

Research Project Document

*(Re)arrangements of šari'ah and secular law in constitutional transitions*

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**Abstract:**

The research project intends to investigate how—if at all—the current constitutional transitions affect the modern arrangement of *šari'ah* and secular law in the Arabic-speaking world. Such analysis builds on a comparative understanding of the *šari'ah*/secular law dynamics that postulates a much more nuanced assessment of the modern arrangement as enshrined in constitutional provisions identifying *šari'ah* as one or the chief source of legislation.

Provisions on *šari'ah* started appearing in constitutions in the 1950s, with Syria (1950) and Pakistan (1956) as forerunners; the Syrian constitution phrased it in the affirmative and inspired the constitutions of other Arabic-speaking countries, whereas the Pakistani phrased it in the negative and mainly spread it in the Muslim East. The number of constitutions regulating the position of *šari'ah* within the sources of law has steadily increased ever since the 1970s and 1980s, with a peak in the 1990s and the new millennium. A seminal role was certainly played by Egypt under Sadat, who issued in 1971 a Constitution that declared “the principles of Islamic law (*šari'ah*) a chief source of legislation,” and later amended it in 1980 to be “the” chief source of legislation.

The electoral success of forces that have based their political platforms for decades on the top of “implementation of *šari'ah*” might lead to a re-arrangement, both through their large representation in the new legislative assemblies and in the bodies charged with the drafting of the new constitutions. The current constitutional provisions, I argue and have argued in the past, are compromise provisions that allow for interpretations that accommodate quite distinct *šari'ah*/secular law arrangements even if they have been interpreted so far as provisions enabling secular law to further penetrate in *šari'ah*'s last bastion (personal status). Due consideration to a much broader spectrum is therefore in order.

The methodology employed is that of comparative constitutional law, and builds on previous research on the case law on *šari'ah*-provisions by constitutional courts in the region (chiefly Egypt, Pakistan, and Iraq) as well as *šari'ah*/secular law dynamics both in the pre-modern and modern contexts. During the period of residence the research will focus however on the systems that are undergoing a constitutional transition (currently: Tunisia, Egypt, and Libya). The comparative constitutional law method allows—and requires—insights from other disciplines, and there are a number of scholars at NYU and elsewhere in the United States with whom I would wish to discuss the research