

11-1-2015

Emon, Anver M., Mark Ellis, and Benjamin Glahn, (Eds.). Islamic Law and International Human Rights Law. Oxford: Oxford University Press, 2012.

Turan Kayaoglu Ph.D.
University of Washington Tacoma, turan@uw.edu

Follow this and additional works at: <https://digitalcommons.lindenwood.edu/jigs>



Part of the [Anthropology Commons](#), [Critical and Cultural Studies Commons](#), [Environmental Studies Commons](#), and the [Sociology Commons](#)

Recommended Citation

Kayaoglu, Turan Ph.D. (2015) "Emon, Anver M., Mark Ellis, and Benjamin Glahn, (Eds.). Islamic Law and International Human Rights Law. Oxford: Oxford University Press, 2012.," *Journal of International and Global Studies*: Vol. 7: No. 1, Article 7.

DOI: 10.62608/2158-0669.1263

Available at: <https://digitalcommons.lindenwood.edu/jigs/vol7/iss1/7>

This Book Review is brought to you for free and open access by the Journals at Digital Commons@Lindenwood University. It has been accepted for inclusion in Journal of International and Global Studies by an authorized editor of Digital Commons@Lindenwood University. For more information, please contact phuffman@lindenwood.edu.

Emon, Anver M., Mark Ellis, and Benjamin Glahn, (Eds.). *Islamic Law and International Human Rights Law*. Oxford: Oxford University Press, 2012.

Much has been written about the relationship between Islamic law and international human rights. The debate about the nature of the relationship between the two has been shaped by four perspectives: first, by the *human rights universalists*, who assert that Islamic law should be praised when it coincides—and repudiated when it conflicts—with international human rights law. To ensure compliance with the universal international human rights law, they say, Muslims should adjust and reform Islamic law. The second perspective belongs to *Muslim apologetics*, for whom, from its inception, Islam has always provided all human rights codified in modern times as international human rights. For the *Cultural relativists*, Islamic law and international human rights law reflect different systems of values and thus represent incommensurable approaches to human rights and dignity. Since there is no external vantage point from which to judge them, say the proponents of this perspective, comparing and contrasting these traditions with each other violates each tradition’s self-contained nature. Finally, there are the *Naïve hopefuls*, who say that both Islamic law and international human rights advance the same core values and share a common ground, and thus we need to focus on commonalities, not on differences.

Dissatisfied with these perspectives, the book’s contributors offer a “genealogical approach.” They aim to clarify the “historical, intellectual, and political contours of each tradition” (5). The contributors believe that in order to go beyond the superficial connections, maintain the integrity and identity of both Islamic law and international human rights, and understand the parameters of common ground, an initial clearing of ground, a deep examination of these foundations, is imperative. This examination is not easy because of the numerous manifestations of these traditions. To deal with the fluidity and complexity of the topic, the authors provide context for the manifestation of these traditions as lived experiences. Focusing on context is also normatively important because “situating a practice in local context can make it more understandable so that it becomes less alien” (383).

To develop its genealogical approach, the book focuses on four issues—freedom of speech, freedom of religion, the rights of women, and the rights of minorities—and provides a rich analysis of the construction of these traditions in specific contexts. Each of the four issues is analyzed via two main essays: one on Islamic law and one on international human rights law. These longer essays emphasize the development of both Islamic law and international human rights; several shorter commentaries introduce additional discussion.

The work’s essays highlight five points. First, they examine *the diversity and plurality of each tradition*, which are often fluid and contingent; legal institutions and practices have stable meanings only within a given context. Questions such as apostasy, for example, cannot be understood apart from historical and geographical context. Since context shapes these traditions, analysts should be attuned to the diversity and plurality of each tradition. Next discussed is *the nature and purpose of law*, as differences in the nature and purpose of laws inform basic legal definitions, such as freedom and equality. The essays additionally address *the centrality of the modern state*, since the (modern) state has enormous power in shaping, interpreting, limiting, and applying Islamic law or international human rights law, and, as such, debates about the nature of the relationship between Islam and international human rights should also engage with the role of state. For example, a modern state’s commitment to Islamic law has a myriad of complex manifestations including symbolic, advisory, or legislative dimensions. Next, the essays describe *the necessity of relativizing both traditions*; Nehal Bhuta articulates this when he asserts, “Rather

than take one set of principles as the universal norms. . . , we [must] relativize both set of values by trying to grasp their meaning and social significance within specific historical formulations of politics, place, and power” (125). Finally examined are *the social and moral basis of the differences* between Islamic law and international human rights law. It is here that the contributors claim that conflicts between Islamic law and international human rights law do not necessarily reflect incommensurable values. Rather, in the words of Javaid Rehman, these conflicts are indicative of the “tensions inherent in social life: freedom versus order, individual identity versus community solidarity, or protection of privacy versus freedom of expression” (386). For a well-functioning society, the values of both traditions have a time and place, and eliminating one to avoid a particular conflict at a particular time can cause “a loss of human possibilities for society as a whole” (386).

The volume unfolds in five sections: Part one discusses the nature and scope of Islamic law and international human rights law. Rejecting essentialism, this part lays out the level of diversity in each tradition. For Islamic law, the focus is on doctrines, interpretation, and application; for international human rights law, the focus is on declarations, conventions, and human rights bodies. Part two discusses freedom of speech by describing the layers of speech protection and regulation states have developed. Part three discusses religious freedom by examining the ambiguity of the phrase “religious freedom” and detailing states’ role in limiting freedom of religion. This section highlights how “religion” is defined by law and how these definitions can inform freedom of religion and state restrictions of freedom of religion. Part four discusses gender equality. This section describes various campaigns for gender equality and the ways in which these campaigns blend Islamic law and international human rights law. Moreover, the contributors of this section situate the debates surrounding gender equality within larger debates about the identity of ‘citizen’ and ‘nation’. Part five discusses minority rights by examining the tension between states’ valuing minorities as an asset in terms of diversity while simultaneously dealing with minority populations as an inconvenient reality.

Overall, this is a valuable addition to the literature on human rights as well as Islamic law. Some of the chapters particularly stand out to this reviewer for their rigor: Anver Emon’s “Shari’a and the Modern State,” Nehal Bhuta’s “Rethinking the Universality of Human Rights: A Comparative Historical Proposal for the Idea of ‘Common Ground’ with Other Moral Traditions,” Abdullah Saeed’s “Pre-Modern Islamic Legal Restrictions on Freedom of Religion, with Particular Reference to Apostasy and its Punishment,” Ratna Kapur’s “Un-Veiling Equality: Disciplining the ‘Other’ Women Through Human Rights Discourse,” and Ziba Mir-Hosseini’s “Women in Search of Common Ground: Between Islamic and International Human Rights Law.”

Despite the strength of individual chapters, however, the book is not without theoretical, empirical, and stylistic flaws. Theoretically, the volume pays little attention to interaction between Islamic law and international human rights. This is somewhat surprising, as in the book’s Forward, Edward Mortimer states that Islamic law and international human rights law are “influencing and reacting to each other.” In part, because the main essays focus on either Islamic or international human rights law, understanding each as largely self-contained traditions, mutual interaction and influence were left unexplored. This is unfortunate, for many contemporary issues in international human rights law and Islamic law inform and influence each other. For example, the debate about blasphemy laws has been influenced by debates about free speech, as some Muslims are reacting against free speech, while others are fighting for it. On the other hand, some applications of blasphemy laws also inform European debates about hate speech

targeting religions or debates about the limits of state action to prevent the incitement of religious hatred.

Empirically, all substantive issues addressed in the volume are hot-button issues, which makes the book an interesting read. However, the text's skewed focus stresses the conflict and differences between Islamic law and international human rights law more than it attends to their agreements and similarities. This imbalance may be due in part to the real or perceived differences between Islamic law and international human rights law. A focus on equally compelling issues such as the right to life, banning of torture, due process of law, or the right to education would, arguably, produce more instances of commonality.

There are additional minor shortcomings. Stylistically, although the commentaries provided in the text are valuable, they are also uneven in terms of the quality of their engagement; some add little to the discussion. Moreover, perhaps owing to the edited nature of the book, some cases such as the decision by the European Court of Human Rights in *Turkey v. Sahin* are discussed several times without adding much to the debate. Finally, some additional editing would make the book more concise and readable. The short introductions at the beginning of each of the five parts do a good job in contextualizing the discussion, and the conclusion ties the volume's common themes together well, but the text overall could have been expanded to discuss the way forward. In sum, this volume articulates a new methodology and provides an insightful discussion about major questions of Islamic law and international human rights law.

Turan Kayaoglu PhD
University of Washington, Tacoma
turan@uw.edu