

Review by Kevin Boyle*

These books on Islam and Human Rights are published by Martinus Nijhoff from the same series, *Studies in Religion, Secular Beliefs and Human Rights* from Martinus Nijhoff. Both are the fruits of recent doctoral research and, importantly, are written by scholars from Muslim countries. Dr. Shah is a lawyer from Pakistan who now teaches at the University of Hull and Dr. Hashemi teaches human rights and international law in Iran. Much writing on Islam and international human rights has been critiqued by Western scholars, with Abdullahi An Na’im¹ (who provides the foreword to Hashemi’s book), Shaheen Ali,² Mashood Baderin³ and Javaid Rehman⁴ as noted exceptions. The contribution of Western scholars to the study of Islam and human rights has been fundamental, as evidenced by frequent references in these volumes to scholars such as Ann Elizabeth Meyer,⁵ Tore Lindholm⁶ and Heiner Bielefeldt.⁷ But to have the subject explored by non-Western scholars is also of vital importance for the advancement of universal human rights.

These have been books published against a backdrop of serious global crises that have been precipitated by over a decade of violent confrontation between Islamist militants and Western powers (the United States in particular). The search for common ground between the values of Islam and international human rights explored in these volumes would be repudiated by Islamist ideologues.⁸ Their radical understanding of Islam and Shariah, alongside the espousal of

---

* The late Professor Kevin Boyle was a leading professor of Law at the University of Essex.
terrorism by many of them, casts a deep pall over the aspirations of those, such as Shah and Hashemi, who argue for accommodation between Islamic norms and the international human rights system. The authors, reflecting both Shi’a and Sunni perspectives of Islam, are confident in their position that there is no contradiction between the primary sources of the Islamic religion, namely the Koran and the Sunnah (the sayings and deeds of the Prophet), and the corpus of international human rights standards developed by the international community beginning with the Universal Declaration of Human Rights. The tensions and differences that arise derive from reconciling the application of subordinate sources of law, in particular customary legal traditions established in the early era of the religion, before the tenth century, with the human rights norms which have evolved over the last half century. Recent tensions have also emerged in some Muslim states that seek to translate such traditions into legislation in an effort to ‘Islamise’ their nations. Conflict with international human rights law has arisen, in particular, as the result of the adoption of hudood laws. That is, the direct transposition into criminal law of punishments ordained in the Koran. Pakistan and Iran, both featured in these volumes, exemplify this process.

Niaz Shah’s focus is on women’s rights, and he is robust in his argument as to the compatibility of the Koran and international human rights. He accepts that many interpretations of the relevant Koranic verses proscribe a subordinate status to the woman. However, he argues that such interpretations come from a literalist approach and reflect the masculine and patriarchal prejudices of the interpreters. It is accepted by scholars that, compared with pre-Islamic Arabia, the position of women was transformed by the arrival of the Islamic religion and that the Prophet Muhammad worked to improve women’s status and to strengthen the family. Applying what he describes as a holistic and contextual approach to interpretation, Shah concludes an extensive Koranic exegesis with the statement that ‘the Koran never discriminates on the basis of gender’. Thus the author dismisses centuries of teaching by the ulama (Islamic scholars) that found justification in the Koran for the subordination of women to men. His views echo those of Muslim feminists.

However, who is to determine which is the correct interpretation? The Koran is a divinely revealed source. Nonetheless, it is human beings who must seek its meaning under the Islamic doctrine of ijtihad, or individual independent reasoning. This meaning can evolve and change over time. The parallel with the other Abrahamic faiths, Judaism and Christianity, is striking. While the values and principles of all three religions sacred texts are immutable, the meaning found in the texts will always be contested. In the case of Islam, an interpretation which accords with international human rights, values, and principles can only be advanced through internal debate within the religion and in dialogue with those outside it who share a common reference point in the compatibility of universalism in values with pluralism in practice. Both books under review can be seen as important contributions to such dialogue.

Shah’s case study on women’s rights and Islam concerns Pakistan. Pakistan, created in 1947 after the partition of the British Raj in India, was envisaged as both a democratic and a Muslim state. Therefore, it sought to marry democratic principles with the religion of the majority of its people. However, from the beginning there has been a struggle over exactly which understanding

---

9 Shah, p.65.
of Islam was to prevail. There is one which seeks to harmonise the inheritance of colonial secular law and Muslim traditions, or a more radical vision of an Islamic state—one strictly ruled on the basis of the supremacy and direct applicability of Islamic law.

In 1976, a military coup led by General Zia resulted in moves to Islamise Pakistan. This included the introduction of hudood laws. One example Shah examines is the Offence of Zina Ordinance. Zina is the offence of sexual intercourse outside of wedlock. The punishment is stoning to death if the offender is married or a hundred stripes if unmarried. Dr. Shah is explicit in his assessment that the Zina and other ordinances promoted by Zia were politically motivated and intended to give legitimacy to his rule by appeasing the more extreme Islamic movements in Pakistan. His careful study of case law arising from the implementation of the Zina Ordinance demonstrates a depressing picture of abuse of power in which women were the primary victims. While no cases exist of sentences of public stoning to death, the author concludes that this experiment in Islamisation operates ‘as a tool of persecution and vendetta against women by parents, husbands and, in some instances, by police.’ Shah calls for the reform of hudood laws as well as the laws of evidence and personal status in Pakistan. He is confident that their reformation through a contextualised interpretation of the foundational Islamic legal sources can ensure their compatibility with international human rights standards.

There are grounds for scepticism over reform as opposed to the abolition of these laws. Pakistan did introduce legal reforms in 2006. For example, rape is no longer treated as a hudood offence, but rather under the criminal code. Under the hudood ordinance, a woman alleging rape had to produce testimony from four men for a conviction. Failing this, she would be liable to be punished for having sexual relations outside of marriage. Now the offence is to be proved on evidence. However, a continuous concern within the international community over the misuse of such religious laws emerged at Pakistan’s Universal Periodic Review in the UN Human Rights Council in 2008.

Kamran Hashemi examines other topics from an Islamic and human rights perspective, including freedom of religion (which encompasses the freedom to change religion), minority rights, and the rights of the child. Hashemi provides an in-depth and balanced study of apostasy (irtidad) in Islam, under which he considers conversion, heresy, and blasphemy. He offers an equally careful and expert analysis of related international human rights norms on freedom of religion and expression. He acknowledges that Islamic legal traditions in these areas and their implementation do not conform to international human rights law. He notes that while some restriction on proselytism or conversion can be legitimate under international standards, the right of the individual to change religion as an unconditional right cannot. Hashemi makes an exception as to the gap between Islamic law and international standards in the case of blasphemy (sabb). He finds potential convergence given the explicit prohibitions in the ICCPR (Articles 19 and 20) on speech which targets religion and is intended or has the effect of inciting hatred and discrimination of believers. He notes, however, that many Muslim countries have failed to

---

11 Shah, p.147.
12 The Protection of Women (Criminal Laws Amendment) Act, 2006. The passage of the Act caused public protests from Islamic groups.
legislate against religious hatred directed at minority faiths (an example being the Ahmadiyah in Pakistan) or against the practice of declaring other Muslims or members of other religious groups infidels (takfir). He calls for that practice to be made a criminal offence as it ‘legitimizes murder as a reaction to an individual having exercised their freedom of opinion and expression’.\textsuperscript{14} The contemporary impasse within the international community over the legitimacy of ‘defamation of religion’ as a human rights concept is not discussed.\textsuperscript{15} All protagonists in that debate would nevertheless profit from reading his appraisal of both freedom of religion and expression.

The remaining sections of the book discuss minorities and the rights of the child, similarly bringing together Islamic and human rights perspectives. As the writer shows, Islamic experience in the recognition and protection of the rights of religious minorities (dhimma) and the rights of the child has foreshadowed the international norms which are applicable today. It should also be noted that the author is direct and frank about the injustice suffered by the Bahia’s as an unrecognised religious minority in Iran and elsewhere in the Muslim world. He calls for Muslim countries, in the light of their positive historical record on the protection of minorities, to eliminate the discriminatory features of their contemporary practice which contradict that record. The author criticises the reservations made by a number of Muslim states to the Convention on the Rights of the Child arguing that, for the most part, the religious justification given by states for blanket reservations lacks merit. Pakistan, he comments, has withdrawn a similar reservation finding nothing in the Convention that conflicts with ‘any of the major precepts of Islam’.\textsuperscript{16} Instead of making reservations, he argues, states should eliminate those ‘problematic legal traditions’ which result in their failing to fulfil the Convention’s protection of children.\textsuperscript{17}

As with many theses converted to monographs, their origins are occasionally rather obvious in both books. More attention could have been paid to avoiding typographical errors and other blemishes. Nevertheless, there can be no doubt that each of the authors has made a serious contribution to deepening the universalism of human rights. Their books are not only directed at the reformation of Islamic law; each author also offers insights and proposals about the further development of international human rights law and practice.

\begin{footnotes}
\item[14] Hashemi, p.141.
\item[16] Hashemi, p.256.
\item[17] Hashemi, p.256.
\end{footnotes}