

## REDISCOVERY AND REVIVAL IN ISLAMIC ENVIRONMENTAL LAW

The common ground between religions could be fruitfully promoted in order to call for an effective protection of the climate system. Positioned at a junction of different worlds, this book is a multidisciplinary work on Islamic law, common law and environmental law. Looking at the past, present and future, the author suggests a paradigm shift starting from the common ground in order to propose a better future for environmental law in Muslim countries. As the first book to compare *Sharia* and common law in field of environmental protection, it suggests a new path in comparative environmental law by recognizing the contributions of both history and spirituality.

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# Rediscovery and Revival in Islamic Environmental Law

BACK TO THE FUTURE OF NATURE'S TRUST

**SAMIRA IDLLALÈNE**

Cadi Ayyad University



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*To my nieces and nephews: Salma, Emyliah, Issam,  
Youssra, and Noah, the New Seeds and the Common  
Grounds, with love.*

*To my professors: Mohamed-Ali Mekouar and  
Veronique Labrot.*

*To my students.*

*Do not strut arrogantly on the earth.*

*You will never split the earth apart*

*nor will you ever rival the mountains' stature.*

Qur'an (Al-Isra), 17: 37

This is a time in human history when lawyers world-wide must draw upon time-less principles and extrapolate them in logical fashion to new circumstances. Through-out history, courts have found themselves in the position of declaring new law in response to enforceable, often urgent, circumstances. The same principles that have informed all of the historic public trust cases apply with even greater force to the atmosphere.

Michael C. Blumm and Mary Christina Wood, *The Public Trust  
Doctrine in Environmental and Natural Resources Law*

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## Preface

The story of this book started more than ten years ago in France, when I was a PhD student at the University of Western Brittany.

My PhD thesis focused on legal aspects of coastal management in Morocco. This led me to study comparative law on this issue and to learn about the concept of the “Trust” in English law.

My focus on the Trust came from my interest in the Conservatoire du littoral<sup>1</sup> as a tool to protect and conserve the coastal zones in France. I discovered then that the Conservatoire du littoral was inspired by the English Trusts, especially by the National Trust.

Many years later, I started teaching comparative law at the University of Cadi Ayyad in Morocco; I taught then the origins of the Trust concept and how this institution works.

I discovered that there are various similarities between the Trust and the *Waqf*, an Islamic law institution, which is, like several Trusts, a charitable endowment. I started to collect more information on both the Trust and the *Waqf*. I was fascinated by the possibility to use the *Waqf* in the same way the Trust has been used in England for nature conservation.

I found in historical books a wealth of information on how *Waqf* was also used for the protection of natural resources few centuries ago. More than that, the *Waqf* was a revolutionary legal concept because it holds animals, not just humans, as beneficiaries.

The combination of both comparative law and environmental law sheds more light on other institutions such as *Agdal* or *Hima*, protected areas under customary

<sup>1</sup> The Conservatoire du littoral is a French institution in charge of coastal protection. Its main work is to purchase coastal lands and keep them for natural conservation purposes. The Conservatoire du littoral was inspired by the national trusts or public trusts in England. [www.conservatoire-du-littoral.fr](http://www.conservatoire-du-littoral.fr)

This led me not only to look at the Public Trust Doctrine but also to go back to the *domaine public* theory in order to explore its ecological potential.

At the same time, it oriented me towards other ways to protect nature in the United States that are similar to the Public Trust Doctrine, even if they are not labeled as such, like the charitable Trusts, for example.

Similarly, this resulted in expanding the topic of my research to a wider variety of institutions dedicated to environmental protection that are similar to the Trusts but have declined in the same way as *Hima*-like institutions.

This book documents the ecological potential of Islamic law through a comparative law approach. While the *Waqf* is compared with the Trust by scholars, this comparison does not extend to the field of environmental law. Besides, the few environmental studies including Islamic law and ethics did not focus on the *Waqf*, nor did they concern the comparison between the common law and Islamic law. This book aims to fill that gap. It demonstrates the fruitfulness of such comparisons in both environmental law and comparative law scholarship.

In addition, this book is based on the general framework of “Spiritual Ecology”. This framework has not yet served much as a research agenda in comparative environmental law, even if its potential is abundant.

This book aims to contribute to the new research agenda in environmental law in Muslim countries. It is dedicated to academia, civil society and decision-makers, but also to every curious mind. Its main objective is to help to strengthen and expand environmental law in Muslim countries, inasmuch as Islamic law is not, paradoxically, concerned with environmental law in these countries. Yet this law has a huge potential as it encompasses cultural (including spiritual), economic and political aspects.

As I was finalizing the editing of this book while the coronavirus started to devastate the world, including my country, I feel that I have to add a few words on it: I think that this virus is a reminder for humans of the finitude of our planet and that we need to rethink our relationship to nature. It is an illustration that globalization can be harmful for humans and for nature. We need to envisage new ways to live and to work. We need to come back to the roots of our humanity. This is also what this book is about.

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I gratefully acknowledge support from those at the Moroccan American Commission for Educational and Cultural Exchange (MACECE) and the Fulbright Program who enabled me to go to the University of Oregon, to meet environmental scholars and to have wide access to documents.

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My warm thanks also go to Mr. Abdelmajid Tribak from the Islamic World Educational, Scientific and Cultural Organization (ISESCO), who invited me to present this work in its initial format at the first meeting of the Faith for Earth Initiative at the UNEA 4 in Nairobi, Kenya. It is much improved since then.

I am grateful to my Mom and to my sister Yasmine, whose support was valuable during the writing phase of this book.

## Glossary

<b>Agdal:</b>	Protected area. The equivalent of Hima in North Africa
<b>Aya:</b>	<i>Qur'an's</i> verse
<b>Fiqh:</b>	Islamic science
<b>Fuqahas (or Ulamas):</b>	Plural of Faqih, person who is specialized in Fiqh
<b>Hadith:</b>	sayings of the Prophet Muhammad considered as the second source of <i>Sharia'</i>
<b>Haram:</b>	what is forbidden by <i>Sharia'</i> ; it also has the meaning of sanctuary
<b>Harim:</b>	areas around bodies of water, or any other places, dedicated to protecting them (sanctuaries)
<b>Hima (or Hema):</b>	protected area under Islamic law or customary law
<b>Ijma':</b>	consensus of <i>Fuqahas</i> (or <i>Ulamas</i> ) which can be considered as a source of Islamic law
<b>Ijtihad:</b>	the effort of interpreting Islamic science and sources of <i>Sharia'</i>
<b>Istihsan:</b>	a source of <i>Sharia'</i> , literally means “seeking of good”, the equivalent of Equity
<b>Khilafa:</b>	viceregency, trusteeship; it also has the meaning of political authority
<b>Maqasid:</b>	higher purposes of the <i>Sharia'</i>
<b>Maslaha:</b>	public interest or benefit (is also part of <i>Maqasid</i> )
<b>Qiyas:</b>	a source of <i>Sharia'</i> that applies analogy
<b>Qur'an:</b>	Muslim holy book and the first source of <i>Sharia'</i>
<b>Sharia' (or Sharī'ah):</b>	Islamic law
<b>Sunnah:</b>	acts of the prophet Muhammad considered as the second source of <i>Sharia'</i>

<b>Surah</b> (or <b>Sura</b> ):	a verse from the <i>Qur'an</i>
<b>Ulama</b> (or <b>Ulema</b> ):	<i>Sharia'</i> and/or <i>Fiqh</i> scholars
<b>Urf</b> :	customary law
<b>Waqf</b> or <b>Habous</b> :	charitable endowment
<b>Zakat</b> :	tax alms



Acronyms

ARC:	Alliance for Religions and Conservation
IDB:	Islamic Development Bank
IEP:	Islamic Ecological Paradigm
IFEES:	Islamic Foundation for Ecology and Environmental Sciences
IPCC:	Intergovernmental Panel on Climate Change
ISESCO:	Islamic Scientific, Educational and Cultural Organization
IUCN:	International Union for Conservation of Nature
MENA:	Middle East and North Africa region
OIC:	Organization of Islamic Cooperation
PTD:	Public Trust Doctrine
SDGs:	Sustainable Development Goals
UNDP:	United Nations Development Programme
UNEP:	United Nations Environmental Programme
UNFCCC:	United Nations Framework Convention on Climate Change
WANA:	West Asia–North Africa Institute (WANA)