

Contents

<i>Acknowledgements</i>	<i>vii</i>
Introduction	1
I. Background.....	2
A. Methodology	4
B. Plan of Chapters	8
1. The History of the Caliphates	13
I. The First Islamic State	14
II. Rule by the Prophet	15
A. The Emergence of Islam	16
B. The City-State of Medina	17
III. The Rashidun Caliphate	22
IV. The Dynastic Caliphates.....	29
A. Umayyad Rule	31
B. Post-Umayyad Caliphates	37
2. Islamic Law, International Law and Human Rights	42
I. Islamic law	42
A. Sources of Law	43
B. Proofs – Reasoned Law	46
C. <i>Usul al-fiqh</i> – Methods of Discovering Islamic Law	48
D. Purposive Law	51
E. Applying the Law	53
II. Islamic Law and International Law	54
A. International Human Rights Law.....	55
B. <i>Siyar</i>	59
C. <i>Siyar</i> and International Law	62
III. The Islamic Law of Human Rights	64
A. Human Rights Principles of Sharia	64
B. Human Rights According to Islamic Law	67
C. Compatibility of Islamic Law and International Human Rights.....	70
3. Islamic States	72
I. The Caliphate	73
A. Theory of the Caliphate	74
B. The Caliph and the <i>Ulama</i>	76
C. Legacy of the Caliphate.....	78

II.	Ideas of an Islamic State	79
A.	Islamic Revivalism	80
B.	The Modernist View	83
C.	Islamism	84
D.	Islamic Constitutions.....	86
III.	Islamic States in the International System.....	88
A.	Islamic International Law	88
B.	Islamic States and International Law.....	93
4.	Islam, Constitutions and Democracy.....	97
I.	Principles of Islamic Governance	98
A.	The Divine Right to Rule	98
B.	Just Rule	101
C.	<i>Shura</i>	104
II.	Assigning the Governing Power	106
A.	Sharia and Constitutions	106
B.	Choosing a Ruler.....	111
III.	Dividing the Governing Power.....	115
A.	Separating Civil from Religious Authority	116
B.	Dividing the Executive Power	118
C.	Legislation	124
IV.	Courts and Constitutional Interpretation	127
V.	Conclusion	131
Appendix	133
5.	Islamic Law and International Law in Islamic Constitutions.....	141
I.	Limiting Legislation through Sharia	141
A.	Sharia as a Source of Legislation.....	142
B.	Repugnancy Clauses.....	144
C.	Defining the Limit	146
II.	Sharia in Secular and Religious Courts.....	148
A.	Islamic Law in the Hierarchy of National Law	149
B.	Dividing Jurisdiction: Sharia Courts and Civil Courts	153
III.	The Integration of Islamic Law and National Law	156
6.	Islamic States and the UN Human Rights Treaties.....	158
I.	The International Bill of Rights	160
A.	Treaty Partners' Objections.....	162
B.	A Middle Ground: Pakistan's ICCPR Reservations	165
II.	UN Human Rights Treaties.....	168
III.	The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).....	172
A.	General Reservations and Article 2 Reservations.....	173
B.	Article 9	175

C.	Article 15	177
D.	Article 16	178
E.	Objections to Reservations Regarding Articles 2, 9, 15 and 16	180
F.	Patterns of CEDAW Reservations and Objections.....	185
IV.	The Convention on the Rights of the Child (CRC)	187
V.	Conclusion.....	193
7.	Islamic International Human Rights Law	196
I.	An Islamic Human Rights Consensus.....	197
II.	Human Rights Commitments of Islamic States:	
A	Three Layer Analysis.....	202
A.	Sharia and International Human Rights Treaties	203
B.	Sharia and International Islamic Instruments	210
C.	Islamic and International Human Rights Instruments.....	212
III.	Reconciling Islamic Law and International Human Rights Law	215
A.	Flexibility of Islamic Law	216
B.	Interpreting Sharia for Islamic International Law	217
IV.	Conclusion.....	222
	<i>Glossary</i>	225
	<i>Index</i>	257