Editors' Introduction

From 'Common Ground' to 'Clearing Ground': A Model for Engagement in the 21st Century

Anver M Emon, Mark S Ellis, and Benjamin Glahn

A. Interrogating 'common ground'

This book is the culmination of a multi-year effort by the International Bar Association, the Salzburg Global Seminar and a group of global leaders in law, education, and civil society. The book itself focuses on the intersection of, and often conflict between, international human rights law and Islamic law. It represents nearly five years of dialogue between people of different perspectives, all of whom share the hope of a more humane global order. At a time when the foundations and universal claims of international law have been openly challenged,[1] and when the long and rich tradition of Islamic law has been degraded by extremists on all sides, our collective objectives have found expression in the pages of this anthology. This book emerges from that context and those aims at a time when the language of fear and the primacy of security have made the aspirations of openness and pluralism more difficult than they should be.[2] As a result, the difficulties of engagement, particularly on the most contentious issues lying at the intersection of Islamic law and international human rights law, have become more important than ever. Those who have contributed to this book over the past five years, whether as authors or discussants, have endeavored to design and delineate a space for dialogue about the demands and aspirations of each tradition that is also characterized by critical analysis, self-reflection, and mutual respect in the pursuit of common ground.

Pursuing that dialogue, though, has required a long-term commitment and engagement, and the results have been transformative for all involved. The seed

[1] Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2007); Martti Koskenniemi, *Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).

[2] Islamic law is increasingly being framed and evaluated by a concern for security. See for instance, *Sharia: The Threat to America* (Washington DC: Center for Security Policy, 2010).

for this project—and for this book—was planted in 2007, when the Salzburg Global Seminar and the International Bar Association co-hosted an international seminar on the challenges of balancing security, democracy, and human rights in an age of terrorism. In a post 9/11 context, after the invasions of both Afghanistan and Iraq, and alongside the increasing tensions, violence, and mistrust between the countries of North America and Europe on one hand, and those of the Muslim world on the other hand, serious questions had arisen about the ability of international law to protect fundamental rights and minimum standards of human decency in an age of terrorism. In hindsight, it is perhaps not surprising that the result of that seminar was a desire among all the participants not only to examine the elevation of security concerns to the potential detriment of the rule of law, but to understand more completely the diversity of Islamic law and its interpretations, and in particular, to identify areas of common ground that might exist between both traditions.

Seen from this perspective, the collective imperative to search for common ground is perhaps all too natural, especially in the context of the continuing conflicts since 11 September 2001. However, that imperative is not solely the product of 11 September 2001. Rather, it has its own unique historical genealogy, which was pushed to the forefront of geo-political considerations by the events of that day, but does not find its origins there. The desire to identify 'common ground' must be understood as situated within a larger history of engagement, conflict, and tension. That history involves the centuries-long development of religious traditions, the tensions inherent in Muslim encounters with Europe (and vice versa), the breakup of predominantly multinational empires, including the Ottoman Empire, the advent of modern European states and their colonial endeavors, and the rise of independent nation-states in the Muslim world after World War II.

Addressing that history necessitates the exploration of important questions about the meaning of 'common ground'. Contemporary scholarship on Islamic law and human rights has involved different approaches and methods in the search for common ground. One method is to identify those instances where Islamic legal doctrines coincide with the content of human rights law, while proclaiming as outdated or inapplicable those other areas of Islamic law that conflict with the contemporary body of international human rights law. For advocates of human rights, this approach is satisfying—it pays respect to the contributions Islamic law can make, but forfeits no ground and makes no concessions to a commitment to the full scope of human rights protections and doctrines.[3] Yet, for those suspicious of human rights, this approach showcases an important problem—it assumes either the universality, the truth, or simple authority (if not authoritarianism) of human rights doctrines over and against all other traditions of value. This approach employs an implicit (and sometimes explicit) hierarchy of values, where human

[3] See for instance, Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (new edn, Syracuse: Syracuse University Press, 1996).

rights are at the top, and other traditions, such as Islamic law, rise or fall based upon their capacity to meet the standards set by the human rights tradition.

Unsurprisingly, the Muslim world has generated a second approach, which is perhaps best understood as a response to the hierarchy implicit in the first approach. Advocates of this second approach argue, in apologetic fashion, that the traditions of Islamic law espoused human rights protections centuries before those enshrined in Western doctrine. Proponents of this view refer to the conditions of women, for instance, in pre-Islamic Arabia (ie pre-7th century CE) and suggest that the rules concerning women that were introduced by the Qur'an and Muhammad's teachings were designed to enhance the standing of women in society.[4] Certainly as a historical matter that may be true. But they fail to account for the conditions of modernity, and the way in which the early doctrines to which they refer are at best non-responsive to the context of contemporary human rights concerns and aspirations, and at worst, contrary to the very human rights norms that they proclaim are embedded in Islamic legal history.

Furthermore, this second approach does not adequately account for the complex history of human rights, and the processes by which its aspirations have become embedded in a global language of rights and protection. The adoption of human rights conventions at the end of World War II and following the Cold War marked the beginning of a new era in which certain international human rights principles transcended boundaries of culture, religion, and even the state. From a substantive perspective, many human rights can now be regarded as universally protected. This idea has gained broad currency, as evidenced by the Charter of the United Nations, the Universal Declaration of Human Rights, multilateral treaties, developments in international humanitarian law, and, importantly, their incorporation within the more general framework of international customary law.[5] In the aggregate, this points to an effective global consensus that the protection of human rights is universally applicable.

A third approach might suggest that no common ground can be found at all, and that we must instead embrace the reality of distinct systems of meaning and value, which cannot be evaluated except on their own terms. This argument, a crude form of the cultural relativist position, implies that traditions all have a history and provenance uniquely their own, should be valued on their own terms, and cannot be compared or contrasted to other traditions or foreign frameworks.[6] In an era of deep conflict and political correctness, this approach is tempting because it seeks to understand each tradition on its own terms and neither condemns nor judges one tradition over another. However, if left unchecked this third approach has the

[4] James C N Paul, 'Islam and the State: The Problems of Establishing Legitimacy and Human Rights' (1991) 12 *Cardozo LR* 1057–71, 1067; M K Nawaz, 'The Concept of Human Rights in Islamic Law' (1965) 11 *Howard LJ* 325–32, 325.

[5] *The Princeton Principles on Universal Jurisdiction* (Princeton: Program in Law and Public Affairs, 2001). For an online copy of the document, see <http://www.lapa.princeton.edu/hosteddocs/unive_jur.pdf> accessed 6 March 2011.

[6] Reza Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights' (1994) 16(2) *Human Rights Quarterly* 235–76.

potential to essentialize and rarify traditions without accounting for how each is embedded in a dynamic of contest, adjudication, and governance.

A fourth and final approach situates the dialogue about common ground at a more abstract level, positing parallel lists of core values in both Islamic law and international human rights law. Where the lists overlap is where common ground exists.[7] However, this approach suffers from an altogether different failing: the triumph of hope over experience. To identify common ground as simply the overlap of abstract common values is easily rendered naïve. In this instance, the failure to account for the particular, contextual, and more nuanced issues and conflicts that arise between—and even within—each tradition often undercuts the sometimes legitimate and parallel values that may, in fact, exist within the traditions.

As this project developed, it became clear that none of the above approaches would be satisfactory, either from the perspective of academic inquiry or from the perspective of experience and practice. This collection of essays and commentaries therefore adopts an altogether different approach. It espouses a *genealogical* approach, which the authors collectively refer to as 'clearing ground', and is explained further below. This is not to suggest a retreat from the search for common ground, but rather a recognition that the aspiration for common ground is one that must be approached carefully, with due attention to the historical, intellectual, and political contours of each tradition.

B. On 'clearing ground'

In this book, the authors *clear ground* by examining the deeply contextual nature of how Islamic law and international human rights law are legitimately formed, interpreted, and applied. Rules of law or statements of fundamental freedoms do not exist in the abstract or in a vacuum. They are made manifest in the world often through institutions of law and government. From human rights commissions to legislative assemblies, laws are designed with competing interests at stake, and their claim to legitimacy is, ultimately, a claim that they are authoritative and thereby deserving of obedience and adherence.

Most importantly, there are innumerable instances in which freedoms—in both traditions—may be legitimately limited, which raises important questions about the intelligibility of the arguments that justify such limitations. For instance, we might accept as a given that human rights documents protect the freedom of speech. Yet it would be naïve to think that such a freedom is absolute. Rather, jurisdictions around the world recognize that not all speech is protected; speech must, in some cases, be limited. But limited in light of what set of interests? For instance, what does freedom of speech mean in many European countries where

[7] A recent example of this approach is modeled in the letter from Muslims to the Christian world entitled 'A Common Word Between Us and You'. For the letter and other related materials, see <http://www.acommonword.com> accessed 24 October 2011.

denial of the Holocaust is strictly prohibited? Likewise, while many Muslim countries uphold the freedom of speech, what do they mean by that freedom when they also invoke Islamic law to justify punishing those who blaspheme against Islam? In both contexts, freedom of speech is protected; but it is also limited by certain considerations that are deemed legitimate in a given legal system. Those considerations—their content, provenance, and application—are the object of study in this volume. Consequently, the relevant question is not whether Islamic law and international human rights law uphold a particular freedom or not. Rather, the fundamental question asked by the authors in this volume is: what does it mean to legitimately limit a particular freedom, and what do those limits signify about the legal system under consideration?

This book is structured around particular topics that offer flash-points for debate, but also require considerable contextual analysis. In each of the following Parts, a scholar of international human rights law and a scholar of Islamic law address a single issue from the perspective of his or her respective area of specialization. The authors were not asked to address or critique the other tradition. Rather, each author has researched his or her own tradition to uncover and lay bare the ground on which the particular tradition (whether human rights or Islamic law) has been built. Far from embracing either a universalist, cultural relativist, or hierarchical model of engagement, this project attempts to adopt a model of engagement that prioritizes humility and self-reflection. Before attempting to build bridges or seek common ground across a river of discontent or a chasm of disagreement, we must first assess how firm and settled our starting points may be.

What makes something firm or settled, though, may differ when considered by the scholar residing in the university, the legal advisor to the United Nations, and a grass roots civil society leader. For that reason, each pair of essays is followed by commentaries from leading figures representing a diverse range of sectors. The commentators include senior domestic judges from different parts of the globe, international legal advisors to domestic governments and international organizations, and civil society leaders working as advocates (whether in the classroom or the courtroom). The commentators offer written responses to one or both essays on the particular substantive topic, bringing their expertise, experience, and voices to the discussion. The combination of scholars and international leaders, methodologically speaking, forces a conversation between different communities which are not often in dialogue with one another. This book thereby presents a series of conversations that, in the aggregate, reveal how getting past our own essentialisms about our values and our communities (ie clearing ground) is a precondition for an effective model of engagement when contending with difficult questions that arise when juxtaposing Islamic law and international human rights law.

C. Clearing ground, revealing the state

Although the title of this book juxtaposes Islamic law and international human rights law, the juxtaposition hides something that the international participants involved in this project have emphasized repeatedly. Namely, the juxtaposition

posits two traditions without sufficiently problematizing the role of the modern state in giving these traditions force and effect. To address Islamic law or international human rights law without recognizing and accounting for the mediating role of the state is to address abstract ideas in a vacuum, and to run the risk of pursuing 'red herrings'.

For instance, Islamic law has a history that is rooted in the 7th century CE. For hundreds of years students studied the Qur'an, the prophetic traditions (*hadith*), and the sea of legal doctrines (*fiqh*) that premodern jurists developed through their interpretive engagement with source-texts, namely the Qur'an and *hadith*. This early history of Islamic law is well documented in accessible introductions to the field and is addressed in Part I, so will not be repeated at length here.[8] The important point, for the purpose of this book, is that the early tradition of Islamic law, which had a broad scope of application (eg criminal law, contracts, torts, judicial administration, bailments, religious rituals, etc), has been drastically limited in its scope and application in the modern Muslim state. With the advent of colonialism in the Muslim world, the local institutions of Islamic learning and government were dismantled to make room for the institutions of colonial administration. By the second half of the 19th century, the Ottoman Empire had initiated a series of legal reforms that effectively incorporated European legal codes and supplanted the jurisdiction and force that the premodern Islamic legal tradition once held. Later, when colonial occupation ended and Muslim majority states gained their independence, these states did not return to a rule of law system that embraced the full scope and extent of premodern Islamic legal doctrines. While many Muslim states incorporated constitutional provisions identifying Shari'a as a source of law, such as Egypt and Iraq,[9] most have also introduced European legal models to develop their own nascent national legal systems. In doing so, they continued to limit the force and effect of Islamic law in national legal systems, while allowing non-state actors to develop and espouse their Islamist agendas outside the control of formal, official government institutions.

In today's Muslim countries, the principal area of substantive law still influenced by Islamic law is the area of personal status, namely marriage, divorce, inheritance, and child custody. Many states have special personal status statutes that govern these matters; and the statutes often reflect the premodern Islamic legal doctrines governing marriage and divorce. A few states may attempt to apply Islamic criminal law, but that is both rare and more often politically significant than legally significant. For instance, the state of Kelantan in Malaysia passed an Islamic criminal law statute in 1993, which might raise concerns about Islamic law and human rights. But since criminal law is a federal and not a state matter in Malaysia, the Kelantan legislation is more a symbol of the politics of Islam in Malaysia, rather

[8] Knut S Vikør, *Between God and the Sultan: A History of Islamic Law* (New York: Oxford University Press, 2005); N J Coulson, *A History of Islamic Law* (1964; reprint. Edinburgh: Edinburgh University Press, 1997).

[9] For a study on Egypt's constitutional provision on Islamic law and related jurisprudence, see Clark B Lombardi, *State Law and Islamic Law in Modern Egypt* (Leiden: Brill, 2006).

than a legal challenge to the international human rights regime. To view the Kelantan legislation as indicative of the threat and challenge of Islamic law to international human rights law fails to appreciate the effect of the state on the content, scope, and application of Islamic law today.

In a similar sense, international human rights law cannot be viewed in the abstract. Its meaning, application, and effect cannot be fully evaluated without reference to the state. Generally speaking, international law does not operate without states. While international human rights law has increasingly been brought to bear on non-state actors, states remain the principal focal point of international law generally, and international human rights law specifically. For instance, states may be parties to human rights conventions, agreeing to accede and ratify, with or without reservations, restrictions, and covenants. State representatives appear before treaty bodies to account for their compliance or derogation from the terms of the treaties. Judicial bodies that adjudicate human rights conventions, such as the European Court of Human Rights, have developed doctrines that defer to the power and authority of state-parties which are brought before the Court, such as the doctrine of the margin of appreciation. Even the newest international war crimes tribunal—the International Criminal Court—can penetrate the sovereignty of the state, but it does so with great caution and restraint, under a principle of complementarity, in the interest of upholding the sovereign interests of modern states.

The contributions in this volume recognize that to understand either Islamic law or international human rights law requires a deep engagement with the ways one or both are framed by state actors. For some authors, their focus on human rights and the state will lead to an exploration of the disagreements between state representatives when considering the language of a human rights treaty protecting religious freedom. For others, accounting for the modern state in any study of Islamic law allows them to appreciate how premodern Islamic governance elided the political and the religious in ways that are kept different, distinct, and separated in more secular models of the modern state. In other words, the question about legitimate limits and what such limits signify implicitly suggests that no study on Islamic law and international human rights law can proceed without also taking into account the ways in which the modern state conditions the scope and meaning given to both.

D. 'Clearing ground' as *modus vivendi*

For the reader to appreciate what this book attempts to offer, it is important to understand that the 'clearing ground' approach adopted by the authors herein has been informed by a method of engagement that transcends the contents of these pages. This book is the result of a partnership between two international institutions, the International Bar Association and the Salzburg Global Seminar, thereby bringing to bear upon this work the influence of two institutions committed to the legal profession, global education, and engagement across different sectors of society. This book brings together authors from nearly a dozen countries, all of whom have occupied (and in many cases still do occupy) positions in

government, the judiciary, the legal profession, civil society (domestic and international), and the academy. The partnership and participation of such diverse organizations and people presents a model of engagement that is characterized by the openness and commitment of an international group of institutional partners, scholars, legal professionals, and civil society leaders to set a new stage for long-term engagement. At a time when so much of the dialogue on Islam and international law is sponsored by government agencies, many of which are responsible for national security and counter-terrorism portfolios, the institutional partners behind this project help to clear ground by virtue of their very different points of departure. The partners in this project recognize that international legal principles and edicts that isolate, offend, or simply ignore one-fifth of the world's population—the 1.2 billion people who adhere to the diverse principles of Islamic law—risk emasculating the word 'international' in law.

The success of the 2007 seminar in Salzburg referred to at the beginning of this introduction led to a follow-up programme, which the Salzburg Global Seminar and the International Bar Association convened from 25–30 October 2008. This programme brought together 60 experts in Islamic and international law, leading members of the international legal profession, and civil society advocates from 25 countries in an attempt to find common ground between these traditions and to search for complementary principles that might enable a harmonization over time. The assembled experts from government, civil society, and academia confirmed that—at that time—a sustained international dialogue focusing on this critical agenda was not occurring elsewhere. Certainly there were—and continue to be—scholarly debates about this issue, and international organizations such as the UN, World Bank, and WTO must contend with varying concerns about human rights, development, and structural adjustment programs in the Muslim world. Nonetheless, the audience gathered at the 2008 Seminar noted that the international community has limited opportunities to engage in a committed cross-sectoral dialogue on issues of shared concern, especially on issues that manifest themselves differently depending on the context and mandate of one's institutional position. Furthermore, the Seminar's findings indicated that any attempt to bridge the gap between Islamic law and international human rights law will not only require a series of high-level meetings between Muslim scholars and jurists, international lawyers, and academics, but also a sustained, focused, and practically oriented project that can nurture critical research and dialogue across both traditions and across different stake-holder communities. Most tellingly, however, those gathered in Salzburg at the 2008 seminar raised serious doubts about the intelligibility of 'common ground'. The participants argued that the search for 'common ground' can be intellectually unsatisfying when commonalities are pitched at the most abstract level. Furthermore, such an approach can risk framing the apparent commonalities in terms of the supremacy of human rights over Islamic law, or vice versa. In other words, such approaches rely on the normative primacy of one tradition, while inquiring whether the other can 'catch up', so to speak.

To build on the October 2008 findings, to explore the intelligibility of and alternatives to common ground, and to set out an agenda of research and engage-

ment, the Salzburg Global Seminar and the International Bar Association thereafter sought to develop a research project that would bring together:

- an international group of scholars with expertise in the modern body of international human rights law;
- scholars of Islamic law from around the world;
- government officials from the United States, Europe, and different countries in the Muslim world;
- civil society leaders who are active at the intersection of law, religion, and human rights in their countries.

Scholars who specialize either in international human rights law or Islamic law were invited to draft research papers on pre-selected topics that are often flash-points of international debate (if not polemics) about Islam and the West, Islamic law and the modern world, or, to invoke a now well-known phrase from Samuel Huntington, the 'clash of civilizations'. The authors presented their initial drafts at a workshop in May 2010, which was sponsored and hosted by the Center of Theological Inquiry (CTI), based in Princeton, New Jersey. CTI is an ecumenical institution that supports scholarly research in and about religion in our world today. It is a place where discourses about religion, theology, and society are respected and taken seriously. CTI's director William Storrar offered the authors a space where faith and scholarly excellence go hand-in-hand. In the idyllic setting of Princeton, and within the comfort and intellectual openness provided by CTI, the authors convened a frank discussion and analysis of each other's work, as well as the aim of the project as a whole. This workshop was an important turning point for the project. At the workshop, the authors came to terms with the limits of the four approaches noted above, and began to embark on the 'clearing ground' method that characterizes this volume. The value of this method was made plain when approximately 50 people met in Salzburg for a third seminar from 14–19 November 2010 under the sponsorship of the International Bar Association and the Salzburg Global Seminar. The participants represented a cross-section of scholars, government officials, and civil society leaders from over 15 countries. Together they evaluated the project and offered important feedback and criticism to the authors and editors.

This book, therefore, is more than a series of essays and commentaries. It represents the commitment of an international group of institutional partners, scholars, legal professionals, and civil society leaders in dialogue with each other over a period of years. As the embodiment of this sustained commitment, this book aims to model the kind of engagement needed for the 21st century. Beyond the publication of the book itself, the International Bar Association, the Center of Theological Inquiry, and the Salzburg Global Seminar will continue to pursue their commitment to these critical issues, seeking to find and facilitate solutions to the challenges facing the international legal community.

E. Overview of the book

This book is divided into five Parts. Each Part presents an essay by a specialist in international human rights law and a second by a specialist in Islamic law and legal history. Both essays are followed by commentaries by leading figures from the academy, judiciary, international legal profession, and civil society. The commentators were asked to reflect on one or both of the essays by bringing their experience and expertise to bear upon their assessment and analysis. With the exception of Part I, each part focuses on a particular flash-point in the debates on Islamic law and international human rights law. The focus on flash-points is not meant to suggest that the full scope of debate on Islamic law and international human rights law is reducible to these few issues. Rather, these issues offer sites of engagement where the authors model the method of 'clearing ground', in the hope that others will pursue similar lines of inquiry and engagement on other compelling issues. There are many topics that remain unaddressed in this anthology. The aim of this project, however, was never to offer a comprehensive account of all such flash-points. Rather, this project is offered as a model that we hope others will adopt or build upon in the pursuit of greater understanding between and across traditions of value.

In Part I, Kathleen Cavanaugh and Anver M Emon provide an introduction to the disciplines of Islamic law and international human rights law, while framing their discussion in terms of the genealogical approach that defines the contributions in this volume. While reading these two initial essays and the commentaries on them, the reader is asked to keep the following questions in mind, and revisit them when reading each subsequent part of the book:

- Where, under what circumstances, and by whom are transgressions of Islamic law and international human rights law adjudicated?
- What are the implications of regional human rights systems on domestic and international legal systems? Likewise, what are the implications of Islamic law on domestic and international legal systems?
- To what extent do individual states mediate what we experience as Islamic law and international human rights law?
- How will the significance of Islamic law and international human rights law change as the efficacy of the state rises and falls?
- What is the role of civil society in the development and jurisprudence of Islamic law and international human rights law?

These are the questions that animate the essays and commentaries in Part I. No specific contribution necessarily responds to all of these questions. And some readers may find that none of the contributions address them in part or in whole. Nonetheless, these questions are relevant not only to the contributions to Part I, but to the project as a whole. Part I is designed to set the framework of analysis that animates the subsequent chapters in the book.

Part II addresses the regulation of speech under both Islamic law and international human rights law. The global community has become keenly aware of how

contentious freedom of speech can be, particularly between human rights advocates and those claiming to represent Muslim interests. The 2006 Danish cartoon controversy presents a memorable instance of such contests. For some, this controversy pitted freedom of speech against religious intolerance. Yet as most legal academics would readily acknowledge, no society protects the freedom of speech absolutely. While Pakistan and Austria may support freedom of speech, for instance, the former criminalizes blasphemy against the Prophet and his family, while the latter prosecuted Holocaust denier David Irving in February 2006. The essays by Nehal Bhuta and Intisar Rabb are offered as initial models of 'clearing ground', using speech and other forms of expressive acts as points of departure.

Religious freedom is the subject of Part III. Across the globe, religious freedom has been and continues to be a hotly contested issue that animates not only civil society activism, but also the determination of the scope and quantity of government foreign aid packages. For instance, in Malaysia's *Lina Joy* case, a Malay Muslim woman who disavowed Islam was required to appear before a Shari'a court before changing her identity on her identity card. Her simple proclamation of a change in her faith was not sufficient for government identification purposes, thus raising doubts about the quality of Malaysia's commitment to religious freedom. In *Sahin v Turkey*,[10] the European Court of Human Rights held that Turkish rules against women wearing headscarves at university are justifiable limits on the petitioner's freedom of religion. Despite no showing of harm to others, the Court deferred to the Turkish state's claims about the impact of the headscarf in the university in light of Turkey's commitment to a democratic secular ideology. When reviewing the relevant constitutional and human rights conventions in Malaysia and for the European Court of Human Rights respectively, religious freedom is identified as an important value to protect. But in both cases above, petitioners seeking to vindicate their religious freedom were told that the limits imposed upon them were legitimate, whether under domestic Malaysian law or under the jurisprudence of the European Court of Human Rights. To better appreciate the nature and significance of these limitations, Urfan Khaliq pursues an important set of questions about the history of religious freedom protection in human rights law, while Abdullah Saeed problematizes the all-too-easy distinction between religious and political identity when addressing premodern Islamic legal traditions on apostasy. Khaliq's and Saeed's chapters, together, showcase the difficulty of separating the two when considering the way religious freedom is to be understood, whether under an international human rights law regime or an Islamic legal one. Their essays, along with the commentaries, pose important questions about the meaning and content of 'religion' in both international human rights law and Islamic Law, the justifications used to limit religious freedom, and the implications of a deeper appreciation of the rationale for such limits.

Part IV focuses on women's equality under both international human rights law and Islamic law. Women's equality represents a unique challenge for the world

[10] Application no 44774/98 [2005] ECHR 819 (10 November 2005).

community. The explicit friction between Islamic law and international human rights law in the area of gender equality may be the most perplexing problem that brings readers to this book. Clearly, for human rights activists, the issue of women's equality is one of the most troubling aspects of Islamic law. Around the world news accounts abound with horrific stories of abuse against women, often justified by reference to Islamic law. Yet many post-colonial feminists have taken issue with the way in which women's rights activists who promulgate a formal equality agenda fail to understand the limitations of such an approach, or the way in which such a model of equality can become dangerously hegemonic and run counter to the interests of the lived experience and realities of women on the ground. In their essays, Ziba Mir-Hosseini and Ratna Kapur explore the jurisprudence on women and equality by bringing distinct international perspectives to gender equality debates from India and the international context of Islamic legal reform. In combination with the commentators, they raise important insights about the rationales used to justify certain arguments about gender equality, the limits on the scope of women's equality, and the principles, values and politics that animate global debates on women's equality.

Part V addresses the issue of minority rights. This issue is of paramount concern given the global concerns about the rights of indigenous peoples, the treatment of the Roma in Europe, and the more recent tensions in North America and Europe over the issue of immigration and multiculturalism. Multiculturalism—and recent suggestions of its failure—has become an important issue in Europe and North America as governments contend with the challenge and limits of accommodation. Immigration is not the only factor inciting such debates. In the Muslim world, minority groups (especially religious minorities) seek greater inclusion in the polity, despite being actively discriminated against. There is considerable concern about the extent to which an Islamically inspired state can and will treat religious minorities with equal respect. The essays by Anver M Emon and Errol P Mendes, and the commentaries on both, examine the protections offered to minority groups under both Islamic law and international human rights law, raising important insights about the limits of the law, and the increased vigilance required to protect those who are otherwise under-represented.

The book closes with an epilogue by Robin Lovin, who participated at the authors' workshop at the Center of Theological Inquiry and again at the Salzburg session in November 2010. Having worked with a group of Christian theologians and legal scholars on issues pertaining to Christianity and international law, Lovin's epilogue reminds us that the challenge of pursuing common ground is not simply one that faces the Islamic and human rights traditions, but rather is common to any tradition of faith and/or value that comes into contact with another. Given how technology allows us to be in touch with so much more of the world than before, the imperative to find new models of engagement and dialogue is only increasing in importance as older models reveal their limits.

This book is far from a complete assessment of flash-points that arise at the intersection of Islamic law and human rights. It was never meant to be comprehensive. Rather, it represents a method of engagement that requires an expertise and

scholarly rigor that are in large part possible because each contributor starts from the position of honest self-reflection and humility about the tradition that he or she works within or studies. Indeed, a project like this is possible because of the sentiments and values each contributor to this book brings to this endeavor. In other words, this volume offers the reader both scholarly excellence and an ethic of self-reflection that each author has brought to bear on each page. That ethic is represented by the contributors as they delve deeply into the ways in which human rights principles and/or Islamic doctrines rest on assumptions of value that are all-too-often implicit, but which these studies make explicit. By making those assumptions explicit, they provide initial direction for new questions and avenues of inquiry that we hope readers will pursue both on their own and in conversation with others.