

### Book review: Constituting Religion: Islam, Liberal Rights, and the Malaysian State

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Veröffentlichungsversion / Published Version

Rezension / review

#### Empfohlene Zitierung / Suggested Citation:

Naser, W. (2019). Book review: Constituting Religion: Islam, Liberal Rights, and the Malaysian State. [Review of the book *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*, by T. Moustafa]. *Journal of Current Southeast Asian Affairs*, 38(2), 243-245. <https://doi.org/10.1177/1868103419872856>

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## Book review

Journal of Current  
Southeast Asian Affairs  
2019, Vol. 38(2) 243–245  
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DOI: 10.1177/1868103419872856  
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Moustafa, Tamir (2018), *Constituting Religion: Islam, Liberal Rights, and the Malaysian State*, New York, USA: Cambridge University Press, ISBN 9781108539296, 187 pages

Tamir Moustafa's book is a socio-legal study examining how ideological conflicts over religion become constituted in Malaysia. With Islam constitutionally enshrined as the state's official religion, these ideological battles symbolically use Islam either to legitimise power or as the impediment to liberty. One side of the conflict attempts to use this clause to advance Islam in politics, while the other side challenges it through clauses that claim the Constitution to be secular. While these conflicts are often portrayed as emerging outside the courts, Moustafa argues otherwise by making the claim that legal institutions play a crucial role in constituting and intensifying them.

The first chapter lays the book's groundwork by positioning itself within academic debates over Islam and Law. While he agrees with arguments for the constructed nature of the categories of "religion" and "secular," he criticises these discourses for being theorised at a high level of abstraction with regard to law. He then moves on to debates around notions of legal consciousness, specifically those of comparative judicial politics and socio-legal studies. By attempting to combine these approaches, Moustafa seeks to examine courts as key institutional sites in constructing specific political contexts where Islam is pitted against "Liberalism" (p. 23). Ideological mobilisations seem to occur through the practice of litigation, where political contestations or tensions often have courts as the legal/institutional source.

The second chapter lays down the historical context of "claim-making" around Islam and Law in Malaysia, alluding to its secular roots. The 1976 Constitutional Amendments exchanged what was earlier the object of Law (Muslims) for its essence (Islam). Civil law thus became bifurcated between *Syariah* courts for Muslims and a unified civil family law code for the rest. The author argues that this resulted in a tension, not between Islam and Liberalism as is often stated but between two parallel tracks of state law (p. 48). Through a "constitutional ethnography" of religion and liberty, Moustafa analyses how the equation of "Malay" with "Islam" in the first draft of the constitution has been shown to be reverberating until today, and eventually led to the formation of separate "jurisdictions" in 1988 Amendments.

Moving on to questions and controversies relating to religion that arrive at courts, the author claims that these courts adjudicate them in a manner that seeks to regulate religion



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in line with the state project – a phenomenon he terms “judicialization of religion” (p. 63). Linking this phenomenon to the legal construction of race and religion, different “legal regimes” become applied to different “legally constituted communities” (p. 63). The result is that strategic litigation becomes the primary option to challenge the status quo, and thereby reinforcing the power of the state judiciary.

The book then goes on to show how these legal issues fuel the construction of a political spectacle of “Islam versus Liberal Rights” in chapter 5. Aspects of Family Law in *Syariah* courts, represented as the embodiment of Islamic Law, increasingly become defined against “Liberalism” and vice versa. This is taken up as a zero-sum game at the popular level of legal consciousness. Chapter 6 attempts to test this through surveys, interviews, and focus groups and concludes that the popular legal consciousness aligns with what he terms “Rights versus Rites binary” (p. 124). This binary has led to the development of two legal camps within political debates, the formation of specific NGOs and particular coalitions of civil societies. The final chapter deals with these aspects and examines them through the litigation and contestation over the intent and meaning of the Article 3 of the Constitution – “Islam is the religion of the Federation.”

The book has to be commended for its tightly knit structure and coherent arguments. The socio-legal approach of analysing “law as in between” is in this case located in the midst of politics and religion in Malaysia. The conclusion he draws is that legal conflicts over religion in Malaysia is not essentially between Islam and Liberalism but between two forms of State Law. The co-option of Shariah by the State in the form of Modern Family Law is linked to the colonial practice of conflating religion with ethnicity, and with the particular Malayan experience of controlling its racialised population. This has led to particularly constructed or constituted “legal person(s).”

The author states in the beginning that the book is “primarily an exercise in theory generation” (p. 10). As such, a few remarks regarding the central notion of “Rights versus Rites binary” are in order here. While the author states it was partly inspired by Comaroff, Comaroffs’ ideas on “judicialization of politics” surprisingly wasn’t considered. Their conceptualisation of it as a mode of “lawfare” could have provided a broader framework to build on. Lawfare here being acts of political coercion through legal mechanisms by invoking the violence when law as an abstract is made real. Another point of contention is on the choice of terms used to denote the two camps in this binary. Notwithstanding the global connotations that the term “Islamist” has taken on, it could also perhaps misconstrue the political landscape of Malaysia to someone unfamiliar with it. But more crucially here, it does not seem to capture classically trained scholars of Islamic law that emerge from *Pondoks* (traditional schools of Islamic learning) and increasingly from Al-Azhar in Egypt. Does the apparent language barrier and unfamiliarity with Modern Constitutional Law exclude them in any way from these “Islamist” litigation practices? Similarly, are HINDRAF (Hindu Rights Action Force) activists in the “Liberal” camp by virtue of their commitments or by whom they coalesce with? These two examples are evoked to indicate perhaps a less theorising of what Law precisely is. Rather than a restricted sense of Law as governance or enforcement, could the popular legal consciousness be attached to something else, or perhaps something more? Is Law better conceived as a type of grammar or language game that has the

inherent power to exclude and divide? These perhaps reflect my anthropological leanings and the point could be raised here that the book deals solely with State Law.

As a final comment, the book is rather silent on one aspect of Malaysian life where “Syariah” has already encompassed its jurisdiction to all its citizens and not simply Muslims. This is on the growing Islamic Banking sector, with the legal and parliamentary amendments of 2007 and 2009 carving out a separate and independent jurisdiction over these practices, and not just persons, at the Federal level. In contrast to Family and Civil Law, the “Rights versus Rites” binary does not seem applicable here and there hasn’t been any similar level of uproar or contestations over it. One wonders whether the boundary between the “Islamist” and “Liberal” legal camps is perhaps too neat when politics and economics entangle with law.

All these should not take away the valuable and original contribution this book provides to different fields of study, and not simply legal studies. The book can be confidently recommended to an expert or novice, be it in social sciences or legal and regional studies. Finally, the author should also be commended for making the book open access.

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### **Author biography**

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