



# PROJECT *on* Middle East Democracy

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## “The Origins of the Rule of Law: Europe and the Middle East”

School of Advanced International Studies  
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In the third installment of his speaking series "Getting to Denmark: Where the State, Rule of Law and Accountable Government Come From," **Francis Fukuyama**, director of the International Development Program at the Johns Hopkins School of Advanced International Studies, presented a lecture about the development of the Rule of Law in the Middle East and Europe.

Picking up from his previous lecture, Fukuyama continued his discussion of the exit from kinship politics in the Middle East and Europe. In the Middle East, leaders moved away from tribal federations, which provided only short-lived power, and adopted the Byzantine and earlier Greek model of military slavery. This process, instituted by Caliph al-Mahdi in the 9<sup>th</sup> century, enslaved young Christians and raised them within the Turkish system to create servants more loyal to the caliph than Muslim tribesmen. This extreme way of dealing with tribalism also created one-generation aristocracies beholden to the state and empowered a strong central administration. Fukuyama contrasted this progression with the Western European experience in which Christianity, not a central political authority, propelled the rejection of tribalism that had been occurring in Europe since the fall of Rome. Conversion to Christianity brought prohibitions on close relative marriages, adoptions and priestly marriages, all of which were tools used by the church to limit the consolidation of power and land along kinship lines and to prevent a division of loyalty within the clergy.

Moving to the subject of Rule of Law, Fukuyama explained that it has been a major policy issue since the fall of communism and that there have been many attempts to help stage elections, write constitutions, and create rule of law system. He argued, however, that behind the rhetoric there is a lot of confusion about what rule of law means and no clear picture of how to promote it. Economists have identified rule of law with property rights and contract enforcement, with the hope that increased investment will lead to greater participation and accountability. Fukuyama felt that **a better approach is to identify the rule of law as an invariant set of societal values that apply to everyone, including the leadership of a country.** Of the four civilizations Fukuyama covered, China, India, the Middle East and Western Europe, all but China found this normative underpinning in religion. Religion, here, is understood as the transcendental faiths that underpinned social identity and in which the members of those societies did not choose their belief system. The rulers of these societies were seen as enforcers of God's law, not the originators, and so were subjects to the religions.

The strengths of these rule of law systems can be measured against four principles: if the laws are codified, if the content of law is determined by legal specialists, if the law is protected separately from the political hierarchy, and if it reflects the social beliefs of the people. The Middle Eastern and European traditions shared all of these principles, except the separation of the law from political influence. The Catholic Church was able to gain autonomy from the Holy Roman Emperor under **Pope Gregory VII** in the 12<sup>th</sup> century, while in the Arab world the political sphere continued to dominate the religious hierarchy

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until colonialism. Fukuyama noted that when it comes to the forth principle there was no discontent between law and social beliefs in the studied countries, but that **developers of modern legal systems must recognize that Western law is not the tradition widely accepted in target countries.**

Fukuyama then traced the development of the rule of law in Europe and the Middle East. Citing the exclusion of women's and minority rights in the U.S. constitution, he pointed out that the rule of law, in all societies, was only first applied to the aristocracy and much later radiated to the peasant class. In England, the strength of the rule of law came from the protection of property rights and a centralized legal system in which the king saw his role as the protector of those rights. **In the Middle East, the rule of law suffered a more tragic fate.** The *ulamma* lost its standing under the Caliph, then under colonialism the sharia was codified and become one of a number of legal systems imported to the region. Post-colonial systems attempted to continue the imported rule of law, but they were overthrown by military leaders that recognized no checks on their authority. **Noah Feldman** has argued that the current large demand for sharia law in many countries, including the Turkish AKP and Moroccan PJD, is not a call for harsh punishment, but is a dimly remembered call for a period in history where the king was limited by the rule of law. Fukuyama explained that the question then becomes: if Islamist parties come to power will they set up serious interpreters of the law that will limit the power of the government or will the movements become theocracies. Saudi Arabia can be viewed as an example of the former possibility and Iran as the latter. Fukuyama suggested that Iran, however, is very interested in a rule of law, but section 8 of the 1907 constitution allowed the Supreme Leader the power of the veto and authority over the army, which has led to a military influence over the religious authority.

To conclude, Fukuyama explained that it is hard to develop too many policy implications from this analysis. In terms of rule of law we tend to associate this with strong institutional factors, but we forget the need for the rule of law to correspond to the underlying values of the country. In Iran, opposition leader **Mir Hussein Moussavi** is advocating to make the Islamic Republic more democratic, but not to change underlying social traditions in favor of modern liberalism. **The West needs to decide if it can live with this arrangement.** You can have a weaker rule of law that reflects Western values or a stronger rule of law that reflects local values. Lastly, Fukuyama reminded that audience that the rule of law preceded democracy in the West and that we should have the humility to recognize we have no experience creating a rule of law after the state has already consolidated power.

Fukuyama then fielded several questions from the audience. He highlighted the difference between Catholic tradition and the Eastern European rule of law that was weakened by the Byzantine Emperor's continued appointment of Orthodox bishops. When questioned whether the Catholic Church should be viewed as a political rather than social phenomenon, he commented that the church was both and that focus should not be on the rooting of particular institutions, but rather on the disbursement of power that limits centralized sovereignty. **The balance of power between the political and legal authorities is what is critical.** Even though the four countries that he studied witnessed the creation of a rule of law from a religious tradition, Fukuyama argued that religion is not a necessary step to developing modern systems. Referring back to the Middle East, he reiterated that the Arab rule of law was disrupted by Western legal codes, not rooted in the people's beliefs, and so Arab rulers were able to ignore legal codes that limited their power. Asked about Sunni and Shi'a divisions, he noted that Shi'ism is closer to the Catholic tradition and he hopes that Iran will transform its Supreme Council to a Supreme Court. Lastly, he argued that there are no longer religious hegemonies and it is not possible to root rule of law systems in religion, which is what happened in modern Europe and thus lead to a liberal approach. Establishing a rule of law is not a question of its formal design, but is rather a reflection of the actual values within a culture.