Contents

	Note on the transliteration	X1
	Foreword	xiii
	BRIAN WHITAKER	
	Acknowledgements	XV
	Introduction	1
	Background: what this book is about 1	
	Why Egypt and Tunisia? 2	
	Human rights and shari'a: a complicated relationship 3	
	Sexual minorities and freethinkers: the pariahs of the	
	human rights debate 4	
	On 'Islam and Human Rights' again? A few	
	methodological clarifications 6	
	Book outline 9	
I	Constitutionalism and Islam	12
	Background 12	
	The Western concept of 'constitution' 13	
	A brief historical overview of constitutionalism in Islam 16	
	'Liberty' in Islam 17	
	Political freedom and good government 18	
	'Right of resistance'? 20	
	A theocratic state? 21	
	More 'Muslims' than 'citizens' 24	
	'Islamic democracy'? 25	
	Final considerations on the inner tension between Islam and constitutionalism 27	
II	The Islamic conception of individual liberties	31
	Introduction 31	U.
	The Universal Islamic Declaration of Human Rights 32	
	and a minimum and the service of a service o	

	The Cairo Declaration on Human Rights in Islam 36 The Arab Charter on Human Rights 39 The Al-Azhar Constitutional Project 42 Final Remarks 48	
III	What 'sharica' in a constitution concretely means: the case of Egypt Introduction 50	5
	Historical background 50 The uncertain meaning of the 'principles of sharica' as 'the main source of the legislation' 51	
	Interpretation of article 2 by the Supreme Constitutional Court: non-retroactivity 53	
	Interpretation of article 2 by the Supreme Constitutional Court: 'absolute' vs. 'relative' principles of sharica 55 A critique of the SCC's interpretation of Article 2 59 Final considerations and open challenges 62	
IV	Islamic law in post-Arab Spring Egyptian Constitutions Introduction 64 Article 2, the untouchable 64 The expansion of Article 2 65 How should 'principles of sharica' be interpreted? 65 The role of Al-Azhar 67 Nulla poena sine lege or maybe not? 70 Civil, military or theocratic state? 70 Contempt for the sacred 71 Status of non-Muslim minorities 72 Women's rights 73 Individual liberties vs. society's will 75 Final considerations 77	6
V	Compromises and ambiguities in the 2014 Tunisian Constitution Introduction 79 Article 1: the role of Islam 80 Article 2: The 'civil state', dawla madaniyya 82 Article 6, sive 'Le pot-pourri de la constitution tunisienne' 87 Women vs men: not equal, but 'complementary' 91 Light and shadows of the 2014 Tunisian Constitution: The Code des Libertés as a crucial but unlikely step forward 94	7

1	Introd	luction	to the	COCA	etudies
J	Introd	luction	to the	case	studies

97

VI (II)legal persecution of freethinkers

99

Introduction 99

Tunisia 99

Statutory provisions 99

Ils ne sont pas Charlie: Muhammad's cartoons as a threat to social peace 101

Ni Allah Ni Maître, or 'the crime of atheism' 103 Mounir Baatour and Emna Chargui: 'blasphemous extremists'? 105

Egypt 106

Legislation criminalizing apostasy and blasphemy 106 Patterns of persecution of atheists and blasphemers 109 Islamists and (un)free speech 112

Relevant case studies 115

The 'Abu Zayd case': an unfortunate milestone 115 The case of Alber Saber: An example of a revolution without freedom 119

Blasphemy, heresy, atheism ... even homosexuality: all sides of the same coin 120

Final reflections on Egyptian and Tunisian freethinkers: public order and fitna 123

VII (II)legal persecution of sexual minorities

125

Introduction 125

Tunisia 126

Relevant provisions 126

Relevant case law on *liwāţ* 128
Non-conformist behaviours outside of the scope of
Article 230 130

Strategies for decriminalization 131

Abrogation of Article 230 131

Judgment of a prospective Constitutional Court 133

Ban on the anal test 133

Comprehensive revision of the penal code 135

Egypt 136

The witch-hunt against the 'debauched' 136

Elements of evidence 140

Religious grounds for prosecuting homosexuality 142

Recent trends in persecution 145

Strategies for decriminalization 147

Final consideration on anti-gay laws in Egypt and Tunisia 148

VIII	Constitutional and international freedoms	150
	Constitutional obligation to abide by international law 150	
	Non-discrimination 153	
	Freedom of conscience and belief 155	
	Freedom of expression 157	
	Right to privacy 159	
	Protection of human dignity, freedom from torture and inhuman treatments 161	
	Legitimate restrictions of rights 162	
	Final considerations 163	
IX	Conclusions: constitutions and individual freedom:	
	the unbreakable bond	164
	Bibliography	169
	Index	189