Book Review


In the *Editor's Forward*, Hatem Elliesie notes the importance of human rights as a subject of enquiry, encompassing considerations on natural rights, the universality/relativism debate and the systematization of human rights. This bilingual anthology addresses some of these fascinating and complex questions in relation to the Islamic legal tradition, drawing from the findings of the 10th Annual Conference of the *Gesellschaft für Arabisches und Islamisches Recht* (German Association of Arab and Islamic Law). Overall, the selection and breadth of themes discussed in relation to both theoretical and country-specific human rights and Islamic law issues make for an informative and analytical contribution to the existing literature.

The first macro-section of the book titled *Contributions to Islamic Legal and Theological Approaches and Philosophy of Laws* sets the tone of the scholarly effort of the entire work. The opening contribution by the leading human rights and Islamic law scholar A.A. An-Na‘īm (*Islam and Human Rights: Introductory Remarks and Reflections*) indicates the constructive yet critical approach taken here, as opposed to a narrower, one-sided or apologetic attitude in dealing with complex questions of competing normative sources and structures.

An-Na‘īm sets out by distancing himself from the assumption of “either immediate compatibility or permanent contradiction between Human Rights and any religion” (including therein Islam). He points to the “paradox of the reality of tension between the two” and “the importance of reconciliation”, suggesting that this dichotomy is misleading given the interdependence between the two. To that effect, he finds it “more useful to see this relationship in terms of synergy and mutual influence” instead of “permanent antagonism”. With specific reference to Islamic law, he adopts the distinction identified by Bernard Weiss in the seminal text *The Spirit of Islamic Law* between the *shari‘ah* of divine provenance and the historically contextual human understandings of the *shari‘ah*. The core argument outlined against this backdrop is that a revision of these human historical understandings of the divine *shari‘ah* – which enjoy a high degree of authority even though they are not divine in nature themselves – would be appropriate to responding to the contemporary need of societies to engage in a constructive...
discourse “to enhance the legitimacy and practical efficacy of human rights in all societies”, including in Muslim societies.

In *Islam und Menschenrechte: Betrachtungen im Verhältnis von Religion und Recht* (Islam and human rights: Observations in relation to religion and law), Muhammad Kalish discusses the compatibility of human rights and Islam. He notes the difficulty of working with various interpretations and schools of Islamic jurisprudence that may differ in framing Islamic law and comparing it with human rights. He argues that human rights cannot be seen as being based on religion as they are not represented in the form and to the extent they exist now in any of the major religious (normative) sources. Hence, although religions might now be eager to claim active involvement in the development of the contemporary human rights system, this is a secular idea developed independently from religion.

In *Hermeneutik, Koraninterpretation und Menschenrechte* (Hermeneutics, Interpretation of the Qu’ran and Human Rights), Assem Hefny discusses how hermeneutics and *tawil*, which are employed to understand and interpret texts, can be seen as very similar in method and purpose. *Tawil*, the Islamic equivalent to hermeneutics, looks at all linguistic dimensions and at the context in which the text was written as well as the different relationship between words and texts. The safe-guarding of human rights in Islamic countries is often seen as problematic due to the assumption that they are based on Western hegemony and secular ideas on the one hand, and the practices of authoritarian regimes on the other. Hence, the *Qur’an* and the *Sunna* should be re-interpreted and then used to face contemporary challenges.

In “*Westliche* versus “islamische” Menschenrechtskonzeptionen?” (“Western” versus “Islamic” Conceptions of Human Rights), Heiner Bielefeldt notes the hefty task of a single definition and a global acceptance of human rights. Referring to the universality debate, he discusses the intrinsic objectives of human rights and the possibility to ensure human rights on a political-legal level. Moreover, he calls for focusing the polarised debate between the Muslim East and political West towards finding an overlapping consensus, despite cultural and historical differences.

The second macro-section of the book, *Human Rights Situations in Selected Predominantly Islamic Regions and Countries*, offers greater detail on three macro-areas of the predominantly Muslim world: African states with a Muslim population (Nigeria, Zanzibar and Sudan), the (Arab) Middle East and Asia (Indonesia, Afghanistan, Pakistan and Iran).

In introducing the section on Africa, Mashood Baderin addresses issues of *Islam and Human Rights in the Constitutions of African States*. He addresses the “question of how the doctrines of modern constitutionalism and rule of law (...) can practically accommodate a constitutional role for Islamic principles”. His contribution also includes a useful table containing the constitutional provisions of African states dealing with Islam and human rights. This article draws from legal