

BOOK REVIEWS

Rediscovery and Revival in Islamic Environmental Law: Back to the Future of Nature's Trust,
by Samira Idllalène

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Faced with the increasingly apparent shortcomings of ‘modern’ regulatory models for combating the climate crisis, Samira Idllalène advocates a renewed role for Islamic environmental law in this concise and timely book. She argues that Islamic norms resemble those of modern environmental law but base their legitimacy in the sources of Islam (p. 86). Underlying her contribution is the idea that Islamic law could be used to reframe environmental law approaches in states with large Muslim populations¹ so as to further motivate efforts for climate action. In the context of this premise, the book offers a roadmap for Islamic environmental law that is drawn from the *Sharia* and Muslim states’ own ecological traditions. Idllalène suggests that ‘[t]apping into the ecological potential of Islamic religion and law is essential to enforce environmental law and protect the planet’s resources’ (p. 9).

Idllalène’s book explores a highly pertinent but overlooked subject. Firstly, religion has long been closely entangled with (international) law² and with human approaches to the environment.³ Secondly, a great majority of the world’s population identify as religious (with Islam being the second largest but fastest growing religion), and studies indicate that religiosity is experiencing a revival in public life.⁴ Thirdly, as a social institution, religion is able to inform the values, views, and behaviour of its adherents, promoting

¹ I use this terminology to capture the variety of states with large Muslim populations. Some Muslim majority states (such as Iran, Pakistan, and Afghanistan) identify as Islamic republics, while others (such as Indonesia) do not. States like India have a very large Muslim population in absolute terms, but Islam is still a minority religion in relative terms. While some states recognize Islam as a source of law in their constitutions, others may apply only parts of Islamic law (family law) or custom – or none at all. As such, it is difficult to generalize about ‘Muslim states’ and each must be understood in its own context.

² R.Y. Paz, ‘Religion, Secularism, and International Law’, in A. Orford & F. Hoffman (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016), pp. 923–38, at 923.

³ Koehrsen notes that ‘[r]eligion shapes the worldviews and moral attitudes of their adherents and how they approach nature’: J. Koehrsen, ‘Muslims and Climate Change: How Islam, Muslim Organizations, and Religious Leaders Influence Climate Change Perceptions and Mitigation Activities’ (2021) 12(3) *WIREs Climate Change*, e702, p. 2.

⁴ Pew Research Centre, ‘The Future of World Religions: Population Growth Projections, 2010–2050’, 2 Apr. 2015, available at: <http://www.pewforum.org/2015/04/02/religious-projections-2010-2050>; M.D. Toft, ‘False Prophecies in the Service of Good Works’, in D. Lettinga & L. van Troost (eds), *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World* (Amnesty International, 2014), p. 48; M.H. Fadel, ‘Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights Law’ (2007) 8(1) *Chicago Journal of International Law*, pp. 1–20, at 1.

voluntary compliance with its norms.⁵ Despite this normative promise, Idllalène laments the scarcity of *legal* research examining religion and climate change in the preface of her book – a concern which I echo.⁶ Idllalène’s proposition that climate change must be addressed in conjunction with its cultural and religious roots (p. 2) is supported by numerous scholars, including a recent report by the United Nations (UN) Special Rapporteur in the field of cultural rights.⁷ While I am optimistic about the potential of Islamic environmental law, certain caveats apply, which I address below in my discussion of the book.

Idllalène’s book is structured into six short and accessible sections that address the substantive aspects of Islamic law regarding the environment and explain the distinct contribution of ‘Eco-Islam’. She convincingly makes the case for adopting the latter paradigm and sketches the impact that it could have in Muslim states and around the world (pp. 12–28). The book introduces and explains Arabic and Islamic terms and compares them throughout with common law concepts. Despite this aid, parts of the book may be somewhat of a challenge for those new to Islamic law – one well worth the effort, however. It is particularly important that the book is written in English in order to introduce long-standing and well-known Islamic concepts and ideas to new audiences.

According to Idllalène, there are some 675 verses of the *Qur’an* that contain environmental norms relating to water, land, air, plants, animals, and other natural resources (p. 35). Additionally, the *Qur’an* prohibits wastage and all types of pollution (p. 36). Common to all the Abrahamic faiths, Islamic law appoints humankind as stewards of the earth, tasked with caring for God’s creation.⁸ Unsurprisingly, therefore, the book dedicates special attention to this idea, starting with the *Qur’anic* verses that identify humans as God’s deputy on earth: ‘The principle of *Khilafa* (viceregency or trusteeship) confirms the responsibility of human beings for the protection of the environment with which they have been entrusted’ (p. 35). This role appears particularly pertinent in the light of both large carbon polluters in the Middle East,⁹ as well as several climate-vulnerable states in Asia and Africa having a majority Muslim population.

While the *Qur’an* is the primary source of Islamic law, it is not the only one. Others include the *Hadith*¹⁰ (sayings of the Prophet) and *Fiqh* (a form of jurisprudence produced by learned Islamic scholars). *Fiqh*, especially together with *Ijtihad*

⁵ J. Fraser, *Social Institutions and International Human Rights Law Implementation: ‘Every Organ of Society’* (Cambridge University Press, 2020), p. 15.

⁶ While there is a growing range of scholarly interest in the nexus between religion (mainly Christianity) and climate change, most of it is in the field of religious studies and not the legal discipline.

⁷ UN Special Rapporteur in the Field of Cultural Rights, ‘Report on Climate Change, Culture and Cultural Rights’, 10 Aug. 2020, UN Doc. A/75/298, available at: <https://www.ohchr.org/en/documents/thematic-reports/a75298-report-climate-change-culture-and-cultural-rights>.

⁸ See J.J. Kaminski, ‘The OIC and the Paris 2015 Climate Change Agreement: Islam and the Environment’, in L.A. Pal & M.E. Tok (eds), *Global Governance and Muslim Organisations* (Palgrave Macmillan, 2019), pp. 171–95, at 174.

⁹ *Ibid.*, p. 190 (noting that ‘7 of the top 15 oil-producing states in the world are OIC [Organisation of Islamic Cooperation] member states: Saudi Arabia, Iraq, the UAE, Iran, Kuwait, Nigeria, and Qatar’).

¹⁰ For a study of the *Hadith* regarding nature and its protection, see S. Noorhidayat, A.Z. Abidin & I. Ahmadi, ‘Understanding Hadith on Nature Conservation: An Effort to Reinforce Ecological Piety’ (2022) 7(10) *KnE Social Sciences*, pp. 24–35.

(independent reasoning),¹¹ make Islamic law dynamic and applicable to contemporary settings such as climate change. Ascertaining and applying norms regarding the environment from across the sources of Islamic law is now a major task for Islamic scholars. This is because, Idlallène argues, Islamic environmental law has largely fallen into disuse in the Muslim world. While Islamic law is still commonly used for family law in Muslim states, a Western legal model is typically adopted for environmental law (p. 32). This is an example of the epistemic losses flowing from colonialism and persistent Western hegemony. As such, Idlallène's book is also a call-to-action for Islamic scholars.

One solution that Idlallène highlights is the role of *fatwas* (non-binding Islamic rulings) in 'paving the way for a new understanding of *Sharia*'-based environmental law' (p. 119). Numerous so-called 'green' or 'eco-*fatwas*' have been issued in 'pioneer countries' like Indonesia.¹² There, the Indonesian Ulama Council (Majelis Ulama Indonesia) has issued eco-*fatwas* on pressing environmental topics, which include illegal logging, mining practices, endangered species, forest burning, waste management, and clean water and sanitation.¹³ Idlallène specifically foresees the use of eco-*fatwas* in order to 'green' Islamic finance, which is used in many high-carbon polluting Muslim majority states (p. 132). She suggests that eco-*fatwas* could be relied upon by potential Muslim investors to approve (or disapprove) of proposed finance projects based on their environmental impact (p. 133).

A significant part of the book – Chapter 5 – is dedicated to mapping out potential areas of growth for Islamic environmental law; this represents the book's main contribution. Here, Idlallène advocates the revival of the Islamic concept of *Waqf* to protect the environment. As a pious endowment, *Waqf* is 'a permanent dedication by a Muslim of any property for religious or charitable purposes, or for the benefit of the founder and his [sic] descendants, in such a way that the owner's right is extinguished, and the property is considered to belong to God' (quoting Hussain, p. 24). According to Idlallène, *Waqf* could be leveraged to protect the environment in a similar way to how the National Trust protects historical spaces and places in the United Kingdom (UK) (p. 27). She argues that, like public trusts in the UK, *Waqf* are dedicated 'to the public interest for present and future generations' (p. 74). Environmental *Waqf* have already been used in several Muslim majority states and could be extended to other contexts (p. 139). For example, Indonesia has a *Waqf* that addresses water supply and purification (p. 131).

¹¹ W. Hallaq, *An Introduction to Islamic Law* (Cambridge University Press, 2019), p. 27.

¹² S. Ramlan, 'Implementing Islamic law to Protect the Environment: Insights from Singapore, Malaysia, and Indonesia' (2020) 23(2) *Asia Pacific Journal of Environmental Law*; A.M. Gade, 'Islamic Law and the Environment in Indonesia: Fatwa and Da'wa' (2015) 19(2) *World Views Environment Culture Religion*, pp. 161–83; Koehrsen, n. 3 above, pp. 9–11; F.M. Mangunjaya & G. Praharawati, 'Fatwas on Boosting Environmental Conservation in Indonesia' (2019) 10(10) *Religions*, pp. 1–14.

¹³ See MUI Fatwa No. 128/MUI-KS/XII/2006 on forest fires and smog; Fatwa No. 22 of 2011 on Environmentally Friendly Mining Practices; Fatwa No. 4 of 2014 on the Protection of Endangered Species to Maintain the Balanced Ecosystem; Fatwa No. 127/MUI-KS/XII/2006 on Illegal Logging and Illegal Mining by a Kalimantan Branch of MUI; Fatwa on Burning Forest, 14 Nov. 2006; Fatwa No. 1/MUNAS-IX/MUI/2015 on the Utilization of Zakat *Infaq Shadaqah* and *Waqf* (ZISWAF) for the Construction of Clean Water & Sanitation for Communities.

A *Waqf* could also be created to fund environmental research and development, to provide goods and services related to climate mitigation and adaptation, or to protect animals (p. 135). A *Waqf* could be established to serve as a fund for pursuing environmental litigation (p. 135), which is a growing practice in Muslim majority states such as Pakistan and Bangladesh,¹⁴ or to support legal interventions via *amicus curiae* briefs in ongoing cases (p. 127). Idlallène suggests that Islamic verses could be relied upon in legal arguments before courts and in drafting new legislation (p. 36). Islamic verses have already been used in international declarations, such as the 1986 Islamic Declaration on Nature¹⁵ and the 2015 Islamic Declaration on Global Climate Change.¹⁶ This latter declaration ‘framed the issue of environmental stewardship in both scientific and religious terms, thus containing a message that could resonate with a very wide audience’.¹⁷

Given that Islamic jurisprudence and scholarship transcend state borders, they can have significant influence throughout the Muslim world. As such, I suggest that Islamic environmental law tools like *Waqf* could be adopted in several states and even become a regional norm that influences international environmental law. Cross-fertilization between sacred and secular legal norms has been well documented,¹⁸ with religion having long influenced international law.¹⁹ While Islamic law has a universal character and applies to all Muslims, I argue that modesty is necessary when considering the transferability of concepts and practices from one Muslim context to another.²⁰ Despite many commonalities, Muslim majority states are hugely diverse: what works in Indonesia may not work in Jordan, let alone Malaysia. Islam contains great intra-plurality, including multiple branches and schools of thought. Therefore, any assumption that Islamic-styled environmental legislation could be cut and pasted from one Muslim context to another should be tempered. Unfortunately, the book does not engage in detail with these issues of generalizability of concepts across the Muslim world.

The premise of Idlallène’s argument is that ‘[t]he law is best enforced when it stems from the culture and beliefs of society’ (p. 18), which is supported by a range of

¹⁴ See, e.g., J. Peel & J. Lin, ‘Transnational Climate Litigation: The Contribution of the Global South’ (2019) 113(4) *American Journal of International Law*, pp. 679–726.

¹⁵ A. Omar Nasseef, Secretary General, Muslim World League, *The Muslim Declaration on Nature* (Assisi, 1986).

¹⁶ International Islamic Climate Change Symposium, Islamic Declaration on Global Climate Change, 17–18 Aug. 2015, available at: <http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change>.

¹⁷ Kaminski, n. 8 above, p. 180.

¹⁸ Menchik has argued that secular and sacred forms of knowledge ‘are mutually constitutive and co-evolve over time’: J. Menchik, ‘The Co-evolution of the Sacred and Secular: Islamic Law and Family Planning in Indonesia’ (2014) 22(3) *South East Asia Research*, pp. 359–78, at 362.

¹⁹ Grotius, who is lauded as the ‘father of international law’, wrote more prolifically on Christian theology than he did on international law: D.M. Bigge, ‘Justifications for the Promotion of Religious Diversity on the International Bench’, in F. Baetens (ed.), *Identity and Diversity on the International Bench* (Oxford University Press, 2020), pp. 62–78, at 70, n. 32; C.A. Stumpf, ‘Christian and Islamic Traditions of Public International Law’ (2005) 7 *Journal of the History of International Law*, pp. 69–80, at 74.

²⁰ Fraser, n. 5 above, p. 290.

scholarship,²¹ including my own empirical work in Indonesia.²² Other scholars have similarly hypothesized that Islamic environmental law is ‘likely to win greater respect than conventional environmental law due to the fact that the legislator of Islamic principles is Allah’.²³ Religious leaders often enjoy widespread support and credibility within their community, which makes them influential in public debates, and they often lead organizations with (sometimes) significant resources to be mobilized around a cause.²⁴ To Idllalène, employing Eco-Islam across the Muslim world may be an answer to the poor implementation and enforcement of statutory environmental law (p. 11).

Despite expressing enormous hope for the potential of Eco-Islam, Idllalène also flags some potential weaknesses. For example, while relying on Islamic sources to compel or enforce environmental laws can be effective based on their legitimacy among Muslims, compliance is not guaranteed. Scholarship has indicated that the authority of religion is sometimes weaker than supposed and that social practices may diverge significantly from stated norms.²⁵ Idllalène concedes that even in states ruled by *Sharia* there are ‘appalling cases of environmental abuse, over-indulgent lifestyles and waste’ (p. 60, citing Kula). Despite the many Eco-Islam initiatives in Indonesia, research has shown that environmentalism is not always well received and tends to be taken up only in small groups.²⁶ Furthermore, empirical research demonstrating the actual environmental impact of initiatives like *eco-fatwas* is lacking.

To this I would add that Muslims, like other social/religious groups, hold the full spectrum of views on the environment and climate change.²⁷ Islam supports a wide range of views, as there is no uniform interpretation of Islamic law but rather a range of different schools of thought and no single leader like the Pope in Catholicism.²⁸ Some religious people interpret the climate crisis as sent by God and therefore something to be welcomed – a sign for some Christians of the Biblical ‘end times’.²⁹ This has led scholars to warn against presuming a ‘simple, unidirectional

²¹ See, e.g., S.E. Merry, ‘Transnational Human Rights and Local Activism: Mapping the Middle’ (2006) 108(1) *American Anthropologist*, pp. 38–51; A.A. An-Na’im, ‘Conclusion’, in A.A. An-Na’im (ed.), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press, 1992), pp. 427–37.

²² Fraser, n. 5 above, p. 212.

²³ A.U. Alkali & K.A. Daud, ‘An Expository Study of Islamic Environmental Law’ (2014) 28 *Journal of Law, Policy and Globalization*, pp. 87–96, at 94.

²⁴ Koehrsen, n. 3 above, p. 2.

²⁵ R.G. Veldman, A. Szasz & R. Haluza-DeLay, ‘Climate Change and Religion as Global Phenomena: Summing Up and Directions for Further Research’, in R.G. Veldman, A. Szasz & R. Haluza-DeLay (eds), *How the World’s Religions are Responding to Climate Change: Social Scientific Investigations* (Routledge, 2014), pp. 297–326, at 310.

²⁶ Koehrsen, n. 3 above, p. 10.

²⁷ *Ibid.*, p. 6.

²⁸ Hallaq, n. 11 above, p. 27.

²⁹ Veldman, Szasz & Haluza-DeLay, n. 25 above, p. 302; J. Copeland Nagle, ‘The Evangelical Debate over Climate Change’ (2008) 5(1) *University of St Thomas Law Journal*, pp. 53–86, at 69–70. This view is not endorsed by the Pope in his 2015 ‘Encyclical Letter *Laudato Si*’ of the Holy Father Francis on Care for Our Common Home’, available at: http://www.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf.

relationship between religions and climate change'.³⁰ Finally, both believers and non-believers may push back against the idea of giving more space to religion in the public sphere/legal system and seek to uphold a divide between the state and religion. Idllalène notes that some secular actors may be particularly reluctant to engage with or endorse religious views on the environment given more controversial aspects of Islamic law and a perceived link with terrorism (pp. 138–9).

Given the multiple environmental crises facing the planet, a diversity of tools and norms are needed to redress the situation. While certainly not a silver bullet, Islamic law has much to say about the relationship between humans and the environment, and offers significant untapped ecological potential in creating and enforcing norms (p. 144). Despite this, 'Eco-Islam is still in its infancy' (p. 11) and much more needs to be done 'to explore and systematize this potential' (p. 144). For example, Muslim jurists and scholars (like other lawyers and judges) need better education regarding climate science in order to interpret and apply Islamic law to contemporary environmental settings. Further cross-pollination between sacred and secular knowledge needs to occur. Partnerships need to be strengthened between governments, inter-governmental organizations, civil society, lawyers, conservation groups, and religious groups. All this needs to be done urgently, as time is not on our side.

Julie Fraser

Utrecht University, School of Law, Utrecht (The Netherlands)

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When Environmental Protection and Human Rights Collide: The Politics of Conflict Management by Regional Courts, by Marie-Catherine Petersmann
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The fate of Medina Spirit emblemizes modern relations between humans and non-human living beings.¹ Medina Spirit was an American racehorse, which was sold twice, first for a mere US\$1,000 and then again for US\$35,000, before finishing first in the 2021 Kentucky Derby. Though Medina finished first, he did not win, as he was later disqualified from the race for failing a doping test. The horse did not live to see his championship revoked. Several months after the Kentucky Derby, Medina collapsed and died shortly after finishing a training session. Medina Spirit

³⁰ R.G. Veldman, A. Szasz & R. Haluza-DeLay, 'Social Science, Religions and Climate Change', in Veldman, Szasz & Haluza-DeLay, n. 25 above, pp. 5–22, at 7.

¹ B. Hamilton, 'What Killed Medina Spirit? Inside the Champion Horse's Mysterious Death', *New York Post*, 9 Dec. 2021, available at: <https://nypost.com/2021/12/09/what-killed-medina-spirit-inside-the-champion-horses-mysterious-death>.