

Religion and New Constitutions: Recent Trends of Harmony and Divergence

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Abstract:

The explicit incorporation of Islamic principles in the constitutions of Iraq and Afghanistan has highlighted concern over the past decade that theocratic constitutionalism has become a rival to traditional liberal constitutionalism. Whereas liberal constitutionalism ascribes religion special value but places it in the sphere of the private through guarantees of religious freedom, equal protection of religion, and non-establishment, the emerging ideology of theocratic constitutionalism holds the potential to redefine all rights through the lens of a particular religion.

This Article is an empirical study of whether, and to what degree, liberal constitutionalism has been supplanted by theocratic constitutionalism. Every constitution enacted since the year 2000 has been examined, and its provisions relating to religion sorted into the following categories: Preambular, Ceremonial Deism, Established Religion, Freedom of Religion, Equal Protection of Religion, and (non-)Establishment Clause. Analysis of the prevalence of these categories in new constitutions demonstrates that most new constitutions display some evidence of both liberal and theocratic constitutionalism.

Keywords: secularism, constitutionalism, religious freedom

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