

DEMOCRACY UNDER GOD

State recognition of Islam in Muslim countries invites fierce debate from scholars and politicians alike, some of whom assume an inherent conflict between Islam and liberal democracy. Analyzing case studies and empirical data from several Muslim-majority countries, Dawood Ahmed and Muhammad Zubair Abbasi find, counterintuitively, that in many Muslim countries, constitutional recognition of Islam often occurs during moments of democratization. Indeed, the insertion of Islam in a constitution is frequently accompanied by an expansion, not a reduction, in constitutional human rights, with case law from higher courts in Egypt and Pakistan demonstrating that potential tensions between the constitutional pursuit of human rights, liberal democracy and Islam are capable of judicial resolution. The authors also argue that colonial history was pivotal in determining whether a country adopted the constitutional path of Islam or secularism: British colonizers were relatively tolerant and accommodating of Islam, partly explaining why Islam in constitutional politics survived and became more prevalent in Muslim countries that were colonized by the British, and not those colonized by the French or Soviets. The authors conclude that it is important for policymakers to recognize that, considering the enduring political popularity of Islam in many Muslim countries, it may be inevitable that the pursuit of democratization in the Muslim world follows its own unique and distinct, non-secular trajectory that accommodates Islam.

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Democracy Under God

CONSTITUTIONS, ISLAM, AND HUMAN RIGHTS
IN THE MUSLIM WORLD

DAWOOD AHMED

Comparative Constitutions Project

MUHAMMAD ZUBAIR ABBASI

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Preface

This book adopts an interdisciplinary and empirical approach to the topic of Islamic constitutionalism, which gained much currency in the past three decades. Scholarly interest in this topic increased after the tragic incidence of 9/11 and was further enhanced after the Arab Spring about a decade later. The Taliban's takeover of the government of Afghanistan on August 15, 2021, and their reintroduction of stringent policies toward women's rights show that debates about Islam in politics are far from over. During the past few years, new books have been published that explore the relationship between Islam and human rights in constitutions.¹ The distinctive feature of our book is its interdisciplinary approach, which builds on scholarship in such diverse fields as law, history and political science. This approach is informed by and built on the collaborative research published in the form of two research papers: Dawood Ahmed and Tom Ginsburg, "Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy Clauses" (2014) 54(3) *Virginia Journal of International Law* 615; Dawood Ahmed and Moamen Gouda, "Measuring Constitutional Islamization: The Islamic Constitutions Index" (2014) 38 *Hastings International and Comparative Law Review* 1.

Both papers have been very well received by the scholarly community and are widely cited. This book complements, updates, and builds on these papers. The primary data remains almost the same with a few minor exceptions. We have also compiled the constitutional texts of Muslim-majority countries on a portal that can be accessed online at <https://beta.shariasource.com/projects/>

¹ See Tommaso Virgili, *Islam, Constitutional Law and Human Rights: Sexual Minorities and Freethinkers in Egypt and Tunisia* (Routledge 2022); Rachel M. Scott, *Recasting Islamic Law: Religion and the Nation State in Egyptian Constitution Making* (Cornell University Press 2021); Pietro Longo, *Theory and Practice in Islamic Constitutionalism: From Classical Fiqh to Modern Systems* (Gorgias Press 2019).

islamic-constitutionalism. This is a collaborative project with Harvard Law School's SHARIAsource portal.

Despite our divergent disciplinary backgrounds, we and our collaborators share similarities, but our views also differ, albeit on sub-issues. One such issue and indeed the subject of much contemporary debate is the relationship between Islam and human rights. Scholarly views present a wide spectrum of opinions, from outright conflict to complementarity with a few exceptions. We utilize both quantitative and qualitative methods to contribute to this ongoing debate, which has attracted the attention of several scholars, researchers, and legal commentators. We hope that this book will enrich this debate both methodologically and substantively.

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DAWOOD AHMED

First and foremost, many thanks go to Tom Ginsburg, who not only introduced me to a method of analyzing constitutions from an interdisciplinary and empirical perspective but has always been a bulwark of support and encouragement for all of my endeavors. This book draws heavily on the paper I coauthored with him.¹ I consider him not only a fantastic scholar but also a friend and mentor. I would also like to offer particular thanks to Moamen Gouda for constructing much of the quantitative analysis in this book. The paper I coauthored with him is also substantially referred to in this book.²

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¹ Dawood Ahmed and Tom Ginsburg, “Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy Clauses” (2014) 54(3) *Virginia Journal of International Law* 615.

² Dawood Ahmed and Moamen Gouda, “Measuring Constitutional Islamization: The Islamic Constitutions Index” (2014) 38 *Hastings International and Comparative Law Review* 1.

the Rule of Law, colleagues at workshops at the University of Chicago, the Harvard University's Institute for Global Law and Policy, participants at the ICTT Workshop at the Hamad Bin Khalifa University at Doha, and participants at the Harvard Law School Comparative and International Law Workshop. I would also like to gratefully acknowledge research funding from Harvard University's Institute for Global Law and Policy, the University of Chicago, and George Mason University.

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ZUBAIR ABBASI

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We have used a simple system of transliteration and have avoided diacritical marks for the Arabic letters *‘ayn* (‘) and *hamza* (‘) as much as possible. These marks are used in direct quotations and wherever it is necessary to convey the exact meanings of certain expressions. We have not transliterated commonly used expressions, such as *ulama* and *shari‘a*.

As we have relied upon several primary and secondary sources available in English, Arabic, and Urdu, readers may find some inconsistencies in transliteration and capitalization. We have tried to avoid such inconsistencies as much as possible. Unless otherwise mentioned, translations from Arabic and Urdu into English are ours.

We have followed the Oxford Standard for the Citation of Legal Authorities (OSCOLA) for references.

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