance?’**

**John Adams (1787)**



## UN ‘Rule of Law Unit’ (2006)

**‘...a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.’**

**Kofi Annan (2004)**



## **Three basic elements**

**The powers of the sovereign may not be exercised arbitrarily; rejection of ‘rule of man’**

**The law must apply also to the sovereign and instruments of the State; rejection of ‘rule by law’**

**The law must apply to all subjects of the law equally, be of general application and consistent implementation;**



## **Three basic elements (in short)**

- (i) Government of laws**
- (ii) Supremacy of the law**
- (iii) Equality before the law**



# **Rule of Law and the Islamic Legal System**

## **Problematic characteristics:**

**Sources of Islamic law**

**Sacredness of the law**

**Position of certain individuals**

## **Rule of law in an Islamic State?**

**Preservation of individual liberty?**

**Imposing duties on the State?**

**See ILA Committee Report 2010, p. 126 *et seq.***



# **Selected Problems**

**Humanitarian law**

**Constitutional law**

**Criminal law**

**Family law**

**Economic law**



## **Humanitarian law**

**Limitations to the right to warfare**

**Imperative of mercy**

**Prophetic practice of tolerance**

## **Constitutional law**

**Status of Islamic law in Muslim States**

**Different types of relationship between  
Islam and the State**

**Organization and work of judicial and  
administrative system**



## **Criminal law**

**Huddud crimes with hard punishment,  
frequently not applied**

**Taaz'ir crimes, regulated under  
discretionary power of sovereign**

**Procedural rules:**

**rules of evidence, prohibition of torture,  
uniform compensatory amounts**



## **Family law**

**Talaq divorces**

**Polygamous marriages**

## **Economic law**

**Necessity of legal security**

**National laws and regulations**

**International obligations (WTO,  
investment treaties)**

**Respect of international awards**



## **Conclusion**

**Many questions remain open**

**Possible subjects of future research of ILA  
Committee**

**Choice of methods important**

**Comparative analysis of legal texts**

**Analyses of court and administration practice**

**Historical, political, social studies**

**Interdisciplinary approach**



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# Thank you for your attention!

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