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Islamic constitutions and religious minorities

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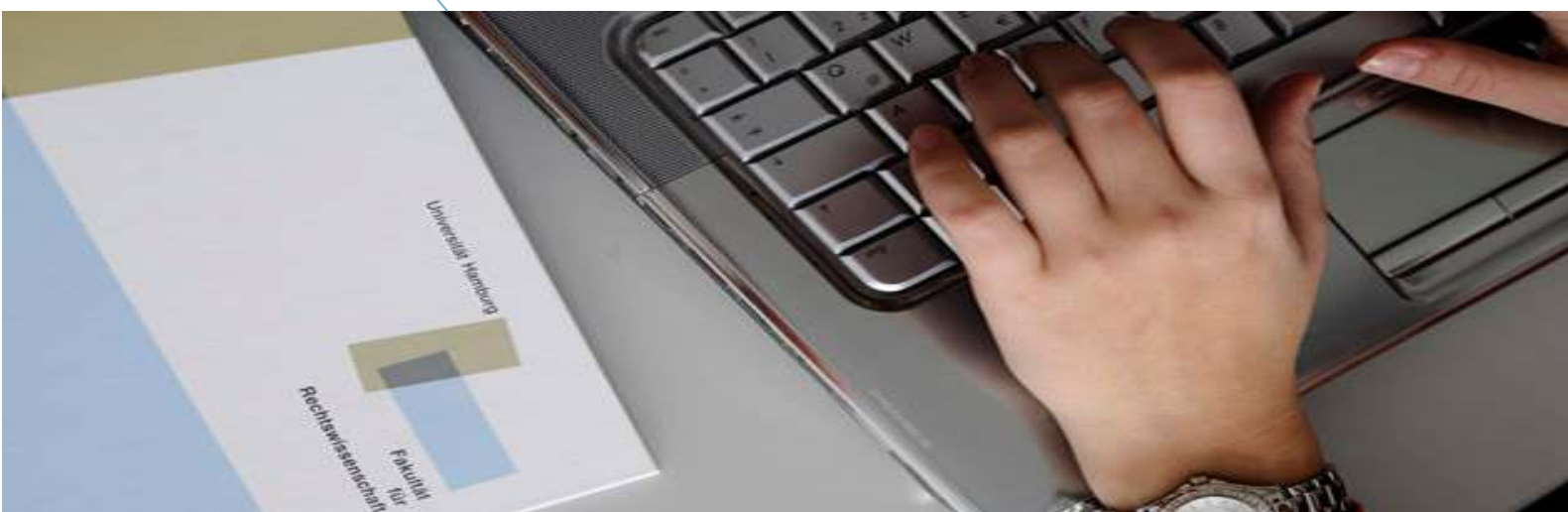
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Islamic constitutions and religious minorities

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Islamic constitutions and religious minorities

Abstract

This study examines the effect of formal institutions, specifically constitutional provisions, on minority discrimination in Muslim societies. We hypothesize that those Muslim countries in which (political) Islam constitutes an important constraint in the legislative process experience more discrimination against minorities than other (Muslim) countries. In other words, as Islam becomes a constitutionally prescribed source of legislation in Muslim societies, it is expected that subsequent laws will be more likely in violation of basic rights of minorities. In our empirical analysis, we find that where the supremacy of Islam and Shari'a is constitutionally entrenched, religious minorities are indeed likely to face more discrimination. Instrumental variable regressions support our interpretation that this result reflects a causal effect of constitutional rules on social outcomes. We find no evidence that Islam encourages minority discrimination if it is not constitutionalized. Our results confirm the grave dangers entailed in the institutionalization of supreme values.

Keywords: minority rights, discrimination, constitutions, Islam, Islamic constitutionalism.

JEL: J15, K38, Z12, Z18.

1. Introduction

Following the Arab Spring, the situation of Middle Eastern religious minorities has fundamentally deteriorated in a torrent of violence and persecution. For instance, in just one Egyptian province (Minya), 77 cases of sectarian attacks on Copts between 2011 and 2016 have been documented by the Egyptian Initiative for Personal Rights (Eltahawy, 2016). Egypt witnessed one of the largest waves of anti-Christian violence after the 2013 ouster of Islamist President Mohammad Morsi. Hundreds of Egyptian Copts have been killed and many businesses and homes were destroyed. Human Rights Watch (2014, p. 104) reported that, in August 2013, mob violence led by Muslim Brotherhood supporters and aficionados damaged 42 churches and dozens of schools and businesses owned by Copts across Egypt, killing and injuring many Christians.

Religious minorities in other Middle Eastern countries witnessed similar attacks. Iraq's religious and ethnic minority groups are on the verge of disappearing as a consequence of civil conflict. The Christian population of as many as 1.4 million before 2003 has dwindled to 250,000 by mid-2016. Most of the Yazidi and Kaka'i populations have been forced from their historic lands. Thousands belonging to minority communities in Iraq have been abducted, maimed or murdered since June 2014 when the Islamic State militant group took control of Mosul.

Many argue that the persecution and discrimination faced by religious minorities in Muslim countries is not a result of the Arab Spring but, in fact, has a long history (Belge and Karakoç, 2015). Shortt (2012, p. viii) estimates that between fifty percent and two-thirds of all Christians in the Muslim-dominated Middle East have either emigrated or were killed over the past century. Even far from the Middle East, religious minorities in Muslim countries faced similar tragedies. For instance, 200,000 Catholics were murdered by agents of the Suharto regime during the early years of the Indonesian occupation of East Timor (Dunn, 1996, pp. 283–285). Discrimination against women (Cooray and Potrafke, 2011; Gouda and Potrafke 2016) and homosexuals (Berggren et al., 2017) has also been shown to be prevalent in Muslim societies. Berggren et al. (2018) document that these negative attitudes persist even among second-generation immigrants from Muslim countries, although they were born and raised in Western societies.

These observations prompt the question why many Muslim countries witness unusual levels of minority discrimination. It has been argued that religious discrimination in Muslim societies is in fact institutionalized (Hanna, 2011) and systematic (Hefner, 2017; Zabad, 2017, p. 7). For example, the group Open Doors (2017) publishes a list of the fifty worst offenders against freedom of religious conscience and practice. They find that thirty countries on this list are majority Muslim. In its 2017 Peoples under Threat-index, which ranks countries according to ten criteria, the Minority Rights Group International (2017) also finds that seven out of the ten most dangerous countries for minorities are Muslim-majority.

Examining religious discrimination between 1990 and 2008, Fox (2013) shows that religious discrimination is highly prevalent in 17 Middle-Eastern Muslim-majority states. The author explains that “...very few groups suffer from no restrictions on their religious institutions or on their ability to practice religion. Even groups that suffer from well below average discrimination, by regional standards, suffer from levels sufficiently high that it is difficult to claim they have religious freedom. This is not surprising given the combination of autocratic government and state support for religion in the region” (Fox, 2013, p. 466). This interpretation is in line with the diagnosis of Voigt (2005) that the values propagated by (political) Islam are not conducive to the establishment of the main institutional pillars of a free society, although the values held by Muslims in these countries are often in line with some preconditions for these core institutions. Fox (2013) and Voigt (2005) seem to suggest that there is considerable scope for formal institutions to shape the political consequences of Islam. In other words, whether Islam is detrimental to the freedoms enjoyed by minorities depends according to these authors on the institutional set-up adopted by a society. Here we are interested in one specific aspect of that institutional set-up: the entrenchment of religious doctrine in a country’s constitution.

According to Lombardi (2013), many Muslim countries have since 1950 enacted constitutions containing provisions that declare Islam to be a chief source of legislation (ISL). The wording of these provisions differs in subtle but consequential ways. Islamic constitutions use multiple terms to describe the extent to which Islamic norms serve as a source of formal state law. Some refer to *Fiqh*, others to *Shari’a*, and still others to “the

principles of *Shari'a*". Moreover, these constitutions characterize the degree of supremacy of Islam (SI) in different ways. Most clauses describe Islamic norms either as "a chief source of legislation" or as "the chief source of legislation".¹

The prevalence and impact of ISL- and SI-clauses is of immense importance for constitutional design in Muslim countries. It is to be expected that a clause declaring Islam "one of the basis of all the laws", as in the case of the constitution of the Maldives, will have a milder impact on the "Islamization" of legislation than a clause declaring that no law contrary to any tenet of Islam shall be enacted (Ahmed & Ginsburg, 2014, p.17). Constitutional drafters in Muslim countries have understood this and carefully consider it in the design of their constitutions. For example, in explaining why Tunisia did not adopt a "source of law"-clause in its 2014 constitution, the founder of the local Islamist party Al-Nahda, Rachid al-Ghannouchi, referred to Afghanistan's high level of Islamic constitutionalism as a negative example that should not be followed (Stilt, 2013).

What these different constitutional designs have in common is the entrenchment of supreme values, i.e. values the realization of which is more important than that of any other values. Bernholz (2004) warns that "ideologies can be dangerous if they comprise supreme values that a whole society should believe and according to which the society should act. (...) religions may also justify all means to convert unbelievers and to suppress, to punish or be rid of pagans and sinners." (p. 318). Bernholz (2017) adds a second defining trait of supreme values: They are absolutely true. Bernholz (2017, p. 20) points out that Islam is characterized by having Supreme Values that are lexicographically preferred to all other goals and believed to be absolutely true. The presence of ideologies with supreme values is also exacerbating the risk of terrorism. During its long history, Islam has seen several revivals of extremism in which its supreme values were reinterpreted as demanding a holy war against pagans, and even Jews and Christians (Bernholz, 2006, p. 227).

Hillman (2007) proposes that the motive for propagating supreme values might be rent-seeking motives of elites who want to shield their wealth from contestation of their property rights. He also refers to work by Congleton (2001, 2007), which shows that

¹ See Ahmed and Gouda (2015) for a more detailed discussion.

constitutional development in Europe entrenched concessions of the elites and eventually paved the way for democracy. Hillman (2007) points out the absence of such liberalizing trends in Muslim societies, but he neglects that constitutions might even have been used to achieve the opposite.² However, Bernholz (2017, p. 51) explains the plausibility of so-called constitutions of totalitarianism, built on and legitimized by supreme values.

This study examines the effect of formal institutions, specifically constitutional provisions, on minority discrimination. We hypothesize that those countries that entrench Islamic supreme values in their constitution experience more discrimination against minorities than comparable countries. In other words, as Islam becomes a constitutionally prescribed source of legislation, it is expected that subsequent laws are more likely to violate basic rights of minorities in these societies. This relationship is expected to hold even after the level of democracy and the role of Islam in society (e.g. in terms of the share of Muslims in the population) are taken into account. We use ISL- and IS-provisions as proxies for the level of Islamicity of constitutions. Although other Islamic provisions exist in constitutions, we believe that these are the most important ones, since they grant Islam a superior role in shaping legislation. A vivid example of the potential consequences of such constitutional clauses is the case of Abdul Rahman, an Afghan convert to Christianity who was threatened with the death penalty in 2006, although Afghanistan's criminal code does not prohibit conversion. The judge responsible for the case argued that: "In this country we have the perfect constitution, it is Islamic law and it is illegal to be a Christian and it should be punished" (The Times 2006, 33). This argument was backed by the prosecutor, who demanded the death penalty. This case highlights the inconsistencies in Afghanistan's 2003 democratic constitution, which guarantees both religious freedom and the supremacy of Islam.

Our study contributes to the literature in three ways: First, while most of the extant studies use religious market theory to analyze differences in minority discrimination across the globe (Finke, 1990, p. 609; Finke & Stark, 2005; Gill, 2007; Iannaccone, 1990; Rahman, 2013), we conduct the first institutional analysis of this phenomenon. This al-

² Identifying the exact reasons for the inclusion of these constitutional provisions is beyond the scope of this paper, but one can certainly argue that aside from ideological motives political economy considerations might have played an important role, as these constitutional rules reallocate political power to different religious interest groups in society.

lows us to demonstrate that the informal institutions of Islam might not automatically cause increased discrimination against minorities. Prescribing that official state law must be based on Islamic law exacerbates the risk of discrimination against religious minorities considerably. Second, although many studies argue that constitutions matter in shaping social and economic outcomes of societies (Brennan & Buchanan, 1981; North & Weingast, 1989), our study is the first to specifically use Islamic constitutional provisions as its main independent variables to explain societal outcomes (i.e., minority discrimination). Finally, we add to the small literature on supreme values (see Bernholz 2004, 2017) by testing the hypothesis that constitutionally entrenched supreme values, in our case Islamic supreme values, are a threat to the well-being of minorities in these societies.

In Section 2 we provide a brief overview of the relevant literature. Section 3 presents our theory as well as the hypotheses to be tested. Section 4 describes the data on constitutionally entrenched Islam and our dependent variable, i.e., minority discrimination. Section 5 elaborates on the empirical model, before we discuss the regression results. Section 6 concludes.

2. The literature on religious minority discrimination

There is already some empirical literature on the determinants of minority discrimination (Fox, 1999; 2000; Fox & Akbaba, 2015; Fox & Sandler, 2003; Grim & Finke, 2007). Cross-national studies find that states with a majority Muslim population tend to have the highest levels of restrictions on the religious freedom of minorities (Akbaba & Fox, 2011; Fox, 2007; 2014).

Aiming to explain variation in the treatment of religious minorities across Muslim-majority countries, Sarkissian et al. (2011) show that factors unique to how countries' religious marketplaces are regulated play a significant role in predicting discrimination. More specifically, Muslim-majority countries that have more laws based on religion discriminate against minority groups at higher rates. Our analysis can be interpreted as providing the link between these specific Muslim societies and the prevalence of religion-based laws in those countries.

Only few studies analyze the relationship between constitutional provisions and discrimination against religious minorities. Fox and Flores (2009) examine three types of constitutional clauses related to religion, namely (1) freedom of worship; (2) bans on discrimination on the basis of religion or guarantees of equality on the basis of religion; as well as (3) separation of religion and the state. Interestingly, none of these constitutional rules exhibit a significant effect on religious discrimination against minorities (Fox & Flores, 2009).

Rahman (2013) models how the establishment of a state religion sets off a process that increases the likelihood that the religious market becomes monopolized, subsequently gaining political influence and restricting the freedom of religious minorities. Employing data from the RAS project, Rahman tests her hypothesis using cross-national data from a sample of 175 states. Rahman finds that the hypothesized process is prevalent in Muslim majority countries. In other words, Muslim majority countries not only are more likely to have a state established religion in comparison to other countries (see also Barro and McCleary 2005), but they are also more likely to complement that formal endorsement with tangible economic and political benefits to adherents of the official religion, increasing the likelihood that discrimination against minorities will occur (Rahman, 2013, p. 4).

The few empirical studies that use constitutional provisions focus on the role of establishing a state religion to explain minority discrimination. Other constitutional provisions, however, have so far been ignored. We test for the first time ISL- and SI-clauses as key explanatory variables for minority discrimination in Muslim countries.

3. Theory and hypotheses

An-Na'im (1986) explicitly states that "categorization and discrimination on grounds of religion or belief is fundamental to traditional *Shari'a* law" (p. 55). Islamic *Shari'a* refers to Jews, Christians, and Sabians (and to a lesser extent, to Zoroastrians) as "people of the book" and they are afforded a special status known as *dhimmi*, which literally means protected person (Esposito, 2014). Islamic *Shari'a* has historically protected the rights of

dhimmis, including the individual's life, property, and freedom of religion and worship (see Patrick, 2007, pp. 218-219).³ However, as citizens in the various Islamic states across time, *dhimmis* faced certain restrictions (Bennett, 2005, p. 163).⁴ It was obligatory for them to pay a special *jizya* tax (Emon, 2012, p. 65). On the other hand, they were excluded from specific duties assigned to Muslims. Although *dhimmis* did not enjoy all the political rights reserved for Muslims, they were otherwise equal under the laws of property, contract, and obligation (Awang, 1994, pp. 167-168; Glenn, 2010, p. 231; Schacht, 1964, pp. 132, 143).

There is some controversy about the status of adherents of "non-revealed" religions, i.e., those that are not considered people of the book under Islamic law (e.g., Buddhists, Yazidis, and Baha'is). According to Friedmann (2006, p. 104) and Shuman (1999, p. 151), no rights are given to these groups under Islamic law. In fact, according to Bostom (2008, p. 156), it is recommended to fight those who are not people of the book until they become Muslims. This rule is derived from the Quran (2:193; 8:39): "*And fight them until there is no fitnah and [until] the religion, all of it, is for Allah*". Prophet Hadith also affirms the latter rule, "*I have been ordered (by Allah) to fight against the people until they testify that none has the right to be worshipped but Allah and that Muhammad is Allah's Apostle, and offer the prayers perfectly and give the obligatory charity, so if they perform a that, then they save their lives and property from me except for Islamic laws and then their reckoning (accounts) will be done by Allah.*" (Bukhārī, 1966, Book 2, No. 24).

In line with An-Na'im's (1987, p. 1; 1996, p. 176) conclusion that Islamic *Shari'a* law does not treat Muslims and non-Muslims as equals, we argue that the institutionalization

³ Specifically, the dhimmi status granted full rights of inheritance and full powers of acquisition, sale, transfer, grant, and mortgage of land. Dhimmis were exempted from military service. Dhimmi indigents were financially supported by the zakat tax paid by Muslims (and not by dhimmis). Dhimmi status offered the freedom to practice religion, including protection from discretion of existing holy sites, autonomy in appointment of religious leaders, and freedom from pressure to convert to Islam (Arzt, 1996, p. 414).

⁴ Dhimmis could not testify in litigation involving Muslims, could not marry Muslim women, and were not allowed to hold political or judicial office outside their local community. Dhimmis were forbidden to carry arms, to walk in the middle of the street, to ride horses, to publicly flaunt their religion or to sell their religious books or artifacts in a marketplace, to raise their voices during worship, or to build churches or houses higher than those of Muslims. Moreover, Dhimmis were obliged to wear distinctive clothing and hair styles, which differed from those of Muslims and to stand in the presence of Muslims. They were not allowed to convert Muslims to their religion or to prevent one of their own from converting to Islam (Khadduri, 1995, pp. 364-366; Brenner, 2008, pp. 71-72; An-Na'im A. A., 1996, pp. 88-91, 144-146).

of Islam by constitutionally declaring it as source of legislation may subsequently lead to minority discrimination in the respective societies. Furthermore, we argue that discrimination is also linked to the degree of supremacy of Islam in constitutional provisions. We expect that minority discrimination in Muslim societies is more severe when Islam is the sole source of legislation rather than a minor source.

Based on these arguments, we postulate two hypotheses:

H1: The existence of an Islam as the source of legislation clause in the constitution negatively affects minority rights.

H2: A higher level of constitutional supremacy of Islam negatively affects minority rights.

4. Data

Our dependent variable is from Fox's Religion and State Dataset, Round 3 (see Fox 2011; 2015). The dataset contains 36 variables measuring restrictions the government places on the practice of religion by minority religious groups. These restrictions are coded on a four point scale from 0—"not significantly restricted" to 3—"the activity is prohibited or sharply restricted". The variables can be grouped in four categories: restrictions on religious practices, restrictions on religious organizations and clergy, restrictions on conversion and proselytizing, and other restrictions. Our dependent variable is the logarithm of an additive scale composed of all 36 variables.

We study the effects of two independent variables of interest, namely "Islam as a source of legislation" (ISL) and "supremacy of Islam" (SI). For this purpose, we draw on data from the Comparative Constitutions Project of Elkins et al. (2009). We construct our two indicators following the methodology of the Islamic Constitutions Index (ICI) introduced by Ahmed and Gouda (2015). The ICI uses a unique Islamic model constitution, developed by the AlAzhar University in 1978, as a point of reference to examine distinctive Islamic characteristics in the constitutions of Muslim countries.

The ISL-dummy variable assumes a value of one if the constitution identifies Islam as a source of legislation, and zero otherwise. The SI-indicator gives a more nuanced picture of the supremacy of Islam by rating it on a three-point scale from zero to two, where

high values reflect a higher level of supremacy. This indicator assumes a value of zero when Islam is not the source of legislation.⁵

To account for the potential endogeneity of clauses that entrench Islamic law in the constitution, we use two instrumental variables as exogenous predictors of the Islamicity of a country's legal system. The first is the log-distance of a country's capital from Mecca. Michalopoulos et al. (2017) show that this measure is a reliable predictor of the historical diffusion of Islam.⁶ We argue here that an early treatment with the institutions of Islam makes it more likely that modern-day societies chose, at some point, to adopt Islamic constitutions. This relationship should hold independent of the share of Muslims in these societies as of today.

Our second instrumental variable is a measure of Arab conquest by Chaney (2012). It equals the product of the share of a country's landmass in 1100 CE that was ruled by Muslim dynasties and a dummy variable for whether at least half of the country's landmass was still under Muslim rule in 1900 CE. Chaney argues that this period under Muslim rule lead to lasting deficits in institutional quality. We expect, in analogy to our argument regarding the distance from Mecca, that countries which were for centuries under Muslim rule are more likely to have adopted Islamic constitutions as of today. Using these instrumental variables allows us to rule out that some populations are more likely to entrench Islamic law in their constitution, because they are interested in using them to discriminate against minorities.

All regressions include region and year fixed effects. Moreover, we control for a country's level of democracy, as measured by polity2, to rule out that religious supremacy is systematically related to authoritarian governance structures, which in turn cause reli-

⁵ For SI, Ahmed and Gouda (2015, p. 49-50) developed a special scoring methodology. They divide the article into two parts; one is related to how Islam is referenced, and the other is related to the sources of legislation. For the former, if the article refers to Islam/Islamic law/sharia, two points are given. One point is given if the article merely refers to "principles" of Islam/Islamic law/sharia. For the second part, one point is given if the supremacy article states that Islam (or its principles) is "a" source of law or if there is no other law governing a matter. Two points are given instead if Islam is "a" primary or basic or foundational source of law. Finally, three points are given if the supremacy article even states that Islam (or its principles) is "the" source (or the only source) of legislation. We recode this indicator to take the values 1 (if the original score was 1, 2 or 3) and 2 (if the original score was 4 or 5).

⁶ Another example of research utilizing this indicator is Coşgel et al. (2017) who use the distance to various "religious capitals", including Mecca, as instruments for countries' level of religious competition.

religious discrimination. A dummy variable by La Porta et al. (1999) is included to identify countries with a socialist legal origin. These countries might be less likely to entrench Islamic law in their constitution, while being more likely to invasively regulate the practice of religion. The KOF Globalisation Index by Gygli et al. (2018) measures jointly the economic, social, and political dimensions of globalization. Potrafke (2015) suggests that globalization should be linked to less discrimination. Data on (the logarithm of) a country's income per capita and its share of total natural resource rents in GDP come from the World Bank's development indicators. Resource dependence seems important to control for as some of the Arab Muslim countries are rich in natural resources and resource dependence can be linked to social conflict. Finally, we need to rule out that we are simply capturing differences between Muslim and non-Muslim societies, rather than the effects of constitutional rules. For that purpose we control for different indicators for Muslim population shares based on data from the ARDA's Religious Characteristics of States Dataset as well as the Islamic State Index (ISI) by Gutmann and Voigt (2015).

Table 1: Descriptive statistics

	<u>Full sample</u>				<u>Treated sample</u>			
	mean	sd	min	max	mean	sd	min	Max
Discrimination	1.90	1.25	0.00	4.39	3.55	0.46	2.64	4.39
SI	0.13	0.48	0.00	2.00	1.83	0.38	1.00	2.00
ISL	0.07	0.26	0.00	1.00	1.00	0.00	1.00	1.00
Distance to Mecca	1.55	0.68	-0.38	2.75	0.44	0.58	-0.24	1.76
Arab conquest	0.14	0.33	0.00	1.00	0.82	0.36	0.00	1.00
Democracy	0.67	0.32	0.00	1.00	0.25	0.23	0.00	0.95
Income per capita	8.20	1.55	4.75	11.43	8.69	1.61	6.61	11.19
Natural resources	8.62	12.21	0.00	82.59	22.78	15.41	0.00	60.78
Socialist origin	0.20	0.40	0.00	1.00	0.00	0.00	0.00	0.00
Globalization	55.79	16.18	19.45	90.67	52.77	12.19	27.31	74.21
Share Muslim	25.24	35.47	0.01	99.65	88.66	10.17	65.33	99.31
Majority Muslim	0.24	0.43	0.00	1.00	1.00	0.00	1.00	1.00
ISI	0.94	1.42	0.00	4.00	3.69	0.42	2.70	4.00
N (countries)	3,687 (156)				265 (14)			

Table 1 provides the descriptive statistics for all variables (1) based on our full regression sample and (2) based only on those observations where the constitution declares Islam to be a source of legislation. The sample is comprised of 3,687 observations from 156 countries covering the period 1990 to 2014. Of these observations, 265 are treated. Evidently, countries with "Islamic constitutions" suffer from significantly higher levels of religious discrimination against minority religions than other countries. However, these

are not the only obvious differences. Countries with Islamic constitutions tend to be less democratic, more dependent on natural resource rents, and Muslims constitute a significantly higher share of their population. Whereas economic characteristics, such as globalization and income, do not systematically deviate from the average, no country with an Islamic constitution is of socialist legal origin. As there are a number of pronounced differences between our treated and untreated countries, a more rigorous empirical analysis is needed to shed light on the relationship between Islamic constitutions and religious discrimination against minority religions. This is the subject of the next section.

5. Empirical Analysis

To mitigate problems due to the potential endogeneity of our variables of interest, we perform two-stage least squares instrumental variable regression with indicators for a country's distance from Mecca and whether it was exposed to a lasting Arab conquest as excludable instruments. The descriptive statistics in Table 1 above already indicate that countries with Islamic constitutions tend to be located significantly closer to Mecca and they are more likely to have been ruled for a long time by Muslims. We estimate second-stage models of the following form:

$$DISCRIMINATION_{i,t} = \alpha + \beta \times CONST_{i,t} + \gamma \times X_{i,t} + \mu_i + \vartheta_t + \varepsilon_{i,t} \quad (1)$$

where *CONST* is one of our potentially endogenous treatment indicators, *X* is a vector of control variables and μ and v are region and year fixed effects. Standard errors are clustered on the country-level. Tables A1 and A2 in the Appendix show the regression results for our first stage, which uses μ , v , the variables in *X*, as well as our excludable instrumental variables to explain the status of Islam in the constitution. In column (1), both distance from Mecca and Arab conquest show the expected sign and both coefficients are individually statistically significant. Actually, both instruments are jointly significant throughout all model specifications, as indicated by the F-statistic. Once we control for the share of Muslims in society (column 2), a dummy for Muslim majority countries (column 3) or the ISI (column 4), the coefficient on Arab conquest is reduced by roughly 50% and is no longer individually statistically significant. Nevertheless, our first stage results do not show signs of a problem with weak instruments. This confirms our

assumption that historical treatment with Muslim rule affects the Islamicity of constitutions today, independent of general (Muslim) population characteristics. Tests of the overidentifying restriction suggest that our instruments do not violate the exclusion restriction.

Tables 2 and 3 show the corresponding regression results in the second stage, as described by equation (1). Both, the supremacy of Islam indicator and the dummy variable for Islam as a source of legislation show positive and statistically significant effects on the level of discrimination. Countries relying on Islam as a source of legislation exhibit discrimination levels that are more than two standard deviations above that of other countries.⁷ Furthermore, democratic countries, resource dependent countries, and countries with a higher income exhibit reduced levels of discrimination, whereas socialist legal origin countries have significantly increased levels of discrimination against religious minorities. If we control for the share of Muslims in society, a dummy for Muslim majority countries or the ISI, we can show that none of these indicators has a statistically significant effect and our main findings are robust. Because we control for the level of democracy, we can rule out that IS and ISL clauses are linked to higher minority discrimination only because they are adopted in autocratic societies, as suggested by Fox (2013).⁸ In another step of our analysis, we interact the IS- and ISL-indicators with the level of democracy to test whether their effects vary with the level of democracy. Indeed, we find that countries increase minority discrimination more strongly in more democratic societies, if they constitutionally entrench the supremacy of Islam (results available on request). This is not surprising, as autocratic countries have higher minority discrimination levels in the first place and therefore less scope to increase discrimination.

⁷ Tables A3 and A4 in the Appendix show, for comparison, the results from estimating equation (1) based on OLS. Our variables of interest remain statistically significant when their endogeneity is not taken into account, but the size of the estimated coefficient falls by over 50%.

⁸ Tables A7 and A8 in the Appendix show our regression results without control variables, but including region- and year-fixed effects. Even when we omit all control variables, the coefficient estimates remain stable and our variables of interest have a statistically significant effect on discrimination.

Table 2: Effect of Sharia as source of legislation

	(1)	(2)	(3)	(4)
Source	2.910 ^{***} (0.758)	3.009 ^{**} (1.068)	3.228 ^{**} (1.076)	3.357 ^{**} (1.207)
Democracy	-0.947 ^{***} (0.281)	-0.953 ^{**} (0.292)	-0.958 ^{**} (0.291)	-0.938 ^{**} (0.298)
Income	-0.190 ⁺ (0.105)	-0.195 ⁺ (0.116)	-0.208 ⁺ (0.118)	-0.234 ⁺ (0.129)
Resources	-0.013 ⁺ (0.007)	-0.013 ⁺ (0.007)	-0.014 ⁺ (0.008)	-0.012 (0.008)
Socialist	0.570 [*] (0.264)	0.571 [*] (0.269)	0.587 [*] (0.273)	0.650 [*] (0.287)
Globalization	0.017 (0.011)	0.017 (0.011)	0.018 (0.011)	0.022 ⁺ (0.012)
Share Muslim		-0.001 (0.004)		
Muslim Maj.			-0.196 (0.323)	
ISI				-0.073 (0.129)
Constant	2.236 ^{***} (0.526)	2.287 ^{***} (0.624)	2.373 ^{***} (0.609)	2.398 ^{***} (0.687)
Observations	3,687	3,659	3,659	3,617
Countries	156	155	155	153

Table 3: Effect of supremacy clauses

	(1)	(2)	(3)	(4)
Supremacy	1.605 ^{***} (0.437)	1.585 ^{**} (0.581)	1.727 ^{**} (0.594)	1.825 ^{**} (0.677)
Democracy	-0.903 ^{**} (0.296)	-0.913 ^{**} (0.304)	-0.908 ^{**} (0.306)	-0.869 ^{**} (0.317)
Income	-0.206 ⁺ (0.111)	-0.201 ⁺ (0.119)	-0.219 ⁺ (0.123)	-0.249 ⁺ (0.135)
Resources	-0.015 [*] (0.008)	-0.015 ⁺ (0.008)	-0.016 [*] (0.008)	-0.015 ⁺ (0.008)
Socialist	0.626 [*] (0.275)	0.616 [*] (0.280)	0.641 [*] (0.286)	0.724 [*] (0.303)
Globalization	0.019 ⁺ (0.011)	0.018 (0.011)	0.019 ⁺ (0.011)	0.024 [*] (0.012)
Share Muslim		0.000 (0.004)		
Muslim Maj.			-0.133 (0.318)	
ISI				-0.057 (0.127)
Constant	2.348 ^{***} (0.550)	2.331 ^{***} (0.638)	2.451 ^{***} (0.633)	2.479 ^{***} (0.718)
Observations	3,687	3,659	3,659	3,617
Countries	156	155	155	153

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10, *: 0.05, **: 0.01, ***: 0.001.

One concern about our results could be that countries with Islamic constitutions differ in many more dimensions from other countries than we can account for in our regression model. In principle, our instrumental variable regression should address this omitted variable bias, which in our case leads to significantly larger coefficient estimates. Nevertheless, we present as a robustness check in Tables A5 and A6 in the Appendix the result of estimating equation (1) with instrumental variable regression, after excluding all observations from the sample where the Muslim population share is less than 10%. Given that the median Muslim population share in our sample is less than 5% and the Organization of Islamic Cooperation has a number of members with 10% or less Muslim population share, this is a very rigorous test. The idea behind this robustness check is to make the countries in the sample more homogenous and to reduce unobservable differences between treated and untreated countries. Based on the remaining sample, which is less than 50% of the original sample, we find substantively the same results as reported in Tables 3 and 4. All coefficient estimates for our variables of interest are significant at the 5%-level and the size of the coefficients is almost identical.

6. Conclusion

Several cross-national studies find that states with a majority Muslim population tend to have the highest levels of restrictions on the religious freedom of minorities (Akbaba & Fox, 2011; Fox, 2007, 2014). However, none of these studies explore why Muslim societies might be different in their treatment of religious minorities and why there is substantial heterogeneity between Muslim societies in that respect. In this study, we consider for the first time Islamic constitutional provisions as a likely determinant of religious discrimination. We hypothesize that as Islam becomes a constitutionally prescribed source of legislation in Muslim societies, it is expected that subsequent laws will be more likely in violation of basic rights of minorities. Our tests show that in countries where the supremacy of Islam and Shari'a is constitutionally entrenched, religious minorities are indeed likely to face more discrimination.

This study reveals several important results. First, the level of Islamicity of a country's constitution, as measured by whether the constitution identifies Islam as a source of legislation and the degree of supremacy of Islam, are significantly associated with mi-

nority discrimination. Second, after taking into account the possible entrenchment of Islamic legal principles in the constitution, there is no significant effect anymore of any other measure for the influence of Islam in society on the level of religious discrimination. In other words, religious discrimination in Muslim societies seems to be a consequence of the design of formal institutions (i.e., the constitution) rather than caused directly by the informal norms prevalent among the population. Finally, this study has demonstrated once more the grave dangers entailed in institutionalizing supreme values, be they Communist, Islamic or of any other kind. Constitutions that propagate absolute truths and, in disregard of the rule of law, expect these principles to be followed by all members of society are inherently incompatible with the protection of minority rights.

Our findings here also have implications for research on other consequences of Islam. It has been argued that Islam historically had adverse consequences for economic development (Kuran 2011) as well as the emergence of democracy (Gassebner et al. 2013; Potrafke 2012) and the rule of law (Gutmann and Voigt 2015, 2018). Particularly in the case of democracy, it is, however, not well understood how or under what conditions exactly Islam is detrimental to its consolidation. As we demonstrate here, understanding these details can be crucial for formulating policy recommendations and should, thus, be a main objective of future research.

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Appendix

Table A1: First stage – endogenous Sharia as source of legislation

	(1)	(2)	(3)	(4)
IV: Distance	-0.163* (0.068)	-0.158* (0.067)	-0.159* (0.066)	-0.159* (0.065)
IV: Conquest	0.242* (0.110)	0.178 (0.147)	0.168 (0.144)	0.103 (0.138)
Democracy	-0.088 (0.058)	-0.084 (0.060)	-0.080 (0.060)	-0.073 (0.061)
Income	0.040+ (0.024)	0.044 (0.027)	0.044+ (0.026)	0.050+ (0.026)
Resources	0.002 (0.002)	0.002 (0.001)	0.002 (0.001)	0.002 (0.002)
Socialist	-0.106** (0.038)	-0.101* (0.039)	-0.101* (0.039)	-0.097* (0.040)
Globalization	-0.003 (0.003)	-0.003 (0.003)	-0.003 (0.003)	-0.003 (0.003)
Share Muslim		0.001 (0.001)		
Muslim Maj.			0.085 (0.083)	
ISI				0.046+ (0.025)
Constant	0.081 (0.148)	0.026 (0.157)	0.035 (0.141)	-0.009 (0.143)
Observations	3,687	3,659	3,659	3,617
Countries	156	155	155	153
Adj. R ²	0.47	0.48	0.48	0.49
Partial R ²	0.27	0.15	0.16	0.14
Robust F [p]	12.7 [0.00]	6.35 [0.00]	8.1 [0.00]	6.21 [0.00]

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A2: First stage – endogenous supremacy clauses

	(1)	(2)	(3)	(4)
IV: Distance	-0.295*	-0.289*	-0.290*	-0.286*
	(0.132)	(0.130)	(0.129)	(0.127)
IV: Conquest	0.439*	0.371	0.343	0.223
	(0.210)	(0.252)	(0.264)	(0.248)
Democracy	-0.186 ⁺	-0.183 ⁺	-0.176 ⁺	-0.170 ⁺
	(0.098)	(0.099)	(0.097)	(0.096)
Income	0.083 ⁺	0.087 ⁺	0.087 ⁺	0.099*
	(0.043)	(0.046)	(0.044)	(0.045)
Resources	0.005	0.005 ⁺	0.005 ⁺	0.005
	(0.003)	(0.003)	(0.003)	(0.003)
Socialist	-0.227**	-0.222**	-0.220**	-0.219**
	(0.073)	(0.075)	(0.074)	(0.075)
Globalization	-0.006	-0.006	-0.006	-0.007
	(0.005)	(0.005)	(0.005)	(0.005)
Share Muslim		0.001		
		(0.002)		
Muslim Maj.			0.111	
			(0.127)	
ISI				0.071 ⁺
				(0.037)
Constant	0.076	0.018	0.015	-0.058
	(0.280)	(0.279)	(0.261)	(0.265)
Observations	3,687	3,659	3,659	3,617
Countries	156	155	155	153
Adj. R ²	0.51	0.51	0.51	0.52
Partial R ²	0.27	0.16	0.17	0.14
Robust F [p]	14.1 [0.00]	9.7 [0.00]	10.8 [0.00]	7.94 [0.00]

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A3: Effect of Sharia as source of legislation, OLS

	(1)	(2)	(3)	(4)
Source	1.331 ^{***} (0.296)	1.081 ^{**} (0.332)	1.160 ^{***} (0.327)	1.121 ^{**} (0.356)
Democracy	-1.367 ^{***} (0.268)	-1.266 ^{***} (0.249)	-1.293 ^{***} (0.252)	-1.255 ^{***} (0.259)
Income	-0.108 (0.090)	-0.079 (0.088)	-0.091 (0.089)	-0.092 (0.090)
Resources	-0.007 (0.006)	-0.007 (0.006)	-0.007 (0.006)	-0.007 (0.006)
Socialist	0.319 (0.223)	0.337 (0.228)	0.326 (0.227)	0.383 (0.244)
Globalization	0.012 (0.010)	0.010 (0.010)	0.011 (0.009)	0.012 (0.010)
Share Muslim		0.005 (0.003)		
Muslim Maj.			0.284 (0.241)	
ISI				0.108 (0.084)
Constant	2.001 ^{***} (0.466)	1.705 ^{***} (0.481)	1.845 ^{***} (0.475)	1.750 ^{***} (0.504)
Observations	3,687	3,659	3,659	3,617
Countries	156	155	155	153

Note: OLS regressions, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A4: Effect of supremacy clauses, OLS

	(1)	(2)	(3)	(4)
Supremacy	0.634*** (0.168)	0.484** (0.176)	0.525** (0.173)	0.500** (0.190)
Democracy	-1.398*** (0.278)	-1.281*** (0.260)	-1.306*** (0.263)	-1.264*** (0.269)
Income	-0.105 (0.092)	-0.071 (0.089)	-0.085 (0.090)	-0.083 (0.091)
Resources	-0.007 (0.006)	-0.007 (0.006)	-0.007 (0.006)	-0.007 (0.006)
Socialist	0.312 (0.226)	0.331 (0.231)	0.320 (0.230)	0.379 (0.248)
Globalization	0.013 (0.010)	0.010 (0.010)	0.011 (0.010)	0.011 (0.011)
Share Muslim		0.006+ (0.003)		
Muslim Maj.			0.345 (0.242)	
ISI				0.129 (0.082)
Constant	2.019*** (0.472)	1.670*** (0.481)	1.823*** (0.476)	1.714*** (0.504)
Observations	3,687	3,659	3,659	3,617
Countries	156	155	155	153

Note: OLS regressions, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A5: Effect of Sharia as source of legislation, 10%+ Muslim

	(1)	(2)	(3)	(4)
Source	3.024** (1.054)	2.812* (1.300)	2.940* (1.247)	2.454* (1.090)
Democracy	0.079 (0.482)	-0.034 (0.475)	-0.020 (0.463)	-0.216 (0.453)
Income	-0.201 (0.205)	-0.175 (0.214)	-0.188 (0.214)	-0.138 (0.198)
Resources	-0.008 (0.012)	-0.008 (0.012)	-0.009 (0.012)	-0.006 (0.011)
Socialist	1.206* (0.583)	1.108+ (0.590)	1.156+ (0.594)	0.932+ (0.498)
Globalization	0.039* (0.019)	0.036* (0.018)	0.037* (0.018)	0.033* (0.017)
Share Muslim		-0.001 (0.006)		
Muslim Maj.			-0.127 (0.382)	
ISI				-0.042 (0.155)
Constant	1.269 (0.971)	1.292 (1.245)	1.343 (1.141)	1.260 (1.179)
Observations	1,499	1,499	1,499	1,486
Countries	69	69	69	68

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Title A6: Effect of supremacy clauses, 10%+ Muslim

	(1)	(2)	(3)	(4)
Supremacy	1.799** (0.662)	1.710* (0.827)	1.763* (0.788)	1.530* (0.726)
Democracy	0.269 (0.563)	0.193 (0.562)	0.203 (0.548)	-0.004 (0.521)
Income	-0.244 (0.231)	-0.224 (0.247)	-0.234 (0.246)	-0.188 (0.235)
Resources	-0.013 (0.013)	-0.012 (0.014)	-0.013 (0.014)	-0.011 (0.013)
Socialist	1.500* (0.695)	1.419+ (0.744)	1.459* (0.738)	1.235+ (0.644)
Globalization	0.046* (0.021)	0.044* (0.020)	0.045* (0.021)	0.040* (0.020)
Share Muslim		-0.000 (0.006)		
Muslim Maj.			-0.074 (0.387)	
ISI				-0.040 (0.161)
Constant	1.386 (1.076)	1.370 (1.349)	1.424 (1.247)	1.377 (1.302)
Observations	1,499	1,499	1,499	1,486
Countries	69	69	69	68

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A7: Effect of Sharia as source of legislation, no control variables

	(1)	(2)	(3)	(4)
Source	2.850*** (0.642)	2.806** (0.898)	2.985*** (0.878)	3.104** (1.073)
Share Muslim		0.000 (0.004)		
Muslim Maj.			-0.087 (0.312)	
ISI				-0.052 (0.135)
Constant	0.947*** (0.139)	0.939*** (0.157)	0.966*** (0.145)	0.977*** (0.164)
Observations	4,082	4,054	4,054	3,969
Countries	168	167	167	163

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A8: Effect of supremacy clauses, no control variables

	(1)	(2)	(3)	(4)
Supremacy	1.522*** (0.358)	1.399** (0.452)	1.522*** (0.454)	1.609** (0.555)
Share Muslim		0.002 (0.004)		
Muslim Maj.			0.004 (0.292)	
ISI				-0.028 (0.124)
Constant	0.984*** (0.140)	0.938*** (0.157)	0.985*** (0.146)	0.994*** (0.167)
Observations	4,082	4,054	4,054	3,969
Countries	168	167	167	163

Note: 2SLS-instrumental variable regressions, excludable instruments are the log-distance to Mecca and an indicator for Arab conquest, all models include region- and year-fixed effects, country-clustered standard errors in parentheses, +: 0.10 , *: 0.05 , **: 0.01 , ***: 0.001.

Table A9: Descriptive statistics (corresponding to Tables A7 and A8)

	Full sample				Treated sample			
	mean	sd	min	max	mean	sd	min	Max
Discrimination	1.91	1.26	0.00	4.39	3.52	0.49	2.56	4.39
SI	0.15	0.51	0.00	2.00	1.80	0.40	1.00	2.00
ISL	0.08	0.28	0.00	1.00	1.00	0.00	1.00	1.00
Distance to Mecca	1.56	0.69	-0.38	2.75	0.49	0.57	-0.24	1.76
Arab conquest	0.15	0.34	0.00	1.00	0.80	0.37	0.00	1.00
N (countries)	4,082 (168)				341 (17)			

Online Appendix**Table OA1: List of countries**

Country name	SI-clause (mean)	ISL-clause (mean)	Number of observations
Albania	0	0	24
Algeria	0	0	19
Angola	0	0	25
Argentina	0	0	25
Armenia	0	0	24
Australia	0	0	25
Austria	0	0	25
Azerbaijan	0	0	20
Bahrain	2	1	13
Bangladesh	0	0	25
Belarus	0	0	24
Belgium	0	0	25
Benin	0	0	25
Bhutan	0	0	25
Bolivia	0	0	25
Botswana	0	0	25
Brazil	0	0	25
Bulgaria	0	0	25
Burkina Faso	0	0	25
Burundi	0	0	25
Cambodia	0	0	22
Cameroon	0	0	25
Canada	0	0	25
Cape Verde	0	0	25
Central African Republic	0	0	25
Chad	0	0	22
Chile	0	0	25
China	0	0	25
Colombia	0	0	25
Comoros	1	1	21
Congo	0	0	25
Congo, Democratic Republic	0	0	25
Costa Rica	0	0	25
Cote d'Ivoire	0	0	25
Croatia	0	0	20
Cuba	0	0	25
Cyprus	0	0	25
Czech Republic	0	0	22
Denmark	0	0	25
Djibouti	0	0	25
Dominican Republic	0	0	25
Ecuador	0	0	25
Egypt	1	1	25
El Salvador	0	0	25
Equatorial Guinea	0	0	19
Eritrea	0	0	19
Estonia	0	0	20
Ethiopia	0	0	25
Fiji	0	0	25
Finland	0	0	25
France	0	0	25
Gabon	0	0	25

Gambia	0	0	19
Georgia	0	0	24
Germany	0	0	25
Ghana	0	0	25
Greece	0	0	25
Guatemala	0	0	25
Guinea	0	0	25
Guinea-Bissau	0	0	25
Guyana	0	0	25
Haiti	0	0	19
Honduras	0	0	25
Hungary	0	0	24
India	0	0	25
Indonesia	0	0	25
Iran	2	1	23
Iraq	1.67	0.83	6
Ireland	0	0	25
Israel	0	0	25
Italy	0	0	25
Jamaica	0	0	25
Japan	0	0	25
Jordan	0	0	25
Kazakhstan	0	0	22
Kenya	0	0	25
Korea, South	0	0	25
Kuwait	2	1	20
Kyrgyzstan	0	0	22
Laos	0	0	25
Latvia	0	0	20
Lebanon	0	0	10
Lesotho	0	0	25
Liberia	0	0	25
Libya	0.15	0.08	13
Lithuania	0	0	20
Macedonia	0	0	24
Madagascar	0	0	25
Malawi	0	0	25
Malaysia	0	0	25
Mali	0	0	25
Mauritania	1.92	0.96	25
Mauritius	0	0	25
Mexico	0	0	25
Moldova	0	0	20
Mongolia	0	0	25
Morocco	0	0	25
Mozambique	0	0	25
Myanmar	0	0	15
Namibia	0	0	25
Nepal	0	0	25
Netherlands	0	0	25
New Zealand	0	0	25
Nicaragua	0	0	25
Niger	0	0	25
Nigeria	0	0	25
Norway	0	0	25
Oman	2	1	19

Pakistan	0	0	22
Panama	0	0	25
Papua New Guinea	0	0	25
Paraguay	0	0	25
Peru	0	0	25
Philippines	0	0	25
Poland	0	0	25
Portugal	0	0	25
Qatar	2	1	15
Romania	0	0	25
Russia	0	0	23
Rwanda	0	0	25
Saudi Arabia	2	1	25
Senegal	0	0	25
Serbia	0	0	20
Sierra Leone	0	0	25
Singapore	0	0	25
Slovakia	0	0	22
Slovenia	0	0	20
Solomon Islands	0	0	24
South Africa	0	0	25
Spain	0	0	25
Sri Lanka	0	0	17
Sudan	2	1	25
Suriname	0	0	25
Swaziland	0	0	25
Sweden	0	0	25
Switzerland	0	0	25
Tajikistan	0	0	21
Tanzania	0	0	25
Thailand	0	0	25
Togo	0	0	25
Trinidad and Tobago	0	0	25
Tunisia	0	0	25
Turkey	0	0	25
Turkmenistan	0	0	23
Uganda	0	0	25
Ukraine	0	0	24
United Arab Emirates	2	1	25
United Kingdom	0	0	25
United States	0	0	25
Uruguay	0	0	25
Uzbekistan	0	0	23
Venezuela	0	0	25
Vietnam	0	0	25
Yemen	2	1	24
Zambia	0	0	25
Zimbabwe	0	0	25

Note: Information is based on our main regression sample comprised of 3,687 observations. Tables A7 and A8 in the Appendix are based on a larger sample, as the control variables are omitted.

Table OA2: List of variables

Variable	Description and data source
Discrimination	Index comprising 36 variables measuring restrictions the government places on the practice of religion by minority religious groups, logarithm, source: Fox (2011).
Supremacy	IS-clause, source: Ahmed and Gouda (2015).
Source	ISL-clause, source: Ahmed and Gouda (2015).
Distance	Distance from Mecca, logarithm, own calculation.
Conquest	Arab conquest, source: Chaney (2012).
Democracy	Level of democracy (polity2), source: Marshall et al. (2018).
Income	Income per capita, logarithm, source: World Development Indicators.
Natural Resources	Share of total natural resource rents in GDP, source: World Development Indicators.
Socialist	Socialist legal origin, source: La Porta et al. (1999).
Globalization	KOF Globalisation Index, source: Gygli et al. (2018).
Share Muslim	Muslim population share, source: ARDA's Religious Characteristics of States Dataset.
Muslim Majority	Dummy variable, Muslim population share >50%, own calculation.
ISI	Islamic state index, source: Gutmann and Voigt (2015).