
This book describes how Islamic law defines and accommodates chronic and temporary physical and mental impairments. The author scrutinized sources reflecting “1400 years of scholarly Islamic activity” for their “consideration of people with disabilities, and for the behavioral or social adjustments these people were offered, mainly through legal rulings” (ix). The author defines disability broadly: any deviation from ‘the healthy’ causing a certain degree of dysfunction, whether temporary, permanent, minor, or major. The basic assumption is that being ‘healthy’ is the preferred condition (x). The author is sympathetic to Islamic law, concluding that “[t]he general attitude… has been marked by tolerance, acceptance, accommodation, and forgiveness regarding the fulfillment of the religious duties” (93).

The introduction examines various modern legal definitions of disability, provides an overview of relevant Arabic terminology, and a brief survey of ‘Islamic’ views of disabilities from the Qur’an to contemporary pronouncements on the subject by Muslims professionally interested in the issue. In addition, the introduction includes a summary review of scholarly and legal aspects of the human rights of the disabled, a defense of studying cultural attitudes toward the disabled through the study of law, and a classification of disabilities according to medical causes.

Five chapters follow. In these the author focuses especially on discussions of religious obligations found in the fiqh literature because such discussions contain extensive treatments of disabilities as potential bars to performance. Chapter One considers the legal treatment of disabilities in connection with the performance of daily prayers, the fast of Ramadan, the pilgrimage and alms-giving.

Chapter Two concerns martial jihād. As noted by the author, the Islamic intellectual tradition has continuously emphasized that martial jihād is the “lesser” and spiritual jihād the “greater” duty (41). The justification for including a chapter on martial jihād is not that participants might become disabled, but rather that Muslims are said to acquire religious merit for participating in it, and so the question arises as to whether disabled Muslims are excluded from the opportunity to acquire such merit.

Chapter Three deals with marriage, focusing on disabilities that give rise to the right of judicial dissolution of the marriage (faskh). Many of the concerns of pre-modern Islamic law in this regard remain present in modern legal systems (not only in Muslim countries), so this chapter also includes a discussion of modern family law legislation in selected Muslim-majority countries and its relationship to Islamic norms. Of particular interest to this reader were the legal opinions in favor of the marriage of disabled persons, including the mentally handicapped (maʿtūh), though not the insane (majnūn) (52). The chapter also includes a discussion of attitudes in contemporary Islamic legal discourse toward genetic counseling and related matters affecting decisions about procreation.
In Chapter Four the author discusses hermaphroditism (khunūtha), that is, the legal status of persons born with sexually ambiguous genitalia. According to the author, this is the “only disability allotted an independent chapter in the fiqh compilations” (69), though it is possibly increasingly outmoded to refer to it as a disability today. While acknowledging the importance of hermaphroditism for understanding the strongly gendered character of Islamic law, the author emphasizes Muslim jurists’ tolerance and their gift for legal innovation.

Chapter Six covers injuries lawfully inflicted in the course of enforcing Islamic tort and penal law. The author summarizes the extensive discussions found in the fiqh literature concerning procedures for carrying out authorized retaliation and corporal punishment as they relate to the physical impairments that result from these penalties. The related topic of the monetary value to be paid for certain grievous injuries—considered as more-or-less permanent disabilities—is also examined, as well as the interesting question of how disabled tortfeasors should be punished.

A short, concluding summary (93-95) clearly and succinctly restates the author’s main objectives and conclusions. There is a bibliography, helpful indices of disabilities and terminology, and an index of names (the book does not use transliteration). There is also an appendix (97-134) containing translations of modern fatwās on disabilities, which make for interesting reading.

Although this book is a good guide to legal doctrines and attitudes, there are a few instances where the material might have been probed more deeply. For example the author claims in regard to ritual purity (ṭahāra) that the Qur’an (5:6) requires “the human body [to] be kept in a state of cleanliness at all possible times” (19). Entertaining the possibility that ṭahāra is more symbolic than hygienic could enrich a discussion of how its rules can be flexible enough to accommodate those unable to comply because of physical impairment. Also, given that certain recurring bodily functions of women can interfere with the performance of religious obligations (menstruation, parturition; or in the case of leading prayers, simply being a woman), I confess to wondering whether under Islamic law (or, to be fair, under other religious systems of Late Antiquity) femaleness could be considered a disability. Further, since most of the author’s discussion concerns the relationship of disabilities to the performance of religious obligations, I found myself wondering about accommodations made for non-Muslims. The issue only arises in the discussion of martial jihād: just as disabled Muslims are excused from participating in martial jihād, certain enemy non-combatants, including the disabled, are protected by law, at least according to some jurists (45). On the other hand, it is not clear that Islamic law offers any deterrent (in tort, for example) against the killing of disabled non-Muslim non-combatants.

Then there is the question of what counts as Islamic legal discourse. In pre-modern times, this could be a relatively clear-cut question of genre. In this book we learn that “[c]ontemporary Islamic explanations for the origins of disabilities and diseases rely mainly on scientific medical literature.” One “Dr. Abu Ghuda” (Ghudda?) from the Kuwaiti Ministry of Awqāf and Islamic Affairs is then cited as explaining that “disabilities can be caused by genetic factors, health problems and diseases, traffic accidents,”