

# Islamic Law, Secularism, and the Modern State: Recasting a Scholarly Debate

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RACHEL M. SCOTT. *Recasting Islamic Law: Religion and the Nation State in Egyptian Constitution Making*. Ithaca, NY: Cornell University Press, 2021.

When the regime of Egyptian President Hosni Mubarak fell to popular revolt in 2011, elation soon gave way to apprehension over the question of what new legal and political order would replace the old. The position of religion in the new constitution became a prominent wedge issue and a salient focal point for debate and political mobilization. Despite the myriad economic, social, environmental, and governance issues that begged for attention, controversy around religion increasingly dominated Egypt's political transition. Rachel Scott's *Recasting Islamic Law: Religion and the Nation State in Egyptian Constitution Making* provides an expert analysis of this period with particular attention to the 2012 Constitution, which was drafted during the brief tenure of Mohamed Morsi's Muslim Brotherhood-dominated government, and the 2014 Constitution, which was drafted following Morsi's ouster by the Egyptian military. Scott situates these constitution-writing episodes within the broader scope of state management of religion throughout twentieth- and twenty-first-century Egypt. Her grasp of the issues and institutions at play is impressive. But more than this, *Recasting Islamic Law* is deeply theorized. It contributes to understanding the nexus of law, religion, and politics in contemporary Egypt and beyond. It also intervenes thoughtfully in long-standing debates in Islamic legal studies.

This review essay highlights some of the broader insights for socio-legal scholars working at the intersection of law, religion, and politics. The essay also covers the interventions that Scott makes in debates in Islamic legal studies, although these contributions will receive a less thorough treatment given the general socio-legal readership of *Law & Social Inquiry*. These twin tasks are no easy feat, given the sheer complexity of the period under study, the rich detail of Scott's analysis, and the space limitations of a review essay. It is a worthy challenge, however, not only because of the size and symbolic importance of Egypt in regional politics but also because the issues, tensions, and paradoxes explored in the book resonate to varying degrees with developments in many other countries.

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## RECASTING A SCHOLARLY DEBATE IN ISLAMIC LEGAL STUDIES

For the past two decades, considerable debate in Islamic legal studies has centered on whether efforts to incorporate and apply Islamic jurisprudence through modern state institutions are consistent with the Islamic legal tradition. A leading scholar in the field, Wael Hallaq (2009; 2013), advanced the strong position that any such effort is both a contradiction and an impossibility. This is because the various constitutive features of the Islamic legal tradition—in particular, its core internal logics and its methodological and substantive pluralism—developed outside the context of the modern state. Hallaq argues that these vital features could not (and cannot) be sustained under the legal monism that is part and parcel of contemporary statecraft. Others, especially historians, have assembled evidence to demonstrate that rulers had always been important constitutive agents in the application and evolution of Islamic jurisprudence.<sup>1</sup>

In following these and related debates, it can feel as though the participants are talking past one another as they marshal evidence from the vantage point of their own substantive research, typically from the premodern or early modern periods. By contrast, *Recasting Islamic Law* is focused squarely on contemporary Egypt. Specifically, the book is focused on the various institutions of the modern Egyptian state that seek to define and regulate Islam and Islamic law. The book traces how these modern formations depart from, and resonate with, premodern conceptions and the broader political dynamics that result: “Considering modern Islamic state law’s discontinuities *and* its continuities with premodern sharia, this book suggests that the sharia is not so much eviscerated by the modern state when it is applied as modern Islamic state law, but is rather recast in its service” (6; emphasis in original).

Scott is well positioned to deliver insightful findings. She commands a rare combination of training in religious and Islamic studies with a strong understanding of legal and political institutions in contemporary Egypt. Equally important, her analysis is not naïve to the politics of claims-making around religion; she grasps the co-constitutive features of law, religion, and politics. As a result, the reader has a qualified guide for the difficult journey ahead.

## STRUCTURE AND ARGUMENT

*Recasting Islamic Law* is divided into two parts. Part 1 (chapters 1–3) provides an extensive theoretical exploration of the functions of constitutions in shaping national identity and securing state power. “Constitutions, National Culture, and Rethinking Islamism” provides the reader with a palate cleanser of sorts. Although most academics will consider themselves above the fray of ideological contention that is examined in Scott’s book, every reader will enter the text with unconscious bias and a host of associations—some positive and others negative—around terms such as “secular,” “religious,” “Islamic law,” “rule of law,” and so on. Scott orients the reader away from conventional understandings of secularism, which conceive of the secular as a neutral position *vis-à-vis* religion, or as the carving out of secular space *vis-à-vis* religion. In their

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1. For an extensive critique of Wael Hallaq’s thesis, see Fadel 2011.

place, Scott guides the reader to recent theorization on secularism, including insights from Hussein Ali Agrama (2012) and Talal Asad (2003), who insist that the categories of “religious” and “secular” are unstable and indeterminant categories of statecraft. Scott recognizes Islamism not as a throwback to a premodern era but, rather, as “a modern project that has in many ways been constituted by the modern nation state’s project to delineate the relationship between religion and politics” (30). In this way, she argues that Islamists and secularists have more in common than one might think. They “share statist perspectives that hold that it is the right of the state to decide what place religion should occupy and the kinds of rights and obligations that should be given and expected accordingly” (16). Thus, although the secular-religious binary frequently serves as the dominant master frame for Egyptian politics, Scott maintains that we should recognize this master frame as something of a trope that conceals more than it clarifies: “Dispensing with the binary will allow us to see what really is at stake in the constitutional debates about religion and the relationship between religion and the state in contemporary Egypt” (31). Scott’s full argument, which unfolds across seven chapters and a conclusion, presents anything but a simplistic narrative of secular versus religious forces battling for supremacy.

The following chapters—“The Sharia as State Law” and “Constitution Making in Egypt”—provide historical context and additional theoretical framing to illuminate the “recasting” of Islamic law over a long span of history. Chapter 2 covers a great deal of academic literature on the Islamic legal tradition from the premodern period through the present, including work on legal codification and the relegation of Islamic law to the spheres of family and personal status law. Throughout, Scott provides an even-handed review of debates in Islamic legal studies while keeping the reader’s eye on the illustrative changes and continuities that form the bedrock of her thesis. Chapter 3 develops the book’s central argument by examining the six iterations of the Egyptian Constitution from 1882 to the present (1882, 1923, 1956, 1971, 2012, and 2014). Scott documents the deepening role of constitutional texts in defining the nation and providing the legal framework for the deepening state management of religion. This includes the introduction of Article 2 in the 1971 Constitution, which recognized the principles of Islamic sharia as “a” primary source of legislation, as well as the 1980 amendment to supersize this commitment to sharia as “the” source of legislation. More importantly, she recognizes the shifting jurisprudence of the Supreme Constitutional Court, which effectively placed state institutions in the position of defining sharia principles, not the other way around. Throughout, Scott shows that the project of state management of religion proceeded apace under ostensibly “secular” and “Islamist” leadership.

Part 2 of the book (chapters 4–7) provides detailed case studies that further develop and illustrate the broader claims of the study. “The Ulama, Religious Authority, and the State” delves further into contemporary struggles over the locus of Islamic legal authority—that is to say, the various state institutions that are charged with rendering authoritative interpretations of Islamic law. Scott’s analysis shows a solid grasp of key institutions and their changing roles and mandates across time, including legislative bodies, al-Azhar, Dar al-Ifta, and the Supreme Constitutional Court, among others. The next chapter examines how legal and political struggles shaped the rights of different religious communities *vis-à-vis* the state as well as individuals *vis-à-vis* their communities. Chapter 6 explores debates over “the family as the basis of society” in the 2012 and 2014 constitutions, where women’s

rights were a particularly salient issue. The final substantive chapter examines how these struggles shaped inheritance rights, with particular significance for women and religious minorities and with substantial consequences for how individuals navigate the legal terrain. Each of these investigations is filled with detailed empirics and astute observations that push the more general argument forward.

## RADIATING EFFECTS AND POLITICAL SPECTACLE

*Recasting Islamic Law* not only traces the micro-effects of state regulation of religion. The book also helps us make sense of the spectacle around the 2012 and 2014 Egyptian constitution-writing processes that were alternately dominated by so-called “religious” and “secular” forces. Scott’s analysis is usefully paired with another recent account by Mona El-Ghobashy (2021) in her brilliant book *Bread and Freedom*. While El-Ghobashy is focused on the intense controversies concerning the composition of the two constituent assemblies, Scott offers a different but complementary angle. She shows that the outcome of the two drafting processes were more similar than they were distinct, both in terms of provisions for the state management of religious institutions and their visions for individual and communal rights.

Scott illustrates this argument across her case studies, but the textual similarities and imagined differences are perhaps most clearly illustrated in her examination of women’s rights: “One of the striking aspects of the debates about women and women’s rights during the drafting of both constitutions was the moral outrage that accompanied criticism of the 2012 Constitution and the relative lack of criticism that accompanied coverage of the 2014 Constitution. . . . Despite the rhetoric . . . both had considerable continuity with previous constitutions” (149). Scott shows that, despite these similarities, the secular/religious binary was invoked by competing parties to shape public opinion and mobilize core constituencies. Scott shows that this binary was deployed most effectively as a cudgel against the Muslim Brotherhood, which was driven from office by an ostensibly secular military and with the backing of ostensibly liberal forces. Although Scott’s analysis stays above the fray to offer a dispassionate and impartial analysis, this reviewer will comment that the result was as unfortunate as it was predictable: the most repressive regime in modern Egyptian history seized power with the aid of rule-of-law and secularist discourse.

In highlighting these dynamics, *Recasting Islamic Law* joins other recent socio-legal studies (for example, Schonthal 2016; Moustafa 2018) that trace the radiating effects of law and legal institutions on politics and religious consciousness. As such, the study contributes to research on how political mobilization around constitutional texts regularly shapes a range of social, political, and religious dynamics, and not always for the positive. Even when constitutional texts are meant to mitigate religious tension and advance rights, mobilization around such provisions frequently exacerbates social and political strife. Coming from a related angle, Mark Fathi Massoud (2021) challenges both conventional narratives of secular legal progress and essentialist understandings that imagine religion locked in intrinsic tension with the rule of law. Together, these studies unsettle common conceptions of the relationship among law, religion, and politics.

*Recasting Islamic Law* will be a challenging text for most readers, particularly those who are less familiar with the Egyptian subject matter and scholarly debates in Islamic legal studies. This is not because the text is unclear. It is because Scott's treatment does justice, both empirically and theoretically, to an exceedingly complex set of dynamics. For scholars working at the intersection of law, religion, and politics, *Recasting Islamic Law* has much to offer.

## REFERENCES

- Agrama, Hussein Ali. 2012. *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt*. Chicago: University of Chicago Press.
- Asad, Talal. 2003. *Formations of the Secular: Christianity, Islam, Modernity*. Stanford, CA: Stanford University Press.
- El-Ghobashy, Mona. 2021. *Bread and Freedom: Egypt's Revolutionary Situation*. Stanford, CA: Stanford University Press.
- Fadel, Mohammad. 2011. "A Tragedy of Politics or an Apolitical Tragedy?" *Journal of the American Oriental Society* 131, no. 1: 109–27.
- Hallaq, Wael B. 2009. *Shari'a: Theory, Practice, Transformations*. Cambridge, UK: Cambridge University Press.
- . 2013. *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press.
- Massoud, Mark Fathi. 2021. *Shari'a Inshallah: Finding God in Somali Legal Politics*. New York: Cambridge University Press.
- Moustafa, Tamir. 2018. *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*. New York: Cambridge University Press.
- Schonthal, Benjamin. 2016. *Buddhism, Politics and the Limits of the Law: The Pyrrhic Constitutionalism of Sri Lanka*. New York: Cambridge University Press.