



**Public Reason and Courts**

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# 5 - The Challenges of Islamic Law Adjudication in Public Reason

## from Part I - Public Reason in Constitutional Courts

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By [Mohammad H. Fadel](#)

Edited by [Silje A. Langvatn](#), [Mattias Kumm](#) and [Wojciech Sadurski](#)

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### Summary

John Rawls's conception of public reason precludes the enforcement of rules derived from metaphysically controversial doctrines, which seems to exclude adoption of Islamic legal doctrines as legitimate rules of decision. While that is true as a matter of ideal theory, the relationship of public reason to Islamic law in nonideal theory is more complex. Islamic law is directly incorporated in the legal systems of numerous Muslim and non-Muslim jurisdictions throughout the world, or its rules arise incidentally in various cases where Islamic law is not formally part of the legal order. This chapter argues that the idea of public reason can meaningfully guide public reason-minded judges when they are tasked with applying Islamic law in a fashion that vindicates the ideals of public reason. Public reason requires judges to steer a middle course among possible extremes when an issue of Islamic law arises: theological reasoning, extreme deference to historical norms, or principled abstention. Moreover, by adhering to the idea of public reason in these cases, judges can play an important role in strengthening, or bringing about, an overlapping consensus in their respective societies.

### Keywords

- Islamic law
- political liberalism
- nonideal theory
- John Rawls
- theological reasoning
- European Court of Human Rights

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