

# Muslim Constitutional Law

Prof. Dr. Ebrahim Afsah

v. 1.0

Thursdays, 12:00–14:00, Seminar Room 52, Juridicum

## Description

This course provides a thorough survey of the constitutional orders across the Muslim world in the modern period. Spanning all Muslim-majority states from Morocco to Indonesia, we will explore the transmission of institutional forms and constitutional ideas, examine the diversity of constitutional arrangements, evaluate how effective these arrangements are, and what role religious law plays in the different jurisdictions.

The relative failure of all Muslim states to provide sufficient governance has led to high levels of popular discontent, reflected for instance in the so-called ‘Arab Spring.’ Consequently, existing constitutional arrangements are being challenged, often violently. In this course, you will learn to contextualise these demands, get to know the principal actors, and appreciate the prominent role public law plays in shaping these contests.

The focus of our readings and discussions lies on the modern period after 1798 – Napoleon’s Egyptian Campaign. We will look at the large body of classical writings on Islamic governance only in so far as they are necessary to understand the *contemporary* debate. The focus is on the legal and political developments of the 20<sup>th</sup> and 21<sup>st</sup> centuries. Three common themes will characterise the course:

- We privilege the study of the *legal and social reality* and seek to highlight where it is at odds with dogmatic stipulations, be they religious or constitutional
- We seek to illustrate the *practical tensions* posed by limited administrative capabilities and political legitimacy that resulted from the *incomplete reception of modern bureaucratic statehood*, especially those affecting the rule of law
- We seek to examine how *popular dissatisfaction with the practical performance* of Muslim governments fuelled demands for greater accountability, with a particular attention to the role of the judiciary and the use of religious law as a ‘language of justice’ under the guise of cultural authenticity.

Ultimately, the course aims to equip participants to better understand Muslim contemporary discourse about the *res publica*, better contextualise the demands for religious law in public life, and to better ascertain the theoretical and practical feasibility of postulated religious alternatives to the still-dominant secular model of governance. The course covers each week one sub-region centred on a particularly important country, highlighting the distinct approaches towards incorporating modern state institutions.

Note that this course is **accompanied by an online component** which all students **must** enrol in and actively participate in:

<https://www.coursera.org/learn/muslim-world>

For those not familiar with the pedagogy behind blended learning please see

<https://www.brown.edu/academics/digital-teaching-learning/tags/type/topic-flipped-class-room>

All literature will be in English and made electronically available.

## Prerequisites

There are no formal prerequisites and no knowledge of Oriental languages is necessary. Jargon is generally avoided and necessary technical terminology will be explained in class.

## Exam

The grade for this course consists of one written, 48 hour take-home, open-book exam of maximum 2000 words excluding footnotes (70%) and class participation (30%).

Students will have to answer two questions out of six, thus accommodating to some degree personal preferences. The exam is aimed to motivate a renewed engagement with the course material and to cement the retention of the stated Learning Outcomes, which will guide grading. Special emphasis will be given to the mastery of comparative approaches.

## Curriculum and Readings

### Learning Outcome

At the successful completion of the course, students will have obtained the following learning objectives. Students will:

### Knowledge

- Know the basic contours of the historical development of public law in Muslim-majority states
- Know the main protagonists
- Know the main difference between *shari'a*, *qanun/farman* and Western law.
- Know the key doctrinal positions regarding Western law
- Know the main response patterns to the challenge of modernity

- Know the areas of key substantive divergence between religious and Western law
- Know key substantive norms regarding legal equality, legal personality and hierarchy of sources
- Know major divergences between different countries and constitutional models
- Know key areas of modern legal reform in family law, taxation, and international relations
- Know key characteristics of Islamic governance models

## **Skills**

- Read translations of key doctrinal texts
- Identify major dogmatic debates, both historical and contemporary
- Identify 'lines of parentage' of key concepts and ideological positions
- Differentiate between private and public law
- Identify and evaluate major legal and bureaucratic institutions
- Identify social pressures for legal change
- Carry out independent interdisciplinary research
- Assess the feasibility of competing ideological positions
- Distinguish between dogmatic ideal and practical reality
- Communicate academic findings to an interdisciplinary audience
- Analyse the role of law in complex socio-political phenomena in current events
- Communicate these insights effectively

## **Competencies**

- Conduct independent interdisciplinary research
- Critically examine the validity and reliability of dogmatic claims
- Disaggregate complex phenomena in the Islamic world
- Give basic legal advice on Islamic public law
- Distinguish legal from related argumentation
- Critically assess claims about cultural and legal immutability

Course materials can be downloaded here: <https://tinyurl.com/Lehre-Afsah>

## Prerequisites

By choice and necessity, this course will be interdisciplinary and has no prerequisites. No knowledge of Arabic or other oriental languages is assumed; neither is previous familiarity with the study of religion in general and Islamic beliefs in particular. Unlike the online component, which is designed for a general audience, we will focus in the weekly sessions on more explicitly legal analysis. Previous knowledge of constitutional, international, or administrative law is therefore welcome but not a prerequisite. Students from beyond the law faculty are explicitly encouraged to join, and we will make reasonable accommodation to make the legal exegesis accessible. Rather than assuming a common frame of reference, it is expected that students' diverse disciplinary backgrounds will complement each other. A sufficient command of English is necessary.

## Exam

The grade for this course consists of one written, four hour, open-book book exam of maximum 2000 words excluding footnotes (70%) and class participation (30%).

Students will have to answer two questions out of six, thus accommodating to some degree personal preferences. The exam is aimed to motivate a renewed engagement with the course material and to cement the retention of the above stated Learning Outcomes, which will guide grading. Special emphasis will be given to the mastery of comparative approaches.

## Curriculum

### 1<sup>st</sup> Session, 10<sup>th</sup> October:            The Challenge of Modernity

- What sets modernity apart from earlier historical epochs?
- Are the effects of modernity felt equally across the globe?
- Why does modernity lead to sudden power imbalances?
- How is that experienced across the Islamic world?
- What response patterns can you discern?

### Mandatory Material:

Sami Zubaida, *Law and Power in the Islamic World* (London: I.B. Tauris, 2005), pp. 1–39. Introduction and Chapter 1 “Concepts, Origins and Mutations.”

Ebrahim Afsah, “Contested Universalities of International Law. Islam’s Struggle with Modernity,” *Journal of the History of International Law*, Vol. 10 (2008) pp. 259-307.

## **Voluntary Material:**

### Early Modern History of the Region:

Malcolm Yapp, *The Making of the Modern Near East, 1792-1923*, Vol. 1 (London: Longman, 1987), pp. 1–46. Chapter 1 “Society, Economy and Politics in the Nineteenth-Century.”

Sadiq Jalal al-Azm, “Orientalism, Occidentalism, and Islamism: Keynote Address to “Orientalism and Fundamentalism in Islamic and Judaic Critique: A Conference Honoring Sadik Al-Azm”,” *Comparative Studies of South Asia, Africa and the Middle East*, Vol. 30(1), No. 1 (2010) pp. 6-13.

Hossein Askari, “Islamic Teachings for Flourishing Societies,” *Huffington Post*, 23 December 2015, available at: [http://www.huffingtonpost.com/hossein-askari/islamic-teachings-for-flo\\_b\\_8868446.html?](http://www.huffingtonpost.com/hossein-askari/islamic-teachings-for-flo_b_8868446.html?), accessed on: 19 August 2016. (very short)

*Idem*, “Islamicity Indices — The Best Instrument for Changing the Muslim World,” *Huffington Post*, 10 January 2016, available at: [http://www.huffingtonpost.com/hossein-askari/islamicity-indices--the-b\\_b\\_8950332.html](http://www.huffingtonpost.com/hossein-askari/islamicity-indices--the-b_b_8950332.html), accessed on: 19 August 2016. (very short)

### Four Models of Adaptation:

Yapp, *The Making of the Modern Near East, 1792-1923*, pp. 47–96. Chapter 2 “The Eastern Question.”

Zubaida, *Law and Power in the Islamic World*, pp. 74–120. Chapter 3 “The Shari’a and Political Authority.”

Sadiq Jalal al-Azm, “Orientalism and Orientalism in Reverse,” in: *Collected Essays on Islam and Politics. Vol. 3: Is Islam Secularizable? Challenging Political and Religious Taboos* (Berlin: Gerlach Press, 2014) pp. 27-56.

Toby E. Huff, *The Rise of Early Modern Science. Islam, China and the West*, 3<sup>rd</sup> ed. (Cambridge: Cambridge University Press, 2017), pp. 209–39. Chapter 6 “Cultural Climates and the Ethos of Science.”

Foad Ajami, *The Arab Predicament. Arab Political Thought and Practice since 1967*, 17<sup>th</sup> ed. (Cambridge: Cambridge University Press/Canto, 2007), pp. 60–89.

Baber Johansen, “The Muslim *Fiqh* as a Sacred Law,” in: *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, ed. by Baber Johansen, Studies in Islamic Law and Society (Leiden: Brill, 1999) pp. 1-76. (optional, difficult text but very worthwhile! Focus on pp. 42–72)

## **2<sup>nd</sup> Session, 17<sup>th</sup> October:                      Secularism: Turkey**

- What are ‘ideal types’?
- What is the predecessor to the Republic of Turkey and how was it organised?
- What are the guiding constitutional principles for the new republic?
- How is the law used to exert social engineering from above? Is it successful?
- Is this process more radical than elsewhere? Why?

### **Mandatory Material:**

Zubaida, *Law and Power in the Islamic World*, pp. 121–57. Chapter 4 “The Age of Reform: The Etatization of Law.”

Ömer Taşpınar, “The End of the Turkish Model,” *Survival*, Vol. 56(2), No. 2 (2014) pp. 49-64.

### **Voluntary Material:**

#### Ottoman Legal Reform: Tanzimat and Majallah:

Huff, *The Rise of Early Modern Science*, pp. 362–84. “Epilogue: Educational Reform and Attitudes toward Science in the Muslim World and China since the Eighteenth Century.”

Mark L. Movsesian, *Elusive Equality: The Armenian Genocide and the Failure of Ottoman Legal Reform*, St John’s Legal Studies Research Paper No 1600745 (5 May 2010), available at: <http://ssrn.com/abstract=1600745>.

#### Kemalism and its Discontents:

Mustafa Koçak, “Islam and National Law in Turkey,” in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 231-72.

Semih Minareci, *Search for Identity: Turkey’s Identity Crisis*, (2008), available at: <http://ssrn.com/abstract=1297378>, accessed on: 14 August 2016.

Ömer Taşpınar, “Turkey’s Strategic Vision and Syria,” *The Washington Quarterly*, Vol. 35(3), No. 3 (2012) pp. 127-40.

### **3<sup>rd</sup> Session, 24<sup>th</sup> October: Religious Modernism: North Africa**

- Which country claims a special role in the Arab and Muslim world? Why?
- When did legal and political reform start in the region?
- What role was played by foreign forces and ideas?
- Why does the Shari’a play such a prominent role in legal reform and political demands?
- What are the differences between constitutional processes in the region after 2010?

### **Mandatory Material:**

Zubaida, *Law and Power in the Islamic World*, pp. 158–81. Chapter 5 “The Shari’a in Modern Debates and Institutions: Egypt.”

Nathan J. Brown, “Egypt’s Failed Transition,” *Journal of Democracy*, Vol. 24(4), No. 4 (2013) pp. 45-58.

Larry Diamond, “Why Are There No Arab Democracies?,” *Journal of Democracy*, Vol. 21(1), No. 1 (2010) pp. 93-112.

Hernando de Soto, “The Real Mohamed Bouazizi. One Year on, a Team of Researchers Uncovers the Man Behind the Martyr and the Economic Roots of the Arab Spring,” *Foreign Policy*, (16 December 2011).

## **Voluntary Material:**

### Egypt and Japan: Contrasting Legal Reform:

Maurits Berger and Nadia Sonneveld, “Sharia and National Law in Egypt,” in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 51-88.

Susumi Yamauchi, “Civilization and International Law in Japan during the Meiji Era (1868-1912),” *Hitotsubashi Journal of Law and Politics*, Vol. 24 (1996) pp. 1-25.

Ram Prakash Anand, “Family of ‘Civilised’ States and Japan: A Story of Humiliation, Assimilation, Defiance and Confrontation,” *Journal of the History of International Law*, Vol. 5 (2003) pp. 1-75, pp. 18–29.

J.C.B. Richmond, *Egypt, 1798-1952: Her Advance Towards a Modern Identity* (London: Routledge, 2013 [1977]). (optional but good)

### Morocco and Tunisia: Constitutional and Personal Status Reform:

Thierry Le Roy, “Constitutionalism in the Maghreb: Between French Heritage and Islamic Concepts,” in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 109-20.

Léon Buskens, “Sharia and National Law in Morocco,” in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 89-138.

Emanuela Dalmasso, “Surfing the Democratic Tsunami in Morocco: Apolitical Society and the Reconfiguration of a Sustainable Authoritarian Regime.,” *Mediterranean Politics*, Vol. 17(2), No. 2 (2012/07) pp. 217-32.

## **4<sup>th</sup> Session, 7<sup>th</sup> November:                    Traditionalism: The Gulf Monarchies**

- What is the chief characteristics of the political economy of the region?
- What repercussions does this have for its social make-up and form of government?
- What is the authoritarian bargain?
- What role is played by religious ideology in fostering state cohesion?
- What happened in 1979? How did it affect social cohesion and foreign affairs?

## **Mandatory Material:**

Esther van Eijk, “Sharia and National law in Saudi Arabia,” in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 139-80.

Kamel Daoud, “Saudi Arabia, an ISIS That Has Made It,” *New York Times*, (20 November 2015).

## **Voluntary Material:**

### Saudi Arabia: Patrimonial Law:

Hossein Esmaeili, "On a Slow Boat Towards the Rule of Law: The Nature of Law in the Saudi Arabia Legal System," *Arizona Journal of International and Comparative Law*, Vol. 26(1), No. 1 (2009) pp. 1-48.

Nimrod Raphaeli, "Saudi Arabia: A Brief Guide to its Politics and Problems," *Middle East Review of International Affairs*, 2003, available at: <http://www.maf-houm.com/press6/162P53.htm>, accessed on: 24 August 2016. (optional)

### Rents and Religion: Traditional Law and Extractive Economics:

Hazem Beblawi, "The Rentier State in the Arab World," *Arab Studies Quarterly*, Vol. 9(4), No. 4 (1987) pp. 383-98.

Amr Daoud Marar, "Saudi Arabia: The Duality of the Legal System and the Challenge of Adapting Law to Market Economies," *Arab Law Quarterly*, Vol. 19(1), No. 1 (2004) pp. 91-124.

Martin Hvidt, "Economic and Institutional Reforms in the Arab Gulf Countries," *The Middle East Journal*, Vol. 65(1), No. 1 (2011) pp. 85-102. (read with a pinch of salt; pay attention to Fred Halliday's remark in footnote 10 in Esmaeili 2009)

Uriel Abulof, "'Can't buy me legitimacy': The Elusive Stability of Mideast Rentier Regimes," *Journal of International Relations and Development* (2015) pp. 1-25. (optional, hard to read)

## **5<sup>th</sup> Session, 5<sup>th</sup> November:            Fundamentalism: Iran**

- What are 'concessions' and what role did they play in Iranian political history?
- When and how did the first constitution come about?
- When and how did the second constitution come about?
- What were the principal actors and points of dispute in each?
- What is *velayat-e faqih* and what is its intellectual significance? Does it work?

## **Mandatory Material:**

Saïd Amir Arjomand, "The Kingdom of Jurists: Constitutionalism and the Legal Order in Iran," in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 147-70.

Zubaida, *Law and Power in the Islamic World*, pp. 182–220. Chapter 6 "The Politics of the Shari'a in Iran."

## **Voluntary Material:**

### Roots and Results of Revolution: Constitutional Contradictions:

Ziba Mir-Hosseini, "Sharia and National Law in Iran," in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 319-72.

Nikki R. Keddie, *Modern Iran: Roots and Results of Revolution* (New Haven: Yale University Press, 2006).



Roy Mottahedeh, *The Mantle of the Prophet* (New York: Simon & Schuster, 2014).

Janet Afary and Kevin B. Anderson, *Foucault and the Iranian Revolution: Gender and the Seductions of Islamism* (Chicago: University of Chicago Press, 2010).

Challenging the status quo: Between Extremism and Pragmatism:

Robin Wright (ed.), *The Iran Primer. Power, Politics, and U.S. Policy* (Washington, D.C.: USIP Press, 2010). (book is freely available on <http://iranprimer.usip.org/>; take your pick among the various chapters according to your interest).

Robert Malley, Karim Sadjadpour, and Ömer Taşpınar, “Symposium — Israel, Turkey and Iran in the Changing Arab World,” *Middle East Policy*, Vol. 19(1), No. 1 (2012) pp. 1-24.

Saïd Amir Arjomand, “Has Iran’s Islamic Revolution Ended?,” *Radical History Review*, Vol. (105), No. 105 (2009) pp. 132-38.

Iranian Constitution 1979/1989

Akbar Ganji, “How the West gets Iran wrong,” *CNN World*, New York, 9 May 2014, available at: <http://globalpublicsquare.blogs.cnn.com/2014/05/09/how-the-west-gets-iran-wrong/>, accessed on: 21 December 2014. (very short)

**6<sup>th</sup> Session, 12<sup>th</sup> November:                    Fragmentation and Chaos: The Levant**

- What is the underlying social problem that ‘consociationalism’ seeks to resolve?
- Which European countries inspired the Lebanese constitutional arrangements?
- How have Syria and Iraq responded to the same social problem?
- What are the social and political costs of each approach?
- Why did the ‘authoritarian bargain’ collapse?

**Mandatory Material:**

Robert Springborg, “The Precarious Economics of Arab Springs,” *Survival*, Vol. 53(6), No. 6 (2011) pp. 85-104.

Joseph G. Jabbra and Nancy W. Jabbra, “Consociational Democracy in Lebanon: A Flawed System of Governance,” *Perspectives on Global Development and Technology*, Vol. 17(2), No. 2 (2001) pp. 71-89.

Raj M. Desai, Anders Olofsgard, and Tarik Yousef, *Is the Arab Authoritarian Bargain Collapsing?*, The Brookings Institution, Washington, D.C. (2011), available at: <https://www.brookings.edu/opinions/is-the-arab-authoritarian-bargain-collapsing/>. (very short)

Magdi Amin *et al.*, *After the Spring. Economic Transformations in the Arab World* (New York: Oxford University Press, 2012), pp. 31–53.

**Voluntary Material:**

Consociationalism: Creating Order in Fractioned Societies:

Malcolm Yapp, *The Near East Since the First World War: A History to 1995*, Vol. 2 (London: Longman, 1996), pp. 69–115, 232–279.

Richard Hrair Dekmejian, "Consociational Democracy in Crisis: The Case of Lebanon," *Comparative Politics*, Vol. 10(2), No. 2 (1978) pp. 251-65.

Robert Springborg, "The Political Economy of the Arab Spring," *Mediterranean Politics*, Vol. 16(3), No. 3 (2011) pp. 427-33. (very short)

Kenneth M. Pollack and Barbara F. Walter, "Escaping the Civil War Trap in the Middle East," *The Washington Quarterly*, Vol. 38(2), No. 2 (Summer 2015) pp. 29-46.

#### Republics of Fear: Authoritarian Bargains and their Constitutions:

Yapp, *The Near East Since the First World War: A History to 1995*, pp. 456–67.

Paul Salem, "The Disintegration of the Levant," *Middle East Voices*, Beirut, Carnegie Middle East Center, 24 January 2013, available at: <http://carnegie-mec.org/publications/?fa=50870>, accessed on: 26 August 2016. (very short)

Raj M. Desai, Anders Olofsgard, and Tarik M. Yousef, *The Logic of the Authoritarian Bargains: A Test of a Structural Model*, Global Economy and Development Working Paper No 3 (Washington, D.C.: Brookings Institution Press, 2007), available at: [https://www.brookings.edu/wp-content/uploads/2016/06/01globaleconomics\\_desai.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/01globaleconomics_desai.pdf), accessed on: 26 August 2016.

Ebrahim Afsah, "Creed, Cabal, or Conspiracy: Origins of the Current Neo-Conservative Revolution in US Strategic Thinking," *German Law Journal*, Vol. 4(9), No. 9 (2003) pp. 902-23. (optional)

Graeme Wood, "What ISIS Really Wants," *The Atlantic*, March 2015, available at: <http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980/>, accessed on: 8 June 2015.

Charles Lister, *Profiling the Islamic State*, Brookings Doha Center Analysis Paper, Brookings Institution Press, Washington, D.C. (1 December 2014), available at: <http://www.brookings.edu/research/reports2/2014/12/profiling-islamic-state-lister>, accessed on: 15 June 2015.

### **7<sup>th</sup> Session, 19<sup>th</sup> November: Afghanistan, Pakistan & Bangladesh**

- How are Pakistan and Bangladesh connected to each other?
- Can you name the major stages of the Afghan conflict?
- What are the driving factors for Islamisation in each country?
- What is the role of 'repugnancy clauses' in each constitution?
- What is the role of foreign models in each legal system?

#### **Mandatory Material:**

Feisal Khan, "Corruption and the Decline of the State in Pakistan," *Asian Journal of Political Science*, Vol. 15(2), No. 2 (2007) pp. 219-47.

Fareed Zakaria, "The Inconvenient Truth About Afghanistan," *Washington Post*, (8 October 2015). (very short)

Ebrahim Afsah, "Afghanistan Conflict," in: *Encyclopedia of Public International Law*, ed. by Rüdiger Wolfrum (Oxford: Oxford University Press, 2009).

### **Voluntary Material:**

#### Garrison or Failed State? Common Law and Common Sense:

- Martin Lau, "Sharia and National Law in Pakistan," in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 373-432.
- Clark B. Lombardi, "Islamism as a Response to Emergency Rule in Pakistan: The Surprising Proposal of Justice A. R. Cornelius," in: *Emergency Powers in Asia. Exploring the Limits of Legality*, ed. by Victor Vidar Ramraj and Arun K. Thiruvengadam (Cambridge: Cambridge University Press, 2010) pp. 436-65.
- Sumit Ganguly, "Pakistan's Forgotten Genocide—A Review Essay," *International Security*, Vol. 39(2), No. 2 (Fall 2014) pp. 169-80.

#### Legal Archaeology: The Palimpsest of Afghan Law:

- Ebrahim Afsah, "Constitutionalism without Governance: International Standards in the Afghan Legal System," in: *Importing International Law in Post-Conflict States: The Role of Domestic Courts*, ed. by André Nollkaemper, Cedric Ruysgaert, and Edda Kristjansdottir (The Hague: Intersentia, 2012) pp. 125-51.
- Conrad J. Schetter, "Der Afghanistankrieg - Die Ethnisierung eines Konflikts," *Internationales Asienforum*, Vol. 33(1/2), No. 1/2 (2002), p. 15.
- Willemijn Verkoren and Bertine Kamphuis, "State Building in a Rentier State: How Development Policies Fail to Promote Democracy in Afghanistan," *Development and Change*, Vol. 44(3), No. 3 (2013) pp. 501-26.
- Afghan Constitution of 2004
- Udenrigsministeriet, Forsvarsministeriet, ~~2017~~ *Afghanistanstrategien 2015-2017*, Government Printing Office, Copenhagen (2016), available at: [http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Documents/afghanistanstrategien\\_2015-17.pdf](http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Documents/afghanistanstrategien_2015-17.pdf), accessed on: 24 August 2016. (optional)

### **8<sup>th</sup> Session, 26<sup>th</sup> November: Liminal Successes: Malaysia and Indonesia**

- What is the form of government in Malaysia and Indonesia, respectively?
- What is the legacy of colonial law in each jurisdiction?
- What is the legacy of Islamic law in each jurisdiction?
- What is the role played by emergency powers in each jurisdiction?
- How has the distribution of powers between centre and periphery changed over time?

### **Mandatory Material:**

- Jan Michiel Otto, "Sharia and National Law in Indonesia," in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 433-90.
- Andrew Harding, "Sharia and National Law in Malaysia," in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 491-528.

## **Voluntary Material:**

### Colonial Constitutions and the Use of Emergency Law:

Tim Lindsey and Mas Achmad Santosa, "The Trajectory of Law Reform in Indonesia: A Short Overview of Legal Systems and Change in Indonesia," in: *Indonesia: Law and Society*, ed. by Tim Lindsey (2008) pp. 2-22.

Nadirsyah Hosen, "Emergency Powers and the Rule of Law in Indonesia," in: *Emergency Powers in Asia. Exploring the Limits of Legality*, ed. by Victor Vridar Ramraj and Arun K. Thiruvengadam (Cambridge: Cambridge University Press, 2010) pp. 267-93.

### Pluralist Transitions: Decentralisation, Federalism and Democracy:

Andrew Harding, "Constitutionalism, Islam, and National Identity in Malaysia," in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 201-18.

Nadirsyah Hosen, "Indonesia: A Presidential System with Checks and Balances," in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 461-74.

Rainer Grote, "Westminster Democracy in an Islamic Context: Pakistan, Bangladesh, Malaysia," in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 447-60.

## **9<sup>th</sup> Session, 3<sup>rd</sup> December: Failure to Form: Sub-Saharan Africa**

- Radelet divides African states into which three groups?
- According to Hamilton et al., what is the role of law in creating wealth?
- What is the constitutional model followed by Muslim African states?
- What is the role of religious law in Nigeria and Mali, respectively?
- How can weak institutions be strengthened?

## **Mandatory Material:**

Philip Ostien and Albert Dekker, "Sharia and National Law in Nigeria," in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 553-612.

Kirk Hamilton, Katharine Bolt, and Giovanni Ruta, *Where is the Wealth of Nations? Measuring Capital for the 21<sup>st</sup> Century* (Washington, D.C.: World Bank, 2006), pp. xiii-xx, 3-32. Executive Summary, Chapter 1 "Introduction: The Millennium Capital Assessment" and Chapter 2 "The Wealth Stock Estimates."

## **Voluntary Material:**

### Intangible Wealth and the Importance of Administrative Law:

Dorothea Schulz, "Sharia and National Law in Mali," in: *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010) pp. 529-52. (optional)

### Africa Awakening: Weak Institutions and Constitutional Responses:

Hamilton, Bolt, and Ruta, *Where is the Wealth of Nations?*, pp. 87–100. Chapter 5 “The Importance of Population Dynamics: Changes in Wealth per Capita” and Chapter 7 “Explaining the Intangible Capital Residual: The Role of Human Capital and Institutions.”

Steven Radelet, *Emerging Africa. How 17 Countries are Leading the Way* (Washington, D.C.: Center for Global Development/Brookings, 2011), pp. 9–90. Chapter 1 “Emerging Africa,” Chapter 2 “Emerging Africa’s Renaissance,” Chapter 3 “Emerging Democracies” and Chapter 4 “Stronger Economic Management.”

### **10<sup>th</sup> Session, 12<sup>th</sup> December: Thrown into the Void: Post-Soviet Central Asia**

- What are the primary socio-economic challenges after the collapse of Communism?
- How religious are Central Asian societies? Is this changing? Why?
- What is the role formally accorded to Islam in their constitutional orders?
- What is the role of political Islam? How have regional conflicts affected this?
- Which foreign actors seek influence and how?

#### **Mandatory Material:**

Sharam Akbarzadeh, “Post-Soviet Central Asia: The Limits of Islam,” in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 421-30.

Alisher Latypov, “Understanding Post 9/11 Drug Control Policy and Politics in Central Asia,” *International Journal of Drug Policy*, Vol. 20(5), No. 5 (2009) pp. 387-91.

#### **Voluntary Material:**

##### State Collapse and Authoritarianism: Secular Legacies and Religious Visions:

Zhenis Kembayev, “The Rise of Presidentialism in Post-Soviet Central Asia,” in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 431-46.

##### Constitutional Rhetoric and Legal Realities:

David Lewis, “High Times on the Silk Road: The Central Asian Paradox,” *World Policy Journal*, Vol. 27(1), No. 1 (Spring 2010) pp. 39-49.

Henry E. Hale, *Patronal Politics. Eurasian Regime Dynamics in Comparative Perspective* (Cambridge: Cambridge University Press, 2014), pp. 61–94. Chapter 4 “Constitutions, Elections, and Regime Dynamics.”

Alexander Baunov, *Heirless in Tashkent: How Autocratic Regimes Manage a Succession*, Carnegie Moscow Center, Moscow (1 September 2016), available at: <http://carnegie.ru/commentary/?fa=64446>, accessed on: 3 September 2016.

### **11<sup>th</sup> Session, 9<sup>th</sup> January: Minority Regimes: India and Europe**

- What are personal status laws? Why do they play such a large role in India?

- Can they provide a model for the integration of Muslims into Europe? At what cost?
- Why are blasphemy laws so divisive?
- What is an ‘Islamicity Index’? How is it different from ‘good governance’?
- According to Salzman, what is the question of political Islam?

### **Mandatory Material:**

Subrata Mitra and Alexander Fischer, “Sacred Laws and the Secular State: An Analytical Narrative of the Controversy Over Personal Laws in India,” *India Review*, Vol. 1(3), No. 3 (2002) pp. 99-130.

Philip Carl Salzman, “When They Proclaim “Islam is the Answer,” What is the Question? The Return to Political Islam,” *Journal of the Middle East and Africa*, Vol. 2(2), No. 2 (2011) pp. 129-52.

### **Voluntary Material:**

#### Indian Muslims: Personal Status Laws and Political Engagement:

Mushirul Hasan, “Indian Muslims Since Independence: In Search of Integration and Identity,” *Third World Quarterly*, Vol. 10(2), No. 2 (1988) pp. 818-42.

Werner Menski, “The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda,” *German Law Journal*, Vol. 3(1, A Special Issue on India), No. 1, A Special Issue on India (2008) pp. 211-50.

Anil Kalhan, “Constitution and ‘Extraconstitution’: Colonial Emergency Regimes in Post-colonial India and Pakistan,” in: *Emergency Powers in Asia. Exploring the Limits of Legality*, ed. by Victor Vridar Ramraj and Arun K. Thiruvengadam (Cambridge: Cambridge University Press, 2010) pp. 89-120. (skim)

Faisal Devji, *Muslim Zion: Pakistan as a Political Idea* (Cambridge, Mass.: Harvard University Press, 2013). (very optional)

#### Euroislam: Uneasy Constitutional Accommodations:

Sadiq Jalal al-Azm, “The Importance of Being Earnest about Salman Rushdie,” in: *Collected Essays on Islam and Politics. Vol. 2: Islam – Submission and Disobedience* (Berlin: Gerlach Press, 2014) pp. 7-58.

Toby E. Huff, “What the West Doesn’t Owe Islam,” *Comparative Civilizations Review*, Vol. 67 (2012) pp. 116-29.

Hossein Askari, “Islamic Teachings for Flourishing Societies.” (very short and repeated from first week)

*Idem*, “Islamicity Indices — The Best Instrument for Changing the Muslim World.” (very short and repeated from first week)

### **12<sup>th</sup> Session, 16<sup>th</sup> January: Review and Overview**

- How would you gauge the region’s future?
- What is its potential for effective, rule-bound, accountable government?
- What is the role of demography?
- Is Melhem right or is he depressed?

- Please come, as always, with your own questions!

### **Mandatory Material:**

Your notes!

Hisham Melhem, “The Barbarians Within Our Gates. Arab Civilization Has Collapsed. It Won’t Recover in My Lifetime,” *Politico*, (18 September 2014).

### **Voluntary Material:**

#### Contending Visions:

Khaled Abou El Fadl, “The Centrality of Shari’ah to Government and Constitutionalism in Islam,” in: *Constitution-Making in Islamic Countries: Between Upheaval and Continuity*, ed. by Rainer Grote and Tilmann Röder (New York: Oxford University Press, 2012) pp. 35-62.

Sadiq Jalal al-Azm, “Orientalism and Conspiracy,” in: *Orientalism & Conspiracy: Politics and Conspiracy Theory in the Islamic World. Essays in Honour of Sadik J. Al-Azm*, ed. by Arndt Graf, Schirin Fathi, and Ludwig Paul (London: I.B. Tauris, 2011) pp. 3-28.

Amin *et al.*, *After the Spring*, pp. 80–106.

Stephen Van Evera, *Why States believe Foolish Ideas: Non-Self-Evaluation by States and Societies*, Version 35, Cambridge, Mass. (10 January 2002), available at: [http://web.mit.edu/polisci/research/vanevera/why\\_states\\_believe\\_foolish\\_ideas.pdf](http://web.mit.edu/polisci/research/vanevera/why_states_believe_foolish_ideas.pdf), accessed on: 25 July 2006.