*Law and History Review* (2023), **41**, 405–415
doi:10.1017/S073824802200058X

ASLH AMERICAN SOCIETY FOR LEGAL HISTORY CAMBRIDGE UNIVERSITY PRESS

INVITED ARTICLE

# Courts and Constitutions in South Asia and the Global South: A View from the Middle East

Faiz Ahmed

Brown University, Providence, Rhode Island, USA
Email: faiz_ahmed@brown.edu

## Abstract

Not long ago, the study of comparative law in U.S. law schools was dominated by North American and European constitutional systems. Thanks to the contributions of a new generation of legal historians, including those canvassed in this special issue, the landscape is changing. In this special issue, scholars of courts and constitutions in twentieth century Afghanistan, Bangladesh, Burma, India, and Nepal have come together to share novel sources, perspectives, and analyses of significant constitutional experiments in the Global South, specifically twentieth century South Asia. This afterword reflects on these important scholarly contributions by highlighting common threads and divergences in the case studies presented in this volume—from the perspective of a legal historian of the late Ottoman Empire and modern Middle East. Ultimately, the author concludes that the articles in this special issue persuasively stamp modern South Asian legal history "on the map" not only for specialists of this large and populous region, but for students and scholars of comparative constitutionalism and global legal history more broadly.

Once upon a time not long ago, comparative law courses in many a United States law school were by and large limited to North American and European constitutional systems. Apart from a handful of industrial states customarily included on the guest list of the Global North (Australia, Israel, and Singapore), the rare instances in which post-colonial courts and constitutions of Africa, Asia, Latin America, or Oceania surfaced appeared to be exceptions rather than a norm. In this framework, such aberrations defied the overall trend of regions characterized by constitutional window-dressing, or what the late Kenyan legal scholar H.W.O. Oketh-Ogendo memorably termed "constitutions without constitutionalism," and which political scientist Nathan Brown has described as "constitutions in a nonconstitutional world."[1]

[1] H.W.O. Oketh-Ogondo, *Constitutions without Constitutionalism: An African Political Paradox* (New York: ACLS, 1988). Nathan J. Brown, *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (Albany: SUNY Press, 2001). For a parallel study in

© The Author(s), 2023. Published by Cambridge University Press on behalf of the American Society for Legal History

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

Thanks to the contributions of a new generation of legal historians, including those canvassed in this special issue, the landscape is changing. Here, seven scholars of courts and constitutions in twentieth century Afghanistan, Bangladesh, Burma, India, and Nepal have come together to share insightful sources, perspectives, and analyses of less widely recognized but no less significant constitutional experiments in the Global South, specifically twentieth-century South Asia.

The articles in this special issue achieve a great deal. Individually, each contributes a breakthrough case study to the historiography of modern South Asian law and constitutionalism, engaging untapped sources or overlooked episodes of great significance to the study of courts, national charters, or basic laws, and other juridical and legislative institutions and practices in the late British Indian Empire and post-colonial states of the region. Collectively, they challenge notions of law and constitutionalism in South Asia as trivial, superficial, exceptional, or otherwise unworthy of our attention. They highlight the role of hitherto-unexamined legal actors or influences—including those beyond official courts—in shaping constitutional law and legal systems in the region. Most of all, the articles persuasively stamp modern South Asian legal history "on the map" not only for specialists of this large and populous region, but also for students and scholars of comparative constitutionalism and global legal history more broadly.

That is no easy feat. In seeking out genealogies of founding constitutional texts, major Supreme Court cases, or grassroots constitutional mobilizations, the case studies in this issue demonstrate how, as South Asia legal historian Elizabeth Lhost has described, post-colonial states in the region struggled to balance competing domestic and international interests, navigate new centers of authority following the ruptures of colonialism and independence, and simultaneously cultivate images of a progressive modern state on the international scene also shaping the future of the region and world.[2] All the while, as several of the articles demonstrate, governing elites and grassroots constitutional activists sought to reassure domestic audiences and interests of the importance of preserving a loyalty to its past, cultures, and heritage, real and imagined.

I am not a scholar of the rich legal and constitutional traditions canvassed in this volume, and there are many others who could more authoritatively comment as legal historians of modern South Asia. But as a historian of legal and constitutional experiments and exchanges in the late Ottoman Empire and modern Middle East, I submit the following five observations of undercurrents running through the learned and insightful articles in this special issue.

## People, Not Just Ideas, Drive Constitutional Movements

The case studies in this issue are keen to demonstrate that real people—not abstract ideas—are at the center of constitutional movements, moments, and texts. Each study in its own way offers a sensitive account that eschews

Central Asia, see Saniia Toktogazieva, "Constitution Without Constitutionalism? Challenges to Republicanism in Kyrgyz Republic," *Constitutional Review* 5 (2019): 275–93.

[2] Eliabeth Lhost, "Of Horizontal Exchanges and Inter-Islamic Inquiries," *Comparative Studies of South Asia, Africa and the Middle East* 41 (2021): 257–61.

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

celebratory or tragic undertones, instead filling key gaps in our understanding of the modern legal history of the late British Indian Empire and post-colonial nation-states in the South Asia region. These explorations uncover how the intensely political forces behind constitutions and constitutional movements never fully evaporate or recede. Refusing to treat law as an autonomous body of texts or rules in the sterile environs of a courtroom or scholar's den alone, the articles treat legal forums as inherently political arenas, a field of power relations where rival interests sometimes clash, sometimes negotiate, and sometimes stall for time. Here, not only judges, solicitors, and barristers, but also legislators, military commanders, intellectuals, and ordinary people prosecute, defend, negotiate, and ultimate shape "the law" vis-à-vis everyday life and politics. It is the interaction among these multiple sites of authority and dispute resolution that together form what sociologist Pierre Bourdieu coined a "juridical field" and legal anthropologist Laura Nader aptly termed "the life of the law."[3]

Of course, ideas matter. Ideas and ideologies—at least in part—motivate human actions, on an individual and on a collective basis. Related to the observation that people ultimately drive constitutional movements is another mantra for legal historians to ponder in these case studies.

## Behind Great Constitutional Texts (or Landmark Cases) Lie Great Societal Tensions

It is a truism to legal historians and anthropologists that discovering the life of the law behind constitutions and Supreme Court judgments requires a thorough exploration of the contexts that produced such texts. Such contexts are often rife with social, political, and economic tensions in the everyday life of the country being studied, or between major factions in the governing elites of the country, which become embedded in the very language of national charters, Supreme Court cases, and statutory legislation produced in that context. Rigorous legal histories such as those in this issue demonstrate the range of historical possibilities and contingency of constitutional trajectories in South Asia, including the roads not taken by governing elites, Supreme Court justices, or other constitutional activists at key junctures of the subcontinent's history leading up to and after partition.

Applying this observation to our subject here, are there common societal tensions driving constitutional struggles in these modern South Asian states? Disparate as the contexts of twentieth century Afghanistan, Bangladesh, Burma, India, and Nepal are, a few shared tensions come to the fore.

### *Colonial Legacies versus Post-colonial Republicanism.*

Albeit to varying degrees, all the case studies illustrate lasting friction between British colonial legacies in the subcontinent and post-colonial governments seeking to navigate the ruptures and opportunities of independence. This

[3] Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field." *Hastings Law Journal* 38 (1987): 805–53; and Laura Nader, *The Life of the Law: Anthropological Projects* (Berkeley: University of California Press, 2002).

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

tension surfaces when decisions were made to preserve certain colonial institutional inheritances, or enact new legal innovations, adaptations, or re-castings stemming from the agency of the formerly colonized and now independent citizens of each state. In some cases, as in India and Pakistan, judiciaries chose to preserve certain aspects of commonwealth states, such as publishing court procedures or even constitutional texts in English; but in other ways they crafted departures of their own, such as creating new political vocabularies of popular sovereignty, democracy, and republicanism, be they of the secular model as in India and Bangladesh, or of the Islamic republic model in Pakistan (and later Afghanistan).

### *Majoritarian Populism versus Minority Rights*

Several of the articles raise the tension of democratic impulses sliding into majoritarian populism, and the dangers and excesses that such transitions or revolutions—top down or grassroots—can bring with them. Here, too, the legacies of colonialism are relevant, where often a tiny foreign population enjoyed grossly disproportionate access to capital, property, rights, and privileges at the expense of majorities, hence producing a pernicious "swinging pendulum" affect following decolonization or revolution. Applied here, are the supreme courts of said states a bastion of protection for minorities, the marginalized, and the disenfranchised, or an instrument of the centralizing state to enact progressive socioeconomic agendas for citizen majorities (if not all the citizenry)?

### *Centralized Developmentalism versus Personal Autonomy of Individuals*

This tension becomes especially salient with the rise of the modern administrative state in the nineteenth and twentieth century. Is constitutionalism about limiting or empowering the executive and to what degree? In his incisive study of the early constitutional history of the Indian Republic, legal historian Rohit De described the competition between the "politics of state desire" and "insurgent orders of expectations from the state" at play in the early writing and application of the Indian republic's constitution.[4] How do the supreme courts of said South Asian states balance the executive's military, economic, or even public health mandates—demonstrated so viscerally with the COVID-19 pandemic today—and the personal autonomy of individuals?

There is one more reoccurring tension at play in the articles in this special issue, and it is one revealing differing approaches and perspectives of legal historians themselves.

### *Founding Constitutional "Moments" versus Longer Arcs of Legal History*

The tension between studying constitutions as "founding moments" of a legal system and studying them as "longer, deeper arcs of legal history" surfaces in

[4] Rohit De, *A People's Constitution: Everyday Life of the Law in the Indian Republic* (Princeton: Princeton University Press, 2018), 10.

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

the different approaches to constitutionalism. While some approaches stress spectacular acts or "moments," others adopt the historian's longer view (such differences also recall a more classic divergence: revolutionary versus evolutionary approaches to legal change). Overall, rather than treating constitutions as fleeting spectacular moments, the articles engage deeper, richer, and more drawn-out processes of legalism, normativity and justice embedded in the everyday life of each society.

Such are only a few of the common threads and tensions running through each of the articles in this special issue. As for divergences, differing perspectives, and unique vantage points, there are also many to be found in the seven articles. Following are a few to consider.

## Access to Justice, Constitutional "Consciousness", and the Dangers of Elitism in Constitutional Studies

It is not surprising that constitutional studies tend to focus on state capitals, specifically supreme courts or other high tribunals, and legal and political elites more generally. But how accessible are constitutional courts and procedures to everyday "ordinary" people? As a number of scholars in different disciplines have noted, one of the dangers in constitutional studies and perhaps legal history more broadly is a tendency to "jump scale" in methodological terms by focusing on capitals, courts, and political elites, and on the latter's connections to powerful elites in other places, rather than horizontally with other internal legal actors in a domestic legal system "hollowed out from itself."[5] Such approaches tend to overlook, for example, the often exceedingly fraught questions of application and access, including relations with local stakeholders, unruly governors, and strong(wo)men outside the capitals and big cities of modern nation-states and in the outlying provinces, hinterlands, and borderlands. Conversely, holistic constitutional histories must also ask the difficult, and stubborn question of the meaning and benefits of national charters for ordinary citizens.

As for elitism, there is little doubt that constitutional drafting is often an elite process. But that is hardly a flaw or weakness unique to South Asia. From Australia, New Zealand, and the United States, to Egypt, Iraq, Tunisia, Syria, and Lebanon, I am not aware of a case in which a former British or French colony, protectorate, or mandate won independence and promulgated its own constitution that was not an elite process at its conception, even if those constitutions were later popularized in society at large, as in the republics of India, Tunisia, and the United States, or the commonwealth of Australia.

Tied to the question of elitism is the widespread use of English in multiple contemporary South Asian legal systems, including India and Pakistan. In terms of access to justice, to what degree is the use of English in societies in which it remains a minority language limiting, or enabling? On the one hand English is obviously a colonial inheritance in the subcontinent, but it is also a lingua

[5] Shah Mahmoud Hanifi, "Local Experiences of Imperial Cultures," *Comparative Studies of South Asia, Africa and the Middle East* 41 (2021): 243–49.

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

franca across substantial segments of India and Pakistan (in some ways and places even more so than Hindi or Urdu). Another factor to consider is whether the use of English enables greater communication and exchange *between and across* former British colonies and jurisdictions of the commonwealth—in Asia, Africa, and the Caribbean—and hence even across the Global South more broadly? This is a notable contrast from the modern Middle East, where linguistic divides—particularly between Arabic, Persian, Turkish, and Hebrew—combined with other social and political factors, stymy greater interaction between courts and constitutions of Turkey, Iran, Israel-Palestine, and the Arab world more broadly. Such barriers persist despite being neighboring countries and sharing substantial historical and cultural ties, be it of the Ottoman, Persianate, or Islamicate varieties, or British and French colonial legacies for that matter.

A related tension deals with what we might call "constitutional consciousness." Why do some citizens seize on to their national constitutions as a way to frame their claims, while others do not? Akin to the scientific challenge of defining human consciousness, what exactly is constitutional consciousness and where does it come from? Far from a question of the brilliance or even representativeness of a constitutional text, the success of constitutional systems: cannot be extricated from the question of access to justice, specifically the problem of slow and cumbersome bureaucracies, or unscrupulous officials, acting more as a block than a solution to resolving ordinary people's disputes. The on-and-off success of militant groups like the Taliban in Afghanistan and northwest Pakistan, among other Islamist insurgencies in Somalia, Syria, Iraq, Yemen, and Libya in recent decades, is unlikely to be explained by raw brutal force and fear alone, devastating and real as those factors have been. Military prowess is only part of the picture; victories against the official governments of these countries must at least in part be attributed to an enhanced ability on these groups' part to serve as mediators, adjudicators, or enforcers of dispute resolution in highly localized contexts in which face-to-face interaction is often more effective than the "face-to-faceless" experiences of navigating large bureaucracies and abstract procedures announced from state capitols.[6] Paradoxically, said groups' claims to maintaining peace and order in certain neighborhoods, towns, and highways from the perils of banditry, extortion, and other forms of abuse (state-sponsored and otherwise) are unlikely to be entirely imagined. The ability of such unofficial state actors to provide more prompt, efficient, and so-called "rough justice" relative to national judicial systems and local police—particularly in rural and urban spaces where the central government is weak—must be considered as sober realities in many societies of the Global South, including the Middle East and South Asia. All of this impacts whether ordinary citizens turn to their national constitution and official state courts or other sources for solutions and remedies to their problems.

Another, lighter way to think of constitutional consciousness is where and when the law surfaces in everyday expressions. There are plentiful examples in

[6] Laura Nader, "The Life of the Law: A Moving Story." *Valparaiso University Law Review* 36 (2002): 657–62.

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

the United States, for example. Take the popular phrases embedded in everyday American discourse (including Hollywood) that reflect constitutional consciousness of some kind— "You have the right to remain silent"; "I want a lawyer"; or "I want my phone call" are some prominent examples. Are there equivalent popular, commonly known expressions that are used by everyday people in the countries of South Asia?

Such factors and questions should encourage us to look beyond extraordinary events and individuals, and recognize that some constitutional stories are bound to privilege or exclude certain actors, networks, and lineages over others.[7] While the absent (or silent) in some cases of South Asia might be a rural majority or pastoral-mercantile networks, or ethnic or religious minorities, in others cases the excluded are not just certain groups of people, but competing epistemologies, world views, and paradigms of governance. All of this is to say is we need more work on these under-studied and under-theorized subjects in the legal historiography of South Asia.

## Are National Legal Systems Closed Boxes?

What are the borders of national legal systems? Are the legal systems of the post-colonial states canvassed in this issue closed boxes? This is not a simple yes or no question, of course. Every state in the world, even the most authoritarian, surveillanced, and policed is porous at some point. Rather, the point here is to assess the degrees of interinfluence and exchanges among the national court systems of South Asia, even the most "hyper-nationalist" in language and tone. As the anthropologist and East Asian legal scholar Annelise Riles has argued, legal or constitutional fields are not pure, autonomous, or self-contained units, but rather are mutually constituted and enriched by overlap, entanglement, even intertwining with others of the region and the world more broadly.[8]

Applied to our case studies here, how were the Supreme Courts or lawyer bars or other legal guilds of these states, for example, connected (or not) to their counterparts in neighboring states, or in the British commonwealth and other international networks? In varying degrees, the articles in this issue raise such questions of legal insularity versus connection, implicating thorny questions of national sovereignty amid anti-colonial and post-colonial alliances, national identity or heritage and globalization, all amid an overall shrinking world.

Bordered, walled, and fenced as the nation-states of South Asia have become (now more than ever), there seems to be plenty of evidence that the legal systems of said states are not closed boxes or worlds to their own. The decisions and policies of some states invariably impact others in the region. As Gandhi perceptively noted, "if cow slaughter could be prohibited in India on religious grounds, then why couldn't the Pakistani government prohibit idol worship on similar grounds? Just as sharia cannot be imposed on non-Muslims, he

[7] Nurfadzilah Yahaya, "Juridical Pan-Islam at the Height of Empire," *Comparative Studies of South Asia, Africa and the Middle East* 41 (2021): 253–57.

[8] Annelise Riles, *The Network Inside Out* (Ann Arbor: University of Michigan Press, 2004).

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

emphasized, Hindu law cannot be imposed on non-Hindus."[9] Here one of the founding architects of the republic of India saw how the dangers and opportunities of one national legal system could impact another in South Asia.

## The Violence of Law (Including Constitutional Law)

Just as constitutionalism and courts in the twentieth century South Asian states canvassed here present important opportunities to enshrine the fundamental rights of (ideally, all) citizens, as arms of modern centralizing states they also carry the potential for devastating violence and discrimination. Can we extricate the positive, progressive components of such constitutional and rule of law campaigns, without condoning the violence, elitism, patriarchy, or populism embedded in modern centralizing state projects? Following are a few of the dilemmas and paradoxes reflected in constitutional experiments presented in this issue.

### *Literal Violence and "States of Exception"*

There is now a significant body of literature on the violence of British colonial law and post-colonial centralizing states in South Asia, including the deleterious impact on more local, diffuse and historically grounded legalities, socio-legal authorities, and indigenous norms and processes of law and dispute resolution more broadly.[10] The articles in this issue remind us that howsoever progressive some constitutional movements and texts sound or have indeed served in the region, we must also consider the variety of impacts on a diverse range of actors within each jurisdiction. Even democratic constitutional states that raise the banner of upholding the rule of law can find themselves employing large-scale violence, and not only on the recalcitrant. As historians and anthropologists of modern South Asia Bernard Cohn, Janaki Nair, Sanjay Nigam, Uday Singh Mehta, Nicholas Dirks, and Nasser Hussein, among many others, have shown, embedded within the Raj's policies were devastating acts of violence, often enacted through the guise and enabling discourse of liberalism and the rule of law. Such paradoxes and contradictions persist all too

[9] Quoted in De, *A People's Constitution*, 131.

[10] This literature is too voluminous to cite here; for only a few notable examples, see Bernard Cohn, "Law and the Colonial State in India," in *History and Power in the Study of Law: New Directions in Legal Anthropology,* ed. June Starr and Jane Collier (Ithaca: Cornell University Press, 1989); Sanjay Nigam, "Disciplining and Policing the 'Criminals by Birth," *Indian Economic and Social History Review* 27 (1990), 131–64; Radhika Singha, "'Providential Circumstances: The Thuggee Campaign of the 1830s and Legal Innovation," *Modern Asian Studies* 27 (1993): 83–146; Janaki Nair, *Women and the Law in Colonial India* (New Delhi: National Law School of India University, 1996); Uday Singh Mehta, *Liberalism and Empire* (Chicago: University of Chicago Press, 1999); Scott Kugle, "Framed, Blamed and Renamed: the Reshaping of Islamic Law in Colonial South Asia," *Modern Asian Studies* 35 (2001): 257–313; Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003); and Nicholas Dirks, *Scandal of Empire: India and the Creation of Imperial Britain* (Cambridge, MA: Harvard University Press, 2006).

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

visibly with the condition of Muslims and other ethnic or religious minorities within India today, the world's largest democracy, but also, we might add the privileging of some kinds of Muslim legal experts and interpretations over others in the Islamic Republics of Iran, Pakistan, and Afghanistan in recent decades (or in the Taliban Emirate for that matter). Apart from actual physical violence employed through the law, there is the related struggle of who gets to define the law, be it "Islamic," "Hindu," "secular," or any other sort.

### *Epistemic Violence*

No less important and concerning than physical violence is epistemic violence and the need to amplify missing or silences voices, be they minorities or non-elites or those otherwise marginalized by race, class, gender and sexuality, or other markers of individual and collective identity and ways of life. As Southeast Asian legal historian Nurfadzilah Yahaya reminds us, a focus on modern law "tells a story of how violence was deployed in an administrative and political mode rather than brute force. Modern legal institutions' robust power lay in its ability to silence competing perspectives and impose a sense of legitimacy buttressed by policing and enforcement."[11] As we expand our gaze beyond brute force to consider the epistemic violence of national laws and constitutions, some relevant questions for each of the six South Asian states discussed here might be: As constitutionalizing states also became more centralized, what was the impact on alternative legal and mediation systems? Did local shura councils, panchayat, ulema, village elders, and other "non-state" legal actors continue to exert their authority, or were they stripped of it by codification, including with the ratifying of written constitutions? There is no single answer here but it may be insightful to study how these often pivotal and influential actors engaged South Asian constitutions and courts over the course of the twentieth century.

### *Dealing with "Shameful" Cases*

It is standard practice is United States law schools to not just study the celebrated cases inauguring greater rights or access or other forms of progressive change, but also to study the troubling and "shameful cases" for their disturbing impact on the lives, property, and liberties of indigenous peoples and citizens of the lands now part of the United States. Common examples of the latter include *Johnson v. M'Intosh* (1823), *Cherokee Nation v. Georgia* (1831), and the dispossession of Native Americans of their land; *Dred Scott vs. Sanford* (1857) and the subhuman treatment of Americans of African descent; *Korematsu v. United States* (1944) and the Japanese American internment, as well as a number of United States Supreme Court cases limiting habeas corpus during times of war or emergency, from the American Civil War to the post-9/11 "war on terror." Do constitutional courts in these states have their own

[11] Yahaya, "Juridical Pan-Islam," 256.

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

"shameful cases," are they recognized as such today, and if so, how has the judiciary since dealt with them (or not)?

## Conclusion

There is a modern and specifically twentieth century chronology to most of the articles in this issue, specifically the pivotal 1940s to 1960s period that witnessed decolonization, partition, and foundational constitutional periods for most states in the region. The chronological anchor of this special issue in the twentieth century might signal to some the "recent" nature of constitutional history in South Asia. The profound ruptures, innovations, and dynamism of the post-colonial period must not obscure the significance and indeed need for further exploration into prior eras of South Asian legal history. In comparison to early modern constitutionalism in the Ottoman Empire or Iran, for example—although scholars can debate the applicability of the term—there appears to be relatively less work on courts and constitutions in Mughal India for example, to say nothing of early modern Chinese, African, or pre-Columbian examples in the Americas.[12] Such gaps and lacunae speak not to the absence of legal history in the Indian subcontinent or these other locales, but rather to the imperative for more work on legal and constitutional histories of the Global South more generally.

Judging from the rich contributions by historians of South Asia in this issue and other venues, such gaps and lacunae are being addressed, and comparative law courses are paying attention, with legal scholars of any world region becoming all the better for it. Meanwhile, following the inspiration of historians Nathan Huggins and Hayden White, and historical anthropologist Michel-Rolph Trouillot, as with any subject of inquiry, it is worth remembering that our foci of attention create areas of inattention; our chosen subjects of discussion create subjects of silencing or omission.[13] In the same spirit, when it comes to courts and constitutionalism of South Asia, the Middle East, or any other place, the articles in this issue remind us that the ultimate test of states or societies that claim to be democratic and constitutional, and to uphold the rule of law, is how their legal systems treat the most vulnerable, the most despised, and the most marginal of subjects and citizens. That responsibility remains just as relevant to the study of law as it is to the study of history.

[12] This is also a rapidly growing area of scholarship in Ottoman, Middle Eastern, and Islamic legal history. See, for example, Hüseyin Yılmaz, "Containing Sultanic Authority: Constitutionalism in the Ottoman Empire before Westernization," *The Journal of Ottoman Studies* 45 (2015): 231–64; Mina Khalil, "Early Modern Constitutionalism in Egypt and Iran," *UCLA Journal of Islamic and Near Eastern Law* 15 (2016): 33–54; Said Arjomand and Nathan Brown, eds., *The Rule of Law, Islam, and Constitutional Politics in Egypt and Iran* (Albany: SUNY Press, 2013); and Elizabeth Thompson, *Justice Interrupted: The Struggle for Constitutional Government in the Middle East* (Cambridge: Harvard University Press, 2013).

[13] Nathan Irvin Huggins, "The Deforming Mirror of Truth," in *Black Odyssey: The African- American Ordeal in Slavery* (New York: Vintage, 1990), xi–lxx; Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon, 1995); and Hayden White, *Metahistory* (Baltimore: Johns Hopkins University Press, 1973).

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press

**Acknowledgments.** This article is dedicated to the memory of one of my teachers, Abdul Rasheed Rashid (1942–2023), an exceptional jurist and former Justice of the Supreme Court of the Islamic Republic of Afghanistan; and one of my students, John Owen Habib (2002–2023), an exemplary Brunonian and global citizen. May their legacies to building a brighter future endure in our lives and in the world around us.

**Faiz Ahmed** is the Joukowsky Family Distinguished Associate Professor of Modern Middle Eastern History at Brown University and a Visiting Fellow at the Program on Law and Society in the Muslim World at Harvard Law School. <faiz_ahmed@brown.edu>

**Cite this article:** Faiz Ahmed, "Courts and Constitutions in South Asia and the Global South: A View from the Middle East," *Law and History Review* 41 (2023): 405–415. https://doi.org/10.1017/S073824802200058X

https://doi.org/10.1017/S073824802200058X Published online by Cambridge University Press