

Constitutionalism In Islamic Countries Between Upheaval And Continuity

This volume explores the form and function of constitutions in countries without the fully articulated institutions of limited government.

Constitutionalism beyond Liberalism bridges the gap between comparative constitutional law and constitutional theory. The volume uses the constitutional experience of countries in the global South - China, India, South Africa, Pakistan, Indonesia, and Malaysia - to transcend the liberal conceptions of constitutionalism that currently dominate contemporary comparative constitutional discourse. The alternative conceptions examined include political constitutionalism, societal constitutionalism, state-based (Rousseau-ian) conceptions of constitutionalism, and geopolitical conceptions of constitutionalism. Through these examinations, the volume seeks to expand our appreciation of the human possibilities of constitutionalism, exploring constitutionalism not merely as a restriction on the powers of government, but also as a creating collective political and social possibilities in diverse geographical and historical settings.

Which way will Egypt go now that Husni Mubarak's authoritarian regime has been swept from power? Will it become an Islamic theocracy similar to Iran? Will it embrace Western-style liberalism and democracy? Egypt after Mubarak reveals that Egypt's secularists and Islamists may yet navigate a middle path that results in a uniquely Islamic form of liberalism and, perhaps, democracy. Bruce Rutherford draws on in-depth interviews with Egyptian judges, lawyers, Islamic activists, politicians, and businesspeople. He utilizes

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major court rulings, political documents of the Muslim Brotherhood, and the writings of Egypt's leading contemporary Islamic thinkers. Rutherford demonstrates that, in post-Mubarak Egypt, progress toward liberalism and democracy is likely to be slow. Essential reading on a subject of global importance, this edition includes a new introduction by Rutherford that takes stock of the Arab Spring and the Muslim Brotherhood's victories in the 2011-2012 elections. *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* examines the question of whether something similar to an "Islamic constitutionalism" has emerged out of the political and constitutional upheaval witnessed in many parts of North Africa, the Middle East, and Central and Southern Asia. In order to identify its defining features and to assess the challenges that Islamic constitutionalism poses to established concepts of constitutionalism, this book offers an integrated analysis of the complex frameworks in Islamic countries, drawing on the methods and insights of comparative constitutional law, Islamic law, international law and legal history. European and North American experiences are used as points of reference against which the peculiar challenges, and the specific answers given to those challenges in the countries surveyed, can be assessed. The book also examines ways in which the key concepts of constitutionalism, including fundamental rights, separation of powers, democracy and rule of law, may be adapted to an Islamic context, thus providing valuable new insights on the prospects for a genuine renaissance of constitutionalism in the Islamic world in the wake of the "Arab spring." *Constitutionalism is steadily becoming the prevalent form of governance in Africa. But how does constitutionalism deal with the lingering effects of colonialism? And how does constitutional law deal with Islamic principles in the region? African Constitutionalism and the Role of Islam* seeks to

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answer these questions. Constitutional governance has not been, nor will be, easily achieved, Abdullahi Ahmed An-Na'im argues. But setbacks and difficulties are to be expected in the process of adaptation and indigenization of an essentially alien concept—that of of nation-state—and its role in large-scale political and social organization. An-Na'im discusses the problems of implementing constitutionalized forms of government specific to Africa, from definitional to conceptual and practical issues. The role of Islam in these endeavors is open to challenge and reformulation, and should not be taken for granted or assumed to be necessarily negative or positive, An-Na'im asserts, and he emphasizes the role of the agency of Muslims in the process of adapting constitutionalism to the values and practices of their own societies. By examining the incremental successes that some African nations have already achieved and An-Na'im reveals the contingent role that Islam has to play in this process. Ultimately, these issues will determine the long-term sustainability of constitutionalism in Africa.

Constitutionalism, Human Rights, and Islam after the Arab Spring offers a comprehensive analysis of the impact that new and draft constitutions and amendments - such as those in Jordan, Morocco, Syria, Egypt, and Tunisia - have had on the transformative processes that drive constitutionalism in Arab countries. This book aims to identify and analyze the key issues facing constitutional law and democratic development in Islamic states, and offers an in-depth examination of the relevance of the transformation processes for the development and future of constitutionalism in Arab countries. Using an encompassing and multi-faceted approach, this book explores underlying trends and currents that have been pivotal to the Arab Spring, while identifying and providing a forward looking view of constitution making in the Arab world.

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Explores the relationship between constitutional law and feminism, offering a spectrum of approaches and analysis set across a wide range of topics.

The contributions to this book analyse and submit to critique authoritarian constitutionalism as an important phenomenon in its own right, not merely as a deviant of liberal constitutionalism. Accordingly, the fourteen studies cover a variety of authoritarian regimes from Hungary to Apartheid South Africa, from China to Venezuela; from Syria to Argentina, and discuss the renaissance of authoritarian agendas and movements, such as populism, Trumpism, nationalism and xenophobia. From different theoretical perspectives the authors elucidate how authoritarian power is constituted, exercised and transferred in the different configurations of popular participation, economic imperatives, and imaginary community.

This book offers unique insights into Islamic law, considering its theoretical perspectives alongside its practical application in daily Muslim life.

As the geographical diversity of the Muslim world stretches from Europe to Africa, through the Middle East and into Asia, this region mirrors a central finding of this study - that predominantly Muslim countries include an array of constitutional measures addressing the role of Islam and the scope of the right to freedom of thought, conscience, and religion or belief, and other related human rights. THE RIGHT TO FREEDOM OF RELIGION & BELIEF analyzes these constitutional measures currently in place related to the relationship between religion and the state in addition to freedom of religion or

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belief in predominantly Muslim countries. Issued in March 2005 as *The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries*, this report was originally prepared by Tad Stahnke, J.D., Deputy Director for Policy; and Robert C. Blitt, M.A., J.D., LL.M., Legal Policy Analyst of the United States Commission on International Religious Freedom (USCIRF). USCIRF is an independent federal commission created by the International Religious Freedom Act of 1998 to monitor the status of freedom of thought, conscience, and religion or belief abroad and to give independent recommendations to the Secretary of State and Congress. For additional information about the Commission, please visit www.uscirf.gov.

Perhaps no other Western writer has more deeply probed the bitter struggle in the Muslim world between the forces of religion and law and those of violence and lawlessness as Noah Feldman. His scholarship has defined the stakes in the Middle East today. Now, in this incisive book, Feldman tells the story behind the increasingly popular call for the establishment of the shari'a--the law of the traditional Islamic state--in the modern Muslim world. Western powers call it a threat to democracy. Islamist movements are winning elections on it. Terrorists use it to justify their crimes. What, then, is the shari'a? Given the severity of some of its provisions, why is it popular among Muslims? Can the Islamic state succeed--should it? Feldman reveals how the classical Islamic constitution governed through and was legitimated by law. He shows how executive power was

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balanced by the scholars who interpreted and administered the shari'a, and how this balance of power was finally destroyed by the tragically incomplete reforms of the modern era. The result has been the unchecked executive dominance that now distorts politics in so many Muslim states. Feldman argues that a modern Islamic state could provide political and legal justice to today's Muslims, but only if new institutions emerge that restore this constitutional balance of power. *The Fall and Rise of the Islamic State* gives us the sweeping history of the traditional Islamic constitution--its noble beginnings, its downfall, and the renewed promise it could hold for Muslims and Westerners alike. In a new introduction, Feldman discusses developments in Egypt, Tunisia, Libya, and other Muslim-majority countries since the Arab Spring and describes how Islamists must meet the challenge of balance if the new Islamic states are to succeed.

Global Constitutionalism and the Path of International Law offers an account of the most important growth and features of international law in the form of global constitutionalism. This book demonstrates how global constitutionalism is shaping the path of international law. *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* Oxford University Press

The diversity of interpretation within Islamic legal traditions can be challenging for those working within this field of study. Using a distinctly contextual approach, this book addresses such challenges by combining theoretical perspectives on Islamic law with insight into how local understandings impact on the application of

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law in Muslim daily life. Engaging with topics as diverse as Islamic constitutionalism, Islamic finance, human rights and internet fatawa, Shaheen Sardar Ali provides an invaluable resource for scholars, students and practitioners alike by exploring exactly what constitutes Islamic law in the contemporary world. Useful examples, case studies, a glossary of terms and the author's personal reflections accompany traditional academic critique, and together offer the reader a unique and discerning discussion of Islamic law in practice.

The relationship between Islam and human rights forms an important aspect of contemporary international human rights debates. Current international events have made the topic more relevant than ever in international law discourse.

Professor Abdullahi An-Na'im is undoubtedly one of the leading international scholars on this subject. He has written extensively on the subject and his works are widely referenced in the literature. His contributions on the subject are however scattered in different academic journals and book chapters. This anthology is designed to bring together his academic contributions on the subject under one cover, for easy access for students and researchers in Islamic law and human rights.

This book focuses on Islamic constitutionalism, and in particular on the relation between religion and the protection of individual liberties potentially clashing with sharica and the Islamic ethos. The analysis

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goes from general to particular, starting with a theoretical overview on constitutionalism, human rights and Islam, moving to the assessment of the post-Arab Spring Constitutions of Egypt and Tunisia, and concluding with a specific focus on the rights of sexual minorities and freethinkers. Part I provides a theoretical account of the conception of constitutionalism and human rights in Islam, compared and contrasted with Western constitutionalism. A set of issues where the tension between sharica and human rights is accentuated is analysed against the backdrop of the main Islamic charters of rights. Part II conducts a similar assessment based on the Constitutions of Tunisia and Egypt – the two main epicentres of the Arab Spring. Part III moves to two specific rights in the same countries, from the twofold perspective of the Constitutions and international law: the freedom from interference in one's intimate life, with particular regard to homosexuality; and the freedom of holding and expressing nonconventional beliefs, deemed unacceptable from the point of view of traditional Islam. These issues have been chosen as representative of the most controversial, still considered taboo in both legal and social terms, hence at the fringes of the debate on individual freedoms. Focusing on two overlooked and underexplored issues, the work thus pushes the boundaries of the human rights discourse in Muslim

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contexts.

Debunking conventional narratives, Faiz Ahmed presents a vibrant account of the first Muslim-majority country to gain independence, codify its own laws, and ratify a constitution after the fall of the Ottoman Empire. Afghanistan, he shows, attracted thinkers eager to craft a modern state within the interpretive traditions of Islamic law and ethics. During the 20th century many countries embarked on a process of constitutional secularization by which the role of religion gradually became limited. Yet, by the late 20th century, and increasingly following the end of the Cold War, this development began to be challenged. This book examines the return of religion in constitutions through the concept of constitutional de-secularization. It places this phenomenon in the context of the constitutional memory of the countries in which it has taken place and critically examines it against the development and standards of constitutionalism, as the prevailing constitutional legal and political theory. Central to this analysis is the impact of constitutional de-secularization on the regulation of equality in liberty, that is, both the regulation of constitutional rights and the scope for equality of those who are granted such rights. The book argues that equal liberty forms an essential part of constitutionalism as a theory, and that constitutionalism therefore entails a continuous development towards expanding it. The first and

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second part of the book presents a conceptual framework for the study of constitutional de-secularization. The third part presents and analyses three cases of constitutional de-secularization in Afghanistan, Iran and Iraq. The book will be of interest to researchers and policy-makers interested in constitutional history and theory, and the role of religion in law and its compatibility with human rights. As religious polarisation in society deepens, political actors and policy-makers have begun to struggle with questions on the role of the dominant religion and how religion influences constitutional commitments and development. By focusing on Indonesia, Malaysia and Sri Lanka, *Constitutions, Religion and Politics in Asia* demonstrates how constitution-making and the operation of constitutional arrangements involving religion cannot be separated from the broader political dynamics of society. Although constitutions establish legal and political structures of government institutions and provide tools for rights protection, they do not operate in a vacuum divorced from the games of power and the political realities surrounding them. Here, Shah sets out how constitutions operate and evolve and demonstrates how constitutional provisions can produce unintended consequences over time. A vital new source of scholarship for students and scholars of law and religion and comparative constitutional law, and those interested

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in issues of constitutionalism and legal and political history in Asia.

"Noah Feldman tells the story behind the increasingly popular call for the establishment of the sharia--the law of the traditional Islamic state--in the modern Muslim world. Feldman goes back to the roots of classical Islamic law, under which executive power was balanced by the scholars who interpreted and administered the sharia. That balance was destroyed under Ottoman rule, resulting in the unchecked executive dominance that continues to distort politics in so many Muslim states. Feldman argues that a modern Islamic state could provide political and legal justice to today's Muslims through sharia--but only if new institutions emerge that restore this constitutional balance of power. In a new introduction, Feldman discusses developments in Egypt, Tunisia, Libya, and other Muslim-majority countries since the Arab Spring and describes how Islamists must meet the challenge of balance if the new Islamic states are to succeed."--P. [4] of cover. This volume examines the question of whether something similar to an 'Islamic constitutionalism' has emerged out of the political and constitutional upheaval witnessed in many parts of North Africa, the Middle East, and Central and Southern Asia in order to identify its defining features and to assess the challenges it poses to established concepts of constitutionalism. This book offers an integrated

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analysis of the constitutional experience of Islamic countries, drawing on the methods and insights of comparative constitutional law, Islamic law, international law, and legal history.

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A comparative analysis of the ways in which Islam has become entangled with the process of democratization in both Egypt & Iran, authoritarian regimes that have faced increasing demands for reform.

This book is the first comparative and interdisciplinary study of constitutional politics and constitution-making in the Middle East. The historical background and setting are fully explored in two substantial essays by Linda Darling and Saïd Amir Arjomand, placing the contemporary experience in the contexts, respectively, of the ancient Middle Eastern legal and political tradition and of the nineteenth and twentieth century legal codification and political modernization. These are followed by Ann Mayer's general analysis of the treatment of human rights in relation to Islam in Middle Eastern

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constitutions, and Nathan Brown's comparative scrutiny of the process of constitution-making in Iran, Afghanistan and Iraq with reference to the available constitutional theories which are shown to throw little or no light on it. The remaining essays are country by country case studies of Turkey, Afghanistan and Iraq, the case of Iran having been covered by Arjomand as the special point of reference. Mehmet Fevzi Bilgin examines the making and subsequent transformation of the Turkish Constitution of 1982 against current theories of constitutional and deliberative democracy, while Hootan Shambayati examines the institutional mechanism for protecting the ideological foundations of the Turkish Republic, most notably the Turkish Constitutional Court which offers a surprising parallel to the Iranian Council of Guardians. Arjomand's introduction brings together the bumpy experience of the Middle East along the long road to political reconstruction through constitution-making and constitutional reform, drawing some general analytical lessons from it and showing the consequences of the origins of the constitutions of Turkey and Iran in revolutions, and of Afghanistan and Iraq in war and foreign invasion. In the West, we tend to think of Islamic law as an arcane and rigid legal system, bound by formulaic texts yet suffused by unfettered discretion. While judges may indeed refer to passages in the classical texts or have recourse to their own orientations,

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images of binding doctrine and unbounded choice do not reflect the full reality of the Islamic law in its everyday practice. Whether in the Arabic-speaking world, the Muslim portions of South and Southeast Asia, or the countries to which many Muslims have migrated, Islamic law works is readily misunderstood if the local cultures in which it is embedded are not taken into account. With *Islam and the Rule of Justice*, Lawrence Rosen analyzes a number of these misperceptions. Drawing on specific cases, he explores the application of Islamic law to the treatment of women (who win most of their cases), the relations between Muslims and Jews (which frequently involve close personal and financial ties), and the structure of widespread corruption (which played a key role in prompting the Arab Spring). From these case studie the role of informal mechanisms in the resolution of local disputes. The author also provides a close reading of the trial of Zacarias Moussaoui, who was charged in an American court with helping to carry out the 9/11 attacks, using insights into how Islamic justice works to explain the defendant's actions during the trial. The book closes with an examination of how Islamic cultural concepts may come to bear on the constitutional structure and legal reforms many Muslim countries have been undertaking. The American Journal of Islamic Social Sciences (AJISS) is an interdisciplinary journal that publishes

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a wide variety of scholarly research on all facets of Islam and the Muslim world: anthropology, economics, history, philosophy and metaphysics, politics, psychology, religious law, and traditional Islam. Submissions are subject to a blind peer review process.

Illustrates the origin and ways of Western hegemony over other civilizations across the world.

Master's Thesis from the year 2018 in the subject Law - European and International Law, Intellectual Properties, grade: C, Hamburg University of Economy and Policy (Europa-kollege), course: LLM/EU Legal Studies, language: English, abstract: This thesis is about finding out if there is a possibility to consider reconciliation between Islam a minority religion and European law in regards to human rights. The aim is to understand the conflict between Islam and liberal political concept human rights law to present a picture that can show human rights protection in European society of which Muslims have become an essential part. Sharia law is taken as an Islamic legal and political manifestation that considered being in conflict with contemporary liberal political concepts like European Union and its laws. With the help of comparative analysis of Islamic countries both in a non European country and a country that is a party to European convention, and historical practices of Muslim societies and regimes in relation to value of Sharia in Islamic civilizations

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and contemporary world. It was observed that Sharia has never been the primary source of legal and political fabric of Islamic rules throughout the history and a larger part of Islamic morals and values recognize modern liberal political concepts and values such as constitutionalism and human rights which are also practiced in modern Muslim majority states like Turkey. John Rawls' theory of overlapping consensus is used in support which says that a desired consensus is only possible if a concept affirms a political conception that is sufficient to express values under favorable conditions make a just constitutional regime despite other values may oppose them.

The authors of *The Economic Effects of Constitutions* use econometric tools to study what they call the "missing link" between constitutional systems and economic policy; the book is an uncompromisingly empirical sequel to their previous theoretical analysis of economic policy. Taking recent theoretical work as a point of departure, they ask which theoretical findings are supported and which are contradicted by the facts. The results are based on comparisons of political institutions across countries or time, in a large sample of contemporary democracies. They find that presidential/parliamentary and majoritarian/proportional dichotomies influence several economic variables: presidential regimes induce smaller public sectors, and proportional elections lead to greater and less targeted government spending and larger budget deficits.

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Moreover, the details of the electoral system (such as district magnitude and ballot structure) influence corruption and structural policies toward economic growth. Persson and Tabellini's goal is to draw conclusions about the causal effects of constitutions on policy outcomes. But since constitutions are not randomly assigned to countries, how the constitutional system was selected in the first place must be taken into account. This raises challenging methodological problems, which are addressed in the book. The study is therefore important not only in its findings but also in establishing a methodology for empirical analysis in the field of comparative politics.

This book investigates the role of Islam and religious freedom in the constitutional transitions of six North African and Middle Eastern countries, namely Morocco, Algeria, Tunisia, Egypt, Turkey, and Palestine. In particular, the book, with an interdisciplinary approach, investigates the role of Islam as a political, institutional and societal force. Issues covered include: the role played by Islam as a constitutional reference – a "static force" able to strengthen and legitimize the entire constitutional order; Islam as a political reference used by some political parties in their struggle to acquire political power; and Islam as a specific religion that, like other religions in the area, embodies diverse perspectives on the nature and role of religious freedom in society. The volume provides insight about the political dimension of Islam, as used by political forces, as well as the religious dimension of Islam. This provides a new and wider perspective able to take into account the

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increasing social pluralism of the South-Mediterranean region. By analyzing three different topics – Islam and constitutionalism, religious political parties, and religious freedom – the book offers a dynamic picture of the role played by Islam and religious freedom in the process of state-building in a globalized age in which human rights and pluralism are crucial dimensions.

What role do and should constitutions play in mitigating intense disagreements over the religious character of a state? And what kind of constitutional solutions might reconcile democracy with the type of religious demands raised in contemporary democratising or democratic states? Tensions over religion-state relations are gaining increasing salience in constitution writing and rewriting around the world. This book explores the challenge of crafting a democratic constitution under conditions of deep disagreement over a state's religious or secular identity. It draws on a broad range of relevant case studies of past and current constitutional debates in Europe, Asia, Africa and the Middle East, and offers valuable lessons for societies soon to embark on constitution drafting or amendment processes where religion is an issue of contention.

Examining Sri Lanka's religious and legal pasts, this is the first extended study of Buddhism and constitutional law.

The present work deals with Islamic law and the law of the Muslim countries. More specifically, the author has studied the constitutional law of the Islamic legal tradition, starting from the perspective of the law of Caliphate. Moreover, this work focuses on the process of

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institutionalization, which, since the first half of 19th century, led to the adoption of civil law in both sunn? and s?? world. Further, this study combines different methodological approaches, based on Islamic law, analyzing sources in Arabic, especially classical and contemporary fiqh booklets, and also following the approach of comparative public law to highlight how modern Constitutions of Muslim countries differ from western constitutionalism.

The events of the Arab Spring and recent military coup in Egypt have highlighted the central importance of the constitutional treatment of Islam. Many constitutions in the Muslim world incorporate clauses that make Islamic law supreme or provide that laws repugnant to Islam will be void. The prevalence and impact of these 'Islamic supremacy clauses' is of immense importance for constitutional design - not just for Muslim countries but also for U.S. foreign policy in the region, which became engaged in the issue during constitution-writing in Afghanistan and Iraq. However, to date, there has been no systematic or empirical examination of these clauses. Many questions remain unexplored: Where did these clauses originate? How have they spread? Are they anti-democratic impositions? What determines their adoption in national constitutions? This Article fills this gap.

Relying on an original dataset based on the coding of all national constitutions since 1789 and case studies from four countries - Iran, Afghanistan, Egypt and Iraq - it traces the origin and adoption of Islamic supremacy clauses since their first appearance in Iran in 1907. We make three major, counterintuitive claims: First, we

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argue that the repugnancy clause - the most robust form of Islamic supremacy clause - has its origins in British colonial law, and indeed, that all forms of Islamic supremacy are more prevalent in former British colonies than in other states in the region. Second, we argue that in many cases, these clauses are not only popularly demanded, but are also first introduced into their respective jurisdictions during moments of liberalization and modernization. Third, contrary to the claims of those who assume that the constitutional incorporation of Islam will be antithetical to human rights, we demonstrate that almost every instance of 'Constitutional Islamization' is accompanied by an expansion, and not a reduction, in the rights provided by the constitution. Indeed, constitutions which incorporate Islamic supremacy clauses are even more rights-heavy than constitutions of other Muslim countries which do not incorporate these clauses. We explain the incidence of this surprising relationship using the logic of coalitional politics. These findings have significant normative implications. On a broader level, our work supports the view of scholars who argue that the constitutional incorporation of Islam is not only compatible with the constitutional incorporation of basic principles of liberal democracy, but that more democracy in the Muslim world may mean more Islam in the public sphere; in fact, we find that more democratic countries are not necessarily any less likely to adopt Islamic supremacy clauses. Our findings also suggest that outsiders monitoring constitution-making in majority Muslim countries who argue for the exclusion of Islamic clauses are focused on a straw man; not only are these

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clauses popular, but they are nearly always accompanied by a set of rights provisions that could advance basic values of liberal democracy. We accordingly suggest that constitutional advisors should focus more attention on the basic political structures of the constitution, including the design of constitutional courts and other bodies that will engage in interpretation, than on the Islamic provisions themselves.

Most Muslim-majority countries have legal systems that enshrine both Islam and liberal rights. While not necessarily at odds, these dual commitments nonetheless provide legal and symbolic resources for activists to advance contending visions for their states and societies. Using the case study of Malaysia, *Constituting Religion* examines how these legal arrangements enable litigation and feed the construction of a 'rights-versus-rites binary' in law, politics, and the popular imagination. By drawing on extensive primary source material and tracing controversial cases from the court of law to the court of public opinion, this study theorizes the 'judicialization of religion' and the radiating effects of courts on popular legal and religious consciousness. The book documents how legal institutions catalyze ideological struggles, which stand to redefine the nation and its politics. Probing the links between legal pluralism, social movements, secularism, and political Islamism, *Constituting Religion* sheds new light on the confluence of law, religion, politics, and society. This title is also available as Open Access.

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