

# Islamic constitutionalism and rule of law: a constitutional economics perspective

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**Abstract** This study investigates the relationship between Islamic constitutionalism and rule of law. Al Azhar, one of the most respected Sunni religious institutions in the world, developed a model of an Islamic constitution. This study uses Al-Azhar's constitution as a model of Islamic constitutionalism and examines its stance in regard to the rule of law. We find the Al-Azhar's constitution to be incompatible with essential concepts of rule of law. For example, the powers vested in the head of the Islamic state are enormous, making the executive branch of government far superior to the legislative and judicial branches. Women and non-Muslims are explicitly discriminated against throughout the constitution. Moreover, laws stemming from this constitution are not stable since many differences exist among schools of Islamic jurisprudence (*fiqh*). Consequently, we show that state-of-the-art Islamic constitutionalism lacks essential components needed in any constitution based on rule of law.

**Keywords** Constitutionalism · Rule of Law · Shari'a · Islam · Constitution

**JEL Classification** H10 · H11 · K30 · K39 · Z12

## 1 Introduction

This study investigates the relationship between Islamic constitutionalism and the concept of rule of law. Islamic parties are becoming major players in writing new constitutions in Arab Spring countries. These Islamic parties have declared that, through drafting the new constitutions, they aim for more economic growth as well as

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