How did you become interested in researching Islamic law and the rule of law?

As a law professor who teaches both contemporary law to law students and Islamic law from a historical vantage point, I am fully aware that many Muslim majority countries incorporate Islamic law in their legal system. Moreover, Islam and Islamic law feature as part of their domestic political landscape. Islam, therefore, informs how Muslim majority states consider and design their own legal systems; this is part of what interests me in the intersection between rule of law and Islamic law. But we also know that much rule of law development work is itself highly problematic; it imposes presumed notions of legality on countries with alternative legal systems, different political climates and distinct institutions that North Atlantic systems do not easily map onto.

What are the reasons behind taking a historical approach to rule of law analysis?

On my reading of rule of law theory, I am struck by how most theorists have a very narrow sense of what ‘history’ is. All too often, they think of history as episodic and synchronic – an approach that supports their own reading of law as a presentist enterprise and practice. Consequently, when they speak of law and morality, their approach to these two concepts does not take the form of a diachronic analysis – of how the two concepts overlap as moral debates and transform legal debates in important ways – but again, only over a period of time. By adopting a diachronic approach to legal analysis and framing it in terms of rule of law, I hope to not only reveal the presentist politics that animate rule of law, but also the limited analytic use of rule of law more broadly.

Part of your research focuses on ‘claim space’. Can you provide a brief summary on this?

Much academic study of Islamic law focuses on its early history, institutional foundations and the epistemic theory that jurists developed over centuries. These foci privilege a certain approach to legal history and interpretation, both of which can determine...
The indeterminacy of the rule of law

A researcher based at the University of Toronto is expanding his previous analysis on Islamic law, as well as questioning what is considered legal in the first place. He assesses what it means to consider the Islamic legal tradition as ‘other’ to ‘our’ law.

**THE WORLD JUSTICE PROJECT** defines the rule of law as being a system in which four universal principles are upheld. First, the people that make up a government are accountable under the law. Second, the laws are clear, just and provide security for individuals and their property. Third, the process by which laws are enacted are accessible, fair and efficient. Fourth, justice is delivered in a timely manner by representatives who reflect the communities they serve.

It is widely held that the rule of law prevents arbitrary decisions to be made by individuals in governmental positions, and that by incorporating the rule of law, justice is always meted out in a consistent manner. However, when considering the rule of law in detail, the inherently amorphous nature of it must be acknowledged – that its meaning is indeterminate and open to interpretation.

What, then, does this indeterminacy mean for the rule of law and the ways in which it impacts what we think Islamic law is, or can be. My project recognises that the domain of law is more akin to a bounded space within which claims of law are made. In other words, rather than presume rule of law is some high-minded ideal about justice, I see it as denoting a claim space. The claim space of law is one in which arguments of law are made. To be a definable space – as opposed to an infinite space – the claim space is bounded because what counts as a legal argument depends on a whole host of factors that act as gatekeepers for legal argument. I aim to explore these boundaries by mapping out a range of legal doctrines from which I can infer boundaries and their porousness.

**How does your project show that legal doctrinal regimes support and enhance the governing regime’s interests?**

The legal doctrines that animate litigation of rights show there is often a balance between protecting rights and enabling governance. In cases of religious freedom, we might find documents that protect such a freedom; the US Bill of Rights, the Canadian Charter of Rights and Freedoms, and the European Convention on Human Rights all protect religious belief. But the question for me is not so much that such freedoms are protected, but rather that all freedoms are nonetheless subject to government regulation. No freedom is absolute.

**Your work endeavours to provincialise dominant conceptions of law and order. Why?**

In the Muslim world, the state has limited reach in its peripheral regions. The various regimes of law in place create a pluralist legal environment that is not so easily susceptible to narrowly defined rule of law projects. Projects that do not account for plurality in legal regimes ultimately take on an imperial logic in the name of free market efficiency, balances of trade, currency exchange rates and increased privatisation, alongside government austerity. But none of these approaches speak to the ways in which the law and state are experienced – or not – by those who live in these countries.
ANVER M EMON is Professor and Canada Research Chair in Religion, Pluralism and the Rule of Law at the University of Toronto’s Faculty of Law. An internationally recognised expert on Islamic law, his research traverses the long and rich history of the Islamic tradition and its implications for contemporary questions of governance and the rule of law. He approaches Islamic law as both a historical tradition and a vehicle of critique by which he interrogates prevailing assumptions of what counts as law and legal rationality, as well as the often triumphalist narrative of liberal legal order. The author of numerous books and articles, he is also General Editor of the Oxford Islamic Legal Studies Series and Editor-in-Chief of Middle East Law and Governance, having founded both. The recipient of numerous grants and awards, he was named a Guggenheim Fellow in 2014-15 for his work on Islamic law.

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