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Democracy and Islam in the New Constitution of Afghanistan

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Preface

As part of a broad program of research and analysis on the Middle East and Asia, on January 28, 2003, RAND called together a group of renowned experts with knowledge in the fields of Islamic law, constitution writing, and democracy, and with specific country and regional expertise. [1]

The task was to identify ways in which the constitution of Afghanistan could help put the country on the path to a strong, stable democracy characterized by good governance and rule of law, in which Islam, human rights, and Afghanistan's international obligations were respected. The group was to keep in mind the realities of Afghanistan's current situation and draw from the experiences of other countries, with the aim of identifying practical ideas, particularly about the treatment of Islam in the constitution. The following document offers ideas to those involved in the drafting of the new constitution for Afghanistan. The meeting and document were underwritten by RAND, with its own funds.

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[1] Not everyone on the panel necessarily agrees with every statement in this document, but all do agree that the document draws faithfully upon the conversations and that it offers useful analysis.

Contents

Preface iii

1. INTRODUCTION 1

2. ISLAM AND SOCIETY 2

3. ISLAM AND SOURCES OF LAW 3

4. JUDICIAL REVIEW 5

5. COURTS AND JUDGES 8
   Personal Status Law and Shari`a Family Courts 8
   Constitutional Court 9

6. INDIVIDUAL RIGHTS 11

7. CONCLUSION 12

Appendix

A. ISLAM AND THE STATE: A SHORT HISTORY 13
   By Khaled Abou El Fadl

B. THE CONSTITUTION OF AFGHANISTAN 1964 17

1. Introduction

The ability of a constitution to effect political change has limits. The 1964 Constitution of Afghanistan, for example, is and was widely regarded as a well-drafted and progressive document, but it did not produce a democracy. A constitution, however, has several important functions. It will be looked to as a clear symbol of the country's direction, both by its citizens and the international community. It can also provide important safeguards against the government going off track, while laying the groundwork for increased democracy, rule of law, and good governance at a later time when the country stabilizes and those developments become increasingly possible.

While there is much discussion and controversy over the place Islam should take in the text of the Afghan constitution, there are other important issues. How the Afghan constitution addresses the relationship between national and local government, for example, is a critical challenge that needs to be examined very carefully.

The constitution should avoid responding excessively to mutable trends of the day. Also, overly ideological statements do not belong in a constitution because they risk being interpreted in ways that undermine the text. Similarly, "preemptive symbolic language" intended to appease particular interest groups can cost a high price at a later date. In addition, different possible approaches to constitutional issues carry attendant risks, and it is important to guard against possible unintended consequences of specific measures.

Finally, it is important that the drafters be aware of how different sections of the constitution can interact in unforeseen ways. For instance, the status of Islamic law and the matter of judicial review are often discussed separately and addressed in different clauses. But providing for strong language in both areas might have the effect of empowering judges in vague and unanticipated ways to address matters of Islamic law as part of their oversight of the constitutionality of legislation.

2. Islam and Society

The constitutions of many Islamic countries include a statement in the preamble that refers to Islam. A democratic constitution would be expected to include all the principles the country will follow in that statement. A good formulation can be crafted from language in the 2001 Bonn Accord on a provisional government in Afghanistan, "The constitution will embody the basic principles of Islam, democracy, pluralism, social justice, rule of law, and Afghanistan's international obligations." In general, where Islam is mentioned in the constitution, all of the guiding principles should be mentioned in congruity. While some may argue that Islam incorporates the other principles, it is best to mention them explicitly because extreme groups like the Taliban also claimed to be enforcing Islam. **Thus, language in the constitution should always recognize not only the basic principles of Islam, but also the principles of democracy, pluralism, social justice, rule of law, and Afghanistan's international obligations.**

While references to Islam are customary and appropriate, attention should be devoted to clauses that give some specificity to Islam's official status. Islam must be enshrined in a way that it is expressed through normal democratic mechanisms, rather than supplanting them. Afghanistan may choose to define itself as a "Muslim" country or an "Islamic state." The latter term carries significant ideological baggage, especially in the context of today's politicized use of the terminology. It may empower those who wish to erode the position of the elected legislature and the executive, and it may allow for a parallel power structure of politically ambitious clerics, as happened in Iran.

3. Islam and Sources of Law

In the constitutions of Muslim countries, there is often a statement that affirms Islam's role in the law. It can occur early in the constitution when religion is mentioned (for example, The Constitution of Afghanistan, May 28–29, 1990, Article 2) or later when the legislature is discussed (for example, The Constitution of Afghanistan, October 1, 1964, Article 64 (Appendix B of this document), hereinafter called "1964 Constitution"). To improve the prospects for a democratic outcome, it is very important to draft this statement thoughtfully.

The wording of the 1964 Constitution is a good starting point: "There shall be no law repugnant to the basic principles of the sacred religion of Islam and the other values embodied in this constitution." (1964 Constitution, Article 64) First, the wording is fairly progressive, and second, the current Constitution of Afghanistan is composed of the 1964 Constitution along with the Bonn Accord, and so the 1964 Constitution is a referent widely accepted by Afghans today.

However, what is commonly referred to as the "repugnancy clause" represents an inaccurate translation of the word "munaqiz(d)." "Contradictory" is a better translation. But the formulation "No law shall *contradict* the basic principles of Islam" may imply judicial review, which carries significant risks, as discussed below. A more neutral formulation is that "the basic principles of Islam are an inspiration for all legislation."

In the past, groups with political agendas, like the Taliban, forcibly imposed their own eccentric interpretation of Islam on the population. Thus, in deciding on the precise formula, the critical task is to avoid overly restrictive interpretations of Islamic law and to prevent particular groups from maintaining an exclusive right to interpretation. This approach is very much in keeping with the Islamic shari`a itself: the shari`a is not and has never been intended to be a definitive legal code (see Khaled Abou El Fadl, "Islam and the State: A Short History," Appendix A of this document). Instead it is a body of thought that Muslims can draw upon in confronting legal (and other) issues. Understood broadly, this should aid rather than undermine attempts to achieve internal stability, stature in the international community, and national reconstruction.

The constitutions of other Islamic countries use a variety of formulations to express the role of Islamic law. Some mention only "Islam"; others mention specifically "the Islamic shari`a" and still others "the principles of the Islamic

shari`a." Some pose shari`a as "a" source of law; others proclaim it to be "the" source of law. In these formulations, reference to shari`a as "a" source rather than "the" source is preferable in a democracy, because it carries a strong and clear acknowledgment that other sources of law besides the Quran are valid and can continue to be used. (This debate has been strong in Arabic-speaking countries but is less relevant in Afghanistan).

In Afghanistan, the 1964 Constitution does not mention the shari`a but uses the phrase "basic principles of Islam." **Reference to "the basic principles of Islam," as in the 1964 formulation, is to be greatly preferred over reference only to "Islam" or to the "shari`a."** Insertion of the term "principles" contributes to the idea that application of Islamic teachings cannot be mechanistic, based on a frozen interpretation of Islamic law. Moreover, the term "Islam" avoids some of the recent political connotations of the term "shari`a." Currently, in a number of Islamic countries, reforms are being rolled back, democratic structures threatened and extreme applications of Islamic law instituted under the name of shari`a, and the term has been politicized to signal that agenda. It suggests efforts to supplant modern legal structures and impose specific interpretations of Islam, including hudud criminal penalties. The term "principles of Islam" avoids possible misunderstanding. This clause on Islam and the law, however phrased, does not imply that any of Afghanistan's current laws ought to be invalidated.

To safeguard democratic elements in the constitution, statements regarding Islam and the law should make equal mention of the "other values embodied in this constitution," just as the 1964 Constitution does. A more powerful alternative is for the sentence to include all the principles that the law will embody, e.g., "the basic principles of Islam, democracy, pluralism, social justice, rule of law, the values of this Constitution and Afghanistan's international obligations."

4. Judicial Review

Just as important as the language used to refer to Islam is determining who is authorized to speak in its name. In general, this should be seen as a task for the entire community and its elected representatives rather than a monopoly of religious scholars or religiously trained judges.

The ability of an independent judiciary to review whether legislation and executive actions are constitutional can be an important feature of a democracy. However, **allowing judges to review legislation's conformity with Islam carries real risks.** In Pakistan, for example, judges struck down vast portions of the statutory law because it did not conform to their notion of Islam, wreaking havoc in the economy and society generally. Other countries have had similarly negative experiences. Fortunately, Afghanistan has no tradition of judicial review for conformity to Islam, and it may be best not to alter this course.

One approach to address this issue is to make clear that the provision that refers to Islam's influence on the law is addressed to the legislature, not the judiciary. This can be accomplished through a qualifying phrase that immediately follows the sentence on law and Islam, such as "The legislature and the executive branch, acting within their constitutional powers, have the exclusive jurisdiction to make determinations concerning the law's conformity to the basic principles of Islam."

Another possibility is that the constitution could specify precisely, as Malaysia's does, that the jurisdiction of courts to find laws unconstitutional is limited to certain articles of the constitution, like the section on individual rights, and not any of the articles that mention Islam. The downside of this approach is that it may create a dilemma; if only clauses on Islam are excluded, some may charge that the constitution's mandates on Islam are not being taken seriously enough. If the exclusions are broader, it may undermine enforcement of other important provisions.

In the 1964 Constitution, the monarch is named as the protector of the basic principles of Islam. As the country is democratized, one could argue that the authority to protect Islam in the law is transferred to the people, represented by the legislature.

Another possibility is to specifically refer to the principle of "ijma" in the constitution, in order to allow for sovereignty of the people in legislation. Based

on a widely respected hadith, which states that "my community will not agree on an error," the concept is that whatever a community or nation of Muslims agrees on will be the correct Islamic approach. This principle of popular consensus can be invoked to explain that the legislature has the proper authority to determine what is "Islamically" correct and why the judiciary does not have the right to strike down legislation as un-Islamic. However, it must be clear in invoking ijma that the parliament does not have unchecked sovereignty in all areas.

Another guard against judicial overstepping (on the pretext of interpreting Islam) is a comprehensive body of carefully crafted, obligatory, statutory law. This is currently the task of a separate commission in Afghanistan, but these two efforts are interdependent and parallel. A complete body of statutes should be in place as soon as possible after the constitution goes into effect so that arbitrary interpretations by individual, possibly untrained jurists do not substitute for democratically enacted law.

In areas of the law where Afghanistan may be lacking statutes, a useful way to proceed is to survey the landscape of progressive legislation in other Muslim countries (Malaysia is a good example) and start producing recommendations for statutes that pin down rights and duties. Muslim personal law, most vulnerable to hijacking by radical Islamists, should be priority number one.

There may be a temptation to give religious authorities a voice concerning legislation, in response to pressure brought by their lobby. One way to do this is to create a body that advises the legislature or the executive on religious matters, as was done in Morocco and a number of other countries. We understand that the Constitutional Commission may have rejected the idea of mentioning advisory bodies of religious experts in the constitution. Most countries have similarly made the wise choice of not enshrining such a body in the constitution. Such bodies are designed to assist the rulers and not to rule themselves. For that reason, they should not be given constitutional status but can be created according to need.

If the executive chooses to create such a body, it can have definite term limits. But even a purely advisory body of this nature can become difficult to contain. Such bodies have shown a tendency to grow in power and expand their mandates. This happened in Egypt and in Saudi Arabia, where the religious authority has been adept at increasing its authority over the government. Likewise, Iran's Council of Guardians is an example in which such a body has arrogated ever increasing power. The system is now difficult to change because of the council's ability to overrule and block.

Another solution sometimes contemplated is to allot a small number of seats in the legislature to religious scholars. While this would secure their participation in the legislative process, it might also suggest that all legal questions could be resolved only when such scholars have rendered judgment. Also, the pattern in Afghanistan during the current state-building period has been for such inclusionary efforts to quickly escalate, with groups pressing for increasing representation. On balance, there is no need to specify mandatory appointment of religious scholars. In the past, constitutions have allowed the head of state to appoint some members to one house of parliament. Such a clause would permit the executive to exercise political judgment on the desirability of such participation.

To safeguard against efforts to undermine essential principles established in the constitution, certain aspects of the constitution can be declared to be unamendable. This was used in Turkey to safeguard state structures against radical backlash and has held up successfully to challenges.

Another important safeguard is for the President to have ultimate veto power; a line-item veto is more powerful than a whole statute veto. This provides a check against a legislature coopted by extremist elements.

A constitution also should allow for situations that statutes do not cover, to prevent judges from having to create law. For example, a provision could say: "Whenever no provision exists in the constitution or in the law for any case under consideration, the courts shall, by following the basic principles of Islam, democracy, pluralism, social justice, and the rule of law, consistent with Afghanistan's international obligations and within the limitations set forth in this constitution, render a decision that secures justice in the best possible way" (adapted from the 1964 Constitution, Article 102).

When mentioning Islam, most previous constitutions of Afghanistan, including the 1964 Constitution, gave a particular role to the Hanafi school of interpretation (fiqh) followed by Afghanistan's majority Sunni Muslims. Recognition of the minority Shi'a can be achieved in two ways: by mentioning the Ja'fari school that the Shi'a follow in addition to the Hanafi school, or by mentioning no school. If the former method is used, judges should be trained in both the Hanafi and the Ja'fari schools so that all may use the same court system. Omitting any mention of schools is perhaps the best course. Referring simply to "the basic principles of Islam" could allow for an eclectic code that does not designate itself as belonging to a particular school but is an "Afghan legal code" applied to all cases. Of course, the difficulty of drafting a code that satisfies all should not be underestimated.

5. Courts and Judges

An appropriate and mandatory process for selecting judges in Afghanistan is critical. The "who" (who is interpreting the law) is as important as the "what" (what law is being interpreted). **The process for selecting judges must have checks and balances.** For example, the executive branch could nominate, a specialized commission could then review, and finally the legislature could confirm new judges. In no case should the judicial body "nominate itself"—judges should not be nominating other judges, as is the current practice in Afghanistan. This practice does not conform to contemporary international standards, and it does not ensure a politically independent judiciary. Further, judges should be required to meet certain educational requirements, as, for example, the 1964 Constitution specifies.

No court can be allowed to unilaterally take up issues. Judges may only review issues in cases brought to the courts by plaintiffs with proper standing. A clause giving courts jurisdiction only over "cases and controversies" could rule out the possibility that they could act on their own initiative.

Personal Status Law and Shari`a Family Courts

Personal and family law can play as large a part as civil and criminal law in determining the direction society takes, individual quality of life, and the prospects for reconstruction.

Many Muslim countries have separate family courts. These have often become the exercise ground for the most conservative, least qualified judges, with very negative consequences especially for women. On the other hand, in some places these courts offer rare opportunities to female judges. Therefore, disbanding them can have the unintended consequence of discouraging the participation of women in the judiciary.

Family law could fall comfortably under the jurisdiction of civil courts. If there are separate shari`a courts alongside civil courts, however, it is important to train and select the judges very carefully and to assure that they are formally educated in codes of both Islamic personal and family law, and civil law, not just the former. In Malaysia's "qadi" courts, members are rigorously trained in legal procedures, including procedures of other nations, which has improved the

courts significantly. Likewise, Egypt's "personal status" courts have civil-trained judges.

Selecting qualified judges will be especially important in Afghanistan, where large numbers of mullahs currently find themselves without a role to play. They may gravitate to personal and family law courts where they could try to monopolize the interpretation of Islamic law without adequate checks.

Other Islamic countries have achieved good success by basing their family law on eclectic sources. It is not necessary for a country to restrict itself to following only one particular school of law. For example, some countries who ordinarily follow the Hanafi school have drawn from the Hanbali school a provision allowing women to put a clause of unilateral divorce, comparable to the right possessed by men, into their marriage contract. Malaysia, by selecting from various Islamic schools as well as from Western law, has produced a superior set of statutes and allowed advances in personal and family law, such as limits on unilateral divorce, more equitable property law, and the permission for women to institute divorce on broader grounds.[2]

When referring to personal status courts, the phrase "in accordance with the constitution" should be used often and prominently to assure that personal and family law conforms to guarantees of individual rights in the constitution.

If there are Islamic courts, they should be for family and personal status law only. In Pakistan, the introduction of a shari`a bench caused judicial chaos. The economy crashed as hundreds of laws pertaining to economic matters were invalidated, minorities became vulnerable to persecution, and individual and human rights were jeopardized.

Constitutional Court

Afghanistan may be considering the establishment of a separate constitutional court. There are benefits but also disadvantages to this institution. For some transition countries, a specialized constitutional court has been an important arbiter (often in a context in which national political institutions are weak and their legitimacy uncertain) as well as an important guarantor of individual rights.

One concern is that an independent constitutional court would attract the country's top judges and siphon off scarce talent when the country is trying to

[2]The International Islamic University of Malaysia is a good source of information about contemporary legal reforms across the Islamic world.

rebuild an entire legal system. But a specialized constitutional court need not necessarily divert resources and expertise from the regular judiciary. It could, for example, have judges serving on it as needed (in some countries, the constitutional court is a chamber of the Supreme Court).

Moreover, if judicial review is to be exercised, whether conformity to Islam is included in that review or not, it should be done by a competent and independent body. In the Afghan context, the existing judiciary is in disarray and may not be able to carry out the profound responsibility of judicial review for some time. Responsible exercise of judicial review thus may require a different body of judges. They need to be highly educated in the law, impartial, respected, and not captives of a particular political agenda.

Another concern is that a constitutional court's members may overstep the court's bounds and seek to hear cases on their own initiative. This concern could be addressed by the rules of access and standing and by the limitation of scope of judicial review.

6. Individual Rights

A strong guarantee of individual rights in the new Afghan constitution is essential. These rights should include freedom of expression, freedom of assembly, freedom from torture, and others. The 1964 Constitution provision that "no one shall be punished except by law" is important and should be kept.

On religious freedom, the text could say that "Muslims and others are free to practice and to teach to their children their own respective religions." This, along with guarantees of human rights, freedom of conscience, and freedom of expression, can guard against apostasy and blasphemy convictions.

The phrase "within the limits set by the constitution" should be used frequently in this context. This wording will help prevent an attempt to circumvent legal provisions for criminal punishment in the name of Islamic law, e.g., attempts to implement hudud.

To stem the rise of subversive movements, freedom of assembly and the right to form political parties could be made conditional on respect for the constitution and its provisions. But any such restriction on individual rights can also backfire by giving the state justification for repressive actions.

Equality of women and men and prohibition against discrimination on the basis of gender have already been included in earlier Afghan constitutions and should be retained.

7. Conclusion

The RAND panel extends its good wishes to its colleagues on Afghanistan's Constitutional Commission and stands ready to provide additional information or to review drafts, if desired.

Appendix

A. Islam and the State: A Short History

By Khaled Abou El Fadl

The relationship of Islam to the state, both in theory and practice, has been complex and multifaceted. Islam, as a system of beliefs embodying a multitude of moral and ethical principles, has inspired a wide range of social and political practices, and a diverse set of legal interpretations and determinations known collectively as the shari`a. Muslims believe the shari`a to be divine law, in the sense that the shari`a is based on the human interpretations and extrapolations of the revealed holy book, the Quran, and of the authentic precedents of the Prophet, known as the Sunna. Therefore, the shari`a (which literally means the way to God or the fountain and spring source of goodness) is the sum total of the various efforts of Muslim scholars to interpret and search for the Divine Will as derived from the Quran and Sunna. Importantly, through the course of 14 centuries, Muslim scholars have emphasized that the main objective of the shari`a is to serve the interests and well-being, as well as protect the honor and dignity, of human beings. There is no single code of law or particular set of positive commandments that represent the shari`a. Rather, the shari`a constitutes several schools of jurisprudential thought that are considered equally orthodox and authoritative. In the Sunni world, there are four dominant schools of thought: Shafi'i, Hanafi, Maliki, and Hanbali. In the Shi'i world, the dominant schools are Ja'fari and Zaydi. The Sunni population of Afghanistan is predominately Hanafi, while the Shi'i population is predominantly Ja'fari.

The first Muslim polity was the city-state led by the Prophet Muhammad in Medina. But after the Prophet Muhammad died, no human being or institution was deemed to inherit his legislative, executive, or moral power. In Islamic theology, there is no church or priestly class that is empowered to speak for God or represent His Will. There is a class of shari`a specialists (jurists), known as the "*ulama* or *fuqaha,*" who are distinguished by virtue of their learning and scholarship, but there is no formal procedure for ordination or investiture. These jurists are not thought to embody the Divine Will nor treated as the exclusive representatives of God's law. The authoritativeness that a particular jurist might enjoy is a function of his formal and informal education, and his social and scholastic popularity. As to their political and institutional role, in classical

Islamic theory, jurists are supposed to play an advisory and consultative role and to assume judicial positions in the administration of justice. It is an interesting historical fact that until the modern age, jurists never assumed direct political power. Although, historically, jurists played important social and civil roles and often served as judges implementing the shari`a and executive ordinances, for the most part, government in Islam remained secular. Until the modern age, a theocratic system of government in which a church or clergy ruled in God's name was virtually unknown in Islam.

Institutionally, Islam does not dictate a particular system of government, and in theory, there is no inconsistency or fundamental clash between Islam and democracy. The Quran dictates only that governance ought not be autocratic, and that the affairs of government should be conducted through consultation (*shura*). According to the classical jurisprudential theory, governance should be pursuant to a civil contract (*'aqd*) between the governor and the governed, and the ruler should obtain a pledge of support (*bay'a*) from the influential members of society as well as the majority of his constituency. In theory, rulers are supposed to consult with jurists, as well as other representative elements in society, and then, after concluding the consultative process, act upon the best interests of the people. In classical Islam, the consultative body was known as *ahl al-hal wa al-aqd*, and this body was supposed to be representative to the extent that it included the authoritative and popular jurists and other influential members of society. There is substantial disagreement in the classical sources, however, on whether upon concluding the consultative process, the ruler is duty bound to adhere to the judgment of the majority, or whether he may act upon his own discretion, even if his opinion is contrary to the view expressed by the majority. This doctrine was known as *ilzamiyyat al-shura*. There was a strong consensus among the classical scholars that in principle, consultation itself is mandatory, but they disagreed on the extent to which a ruler is free to act in contradiction to the will of the majority as expressed in the consultative process.

Outside this basic framework, the state was supposed to respect the shari`a and seek to fulfill its ultimate objectives in society. Historically, the prevailing form of government in Islam was known as Caliphate, which in reality was dynastic and authoritarian. For about 30 years after the death of the Prophet, Muslims succeeded in establishing a form of government with a strong democratic orientation, but upon the rise of the Umayyad Dynasty the democratic experiment came to an end, and power became concentrated in the hands of particular families or military forces. In premodern practice, to the extent that rulers adhered to the process of consultation at all, the consultative body was usually not representative of the governed, and membership in such a body was

typically the product of political patronage and not the outcome of a democratic elective process.

In the post-Colonial era, after most Muslim nation states achieved independence, the relationship between Islam and the state gained a new sense of urgency. At issue was the extent to which the shari`a would play a role in the legal systems of the newfound nation states, and the extent to which Islam would play a role in affairs of governance. In the period between the 1940s and 1960s, most Muslim countries opted for a nationalist republican secular model in which there is a very strong executive power supported by weaker legislative and judicial branches of government. Some countries, such as Saudi Arabia, continued to be governed by a strong royal family, a consultative branch of limited powers, and a judiciary that implemented a mixture of customary law and shari`a-based law. Most Muslim countries, including Egypt, Iraq, and Kuwait, imported the French civil and criminal codes and organized their legal systems according to the civil-law legal tradition. A few countries, such as Pakistan, Indonesia, and Malaysia, were influenced by the British common-law system, which they supplemented with various statutory laws enacted in specific fields. The extent to which the Islamic legal tradition was integrated into modern legal systems varied widely from one country to another, and also varied in accordance with the particular field of law in question. More specifically, in commercial and civil legal matters, most Muslim countries generated a syncretic system, which was predominantly French, Swiss, or British and was amended by various concepts and doctrines inspired by the Islamic legal tradition. In criminal matters, most countries adopted the French or British systems of criminal justice. Countries such as Saudi Arabia and postrevolutionary Iran rejected Western influences and claimed to base their criminal laws on the Islamic tradition. Most of the countries of the Arabian Peninsula, some African nations, and Iran continued to adhere to the Islamic tradition in matters of personal injury and tort law. This was manifested primarily in the incorporation of blood money (*diya*) and strict caps on financial liability in cases of personal injury. Personal and family law remained the field most susceptible to Islamic influence. Most Muslim countries created courts of separate jurisdiction to handle matters related to inheritance, divorce, and marriage. In these fields, judges typically implement statutory laws, which were enacted as codifications of Islamic laws.

The periods between the 1960s and 1970s witnessed the emergence of fundamentalist Islamic movements that materially affected the constitutional place of Islam in the various Muslim states. Building on the positions of some premodern theological orientations, most fundamentalist groups, but not all, contended that sovereignty belongs only to God (*al-hakimiyya li'llah*), that

governments ought to represent and give effect to the Divine Will, and that there ought to be a strict adherence to the detailed determinations of religious scholars. The fundamentalist orientations of those decades are most accurately understood as oppositional nationalistic movements dissatisfied with the status quo, and utilizing religious symbolism as a means of claiming authenticity and legitimacy. The problem, however, is that fundamentalists tended to treat the shari`a as if it were a code of law containing unitary and uncontested specific legal determinations and also tended to ignore the highly contextual sociohistorical nature of most of Islamic jurisprudence. The Islamic legal tradition is too diverse, diffuse, and amorphous to yield to the type of narrow treatment afforded to it by fundamentalists. In addition, taken out of its sociohistorical context, parts of Islamic legal tradition become problematic in terms of contemporary international human rights standards.

Although fundamentalist movements did not achieve direct power in most Muslim countries, they generated political pressure toward what might be described as greater symbolic Islamization. As a part of their Islamization efforts, a large number of Muslim countries drafted in their constitutions articles that either stated: "Shari`a is *the* main source of legislation," or "Shari`a is *a* main source of legislation." The former version made Islamic law the near exclusive source of law for the nation, while the latter version mandated that Islamic law be only one of several sources for legislation in the country. However, especially for countries that adopted the former version, the shari`a clause was deemed not to be self-executing. This meant that the shari`a clause was deemed to be addressed to the legislative and executive powers in the country, and not the judiciary. Accordingly, the judiciary would not, on its own initiative, give effect to Islamic law. Rather, the shari`a needed to be implemented or executed by statutory law, and only upon the enactment of such statutory laws would the judiciary be bound to apply it. Effectively, this meant that in most instances the shari`a constitutional clause would remain dormant until made effective by statutory law. Nevertheless, at the political level, shari`a clauses played an important symbolic role. In addition, shari`a clauses were often cited by courts in resolving possible ambiguities in statutory law by referring to the principles of Islamic jurisprudence.