

**BOOK REVIEW**

**LAWLESS WORLD: MAKING AND BREAKING GLOBAL RULES**

***Philippe Sands* (Penguin Books, London 2006) Paperback, Pp 432, ISBN 9780141017990, £8.99**

*Jason de Mink*\*

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or out of my depth with “*Lawless World*” however, as Professor Sands writes clearly and authoritatively on subject-matter which will be quite familiar to most readers: the Pinochet trial, the Kyoto Protocol, trade rules, foreign investment, Abu Ghraib and Guantanamo, the Iraq War and torture.

Professor Sands alerts us to the fact that it is only since the attacks of 11 September 2001 that international law has become of such enormous interest throughout the world. It is a topic that had received little attention in the mainstream media, and the few discussions of U.N. rules or international treaties had made the concept appear to be the faraway province of dusty academics (p 1).

However, the reader is made aware that the global landscape has changed. Whether a war can be started on the basis that another country has violated international law or whether in defence of international standards, international law changes from something intangible and remote to a highly significant area of knowledge (p 22).

In introducing his subject, Professor Sands has elected not to lead off with the headline-grabbing chapters of the Iraq War (Chapter 8) and Guantanamo Bay (Chapter 7: Guantanamo: The Legal Black Hole) but chooses first to familiarise the reader with the history of international law, illustrates historical developments in this area (Chapter 1: International Law: A Short and Recent History) and sets out the role international law will continue to play in the future in areas including for example environment (Chapter 4: Global Warming: Throwing Precaution to the Wind) and terrorism (Chapter 9).

This is certainly not a book that covers only old or newsworthy ground. The chapters on the processes for dispute resolution via the Appellate Review Body of the World Trade Organization and the World Bank’s International

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Centre for the Settlement of Investment Disputes (Chapter 6: A Safer World, For Investors) are particularly likely to offer fresh and useful information for the majority of readers. These chapters highlight the remarkable and bewildering fact that the United States is among the strongest supporters of these highly significant and influential international bodies while remaining among the strongest opponents of the new International Criminal Court (Chapter 3: A New International Court).

Professor Sands considers that the attitude of the United States to the International Criminal Court (ICC) is symptomatic of its cynical attitude to international law in general (p 48). The ICC now binds over 100 countries, but the United States, Russia and China have not joined. The decision of the United States to exclude itself is particularly ironic, for it had historically supported the introduction of a court for the international prosecution of war criminals after World War I, with President Woodrow Wilson advocating the indictment of Kaiser Wilhelm II of Germany (p 49).

But as Professor Sands points out, the ICC that the United States once envisaged was a court that could be controlled by the permanent members of the UN Security Council (p 57).<sup>1</sup> Only they could decide which cases would be referred to the ICC, allowing the application of political pressure and undermining the independence of the court. However, when proposals emerged for an independent prosecutor who could bring cases under his/her own authority, the United States demurred and since then President George Bush's administration has consistently worked against the ICC. As Professor Sands puts it: 'Disdain for global rules underpins the whole enterprise' (p 222) unless they serve the commercial best interests of the U.S., in which case they are 'strongly and consistently' supported (p 119).

These are just a few of the fascinating issues Professor Sands investigates in effortless detail. Individually they may all seem like rather disparate elements but this book elegantly makes the point that they are all inextricably linked, with the relevance and importance of international law in modern society being constantly highlighted.

Professor Sands comprehensively illustrates that the study of history is necessary to avoid repeating past mistakes.<sup>2</sup> He also continually demonstrates the significance of this principle in modern times and the egregious consequences for those who fail to acknowledge it.

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<sup>1</sup> By means of a veto.

<sup>2</sup> The origins of this statement can be found in the writings of George Santayana, a Spanish-born American author of the late nineteenth and early twentieth centuries. The exact phrasing is: 'Those who cannot remember the past are condemned to repeat it', taken from *Reason in Common Sense*, the first volume of his book *The Life of Reason*, Charles Scribner's Sons, New York, 1905, p 284.

He lays the historical foundations by grounding this book in the Atlantic Charter of 1941 (p 8). This was the manuscript that gave rise to the origins of modern international law and it is set out in its entirety in this book. It was under the mantle of this groundbreaking document that the world was to be rendered a freer, happier place and it was with optimism and a newfound fervour that Roosevelt and Churchill approached the new world order. Their combined efforts rapidly brought into being the UN Charter,<sup>3</sup> the Universal Declaration on Human Rights,<sup>4</sup> the Genocide Convention,<sup>5</sup> and the General Agreement on Tariffs and Trade,<sup>6</sup> putting in place rules and systems limiting the use of force, protecting human rights, and establishing a framework for global trade and international economic integration (p 10 – 11).

Professor Sands fast-forwards 60 years and contrasts current events with the tenor and tenets of the Atlantic Charter as espoused by its signatories. His conclusion is that the successors of Roosevelt and Churchill are seriously lacking in many ways and have unequivocally turned against the very international order they helped create (p 11).

Given that he has been a participant in some of the seminal international law cases and issues he reviews, Professor Sands is well placed to offer a frank, open and authoritative perspective. He does so engagingly and his excellently detailed description of the proceedings in the Pinochet case in the House of Lords, in particular, places the reader in the courtroom with him (Chapter 2: Pinochet in London). He also memorably depicts the proceedings at the various climate change conferences where he acted as a legal adviser to the delegation of St. Lucia and emphasises the importance and influence of forceful personalities that take precedence over the rules when arriving at a decision in such forums (Chapter 4: Global Warming: Throwing Precaution to the Wind). His descriptions of these proceedings focus very little on his own involvement, and this self-effacing style reinforces the wider significance of the events he depicts.

Professor Sands is certainly a passionate advocate for global fair play. He has attempted to highlight the audacity of the main protagonists in the war against terror in order to inform a wider debate. The examples he provides of their cynicism are breathtaking. It is clear that they have mastered the ability to completely dismiss or ignore established rules and laws to their own end. The chapter dealing with the U.K. Attorney-General's legal advice on the war in Iraq is particularly enlightening and offers major insight into the machinations of Whitehall (Chapter 12: This Wretched Legal Advice).

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<sup>3</sup> 1945.

<sup>4</sup> 1948.

<sup>5</sup> 1948.

<sup>6</sup> 1947.

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This is an excellent, highly readable book because it pulls no punches. But it is not groundlessly scathing in its analysis of the conduct of the United States and Britain. The author is able to support all of his contentions authoritatively and does so quite ruthlessly. However, the reader is not compelled to reach any particular conclusion. The author offers the facts and his opinions but leaves room for debate and argument. He willingly presents the arguments against a system of international law, and is acutely aware of its many shortcomings, particularly when attempting to apply a single body of rules across diverse societies and economies.

The continuous strand that runs throughout this book is that the world today is generally an ordered and peaceful place thanks to decisions taken generations ago to regularise global dealings. However, the goals of Roosevelt and Churchill are not yet complete and are under serious threat. We need to build on these past successes in order to ensure a better future. Professor Sands eloquently makes the point that the current trend of projection of power in contravention of international rules can lead to a global catastrophe. We need to study our past if we hope to avoid a “*Lawless World*” in our future. This thoroughly worthwhile and thought-provoking read serves to sharply focus the mind on the people we put our faith in to govern us. Its contents are of enormous significance to us all.

**BOOK REVIEW**

**HUMAN RIGHTS AND RELIGION: THE ISLAMIC  
HEADSCARF DEBATE IN EUROPE**

***Dominic McGoldrick* (Hart Publishing 2006) Pp 320, Paperback ISBN 1 84113 652 2, Price £18.95**

*Susan Edwards*\*

Dominic McGoldrick's *Human Rights and Religion: The Islamic Headscarf Debate in Europe* which captures the mood and the fixation of a contemporary concern, could not be more timely. No doubt if his publishers considered this project marginal and peripheral in its initial stages of manuscript writing, events upon and after its publication have determined its subject matter as highly relevant and mainstream.

It is without doubt the only authoritative book on the subject. Its publication bursts upon a scene where the issue of dress codes at school and in the workplace have become as much publicised and politicised in the UK as they were in France in 2004. Those of us who were surprised by the intensity of the French headscarf debate are now equally perplexed by the centrality and intensity of interest that pervades the dress code debate at school and at work, in the UK, in 2007. McGoldrick asks, not surprisingly, what is all the fuss about (p 12), and as he puts it, 'Why is the Islamic headscarf-hijab so worrying' (p 12). In exploring this question his narrative begins with an interrogation of the meaning of the hijab in an attempt to unveil the basis of those worries.

Consideration of the meaning of the hijab, from the subject position of those who wear it and those who do not, dominates the first chapter in which McGoldrick demolishes the presumption that the meaning of the hijab is monolithic. In so doing, he draws on many scholarly writings quoting for example from F El Gundi's *Veil: Modesty, Privacy and Resistance*<sup>1</sup> where El Gundi writes, 'the veil is a complex symbol of many meanings. Emancipation can be expressed by wearing the veil or by removing it. It can be secular or religious. It can represent tradition or resistance.' (p 6). McGoldrick also draws on the work of Seyla Benhabib *The Claims of Culture Equality and*

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<sup>1</sup> (Oxford Berg 1999) 172.

*Diversity in the Global Era.*<sup>2</sup> Benhabib points out that the hijab signifies a complexity of meaning including amongst them submission, ambivalence, freedom, protection from intrusion of men and is also a powerful statement of opposition. McGoldrick explores further the complexity of this multifacetedness especially in the chapter on 'The Islamic headscarf-hijab debate in France', where he demonstrates how the hijab is not only a symbol of religious conviction, but also an expression of identity in the face of social exclusion and a potent statement of opposition to the West (p 62).

Juxtaposed to the variety of meanings the hijab holds for those who wear it McGoldrick identifies that it is through the eyes of the observer, outside looking in, for whom it especially holds a fixed meaning signifying second classness and female subordination to men and religious fundamentalism. (p 15). McGoldrick identifies what for him is so worrying which is that, 'In Europe in particular, the headscarf-hijab debate has become a microcosm of the debate on pluralism and multiculturalism' (p 33).

McGoldrick develops his text with a careful analysis of the legal position on the hijab in European countries, considering, albeit briefly, the position in North America and in selected non-European countries. The emphasis, however, is on France, Germany, Switzerland, Turkey and the United Kingdom. In the chapter on France we learn that the French headscarf ban, contained in the Law of 2004, prohibits the wearing of headscarves by school pupils (p 34), extending the ban to employees in educational establishments and government departments. In addition, women wearing the hijab are excluded from juries (p 74) as well as being refused a civil ceremony of marriage (p 75). The ban is said to be rooted in the religious neutrality of France with its historical origin of the religious neutrality of public schools (from Catholicism) originating in the 19<sup>th</sup> century. It has to be said however, that the soundness of this logic is under question since it is being used to legitimate another very different purpose and in the very different France of 2007. As McGoldrick writes, 'It is something of a historical irony that the principle behind a law introduced to control the Catholic Church in 1905 is now used to control Muslims' (p 102). As McGoldrick points out, there may be legal equality between religions, but the law of 1905 only recognises churches (p 49). In exploring why the hijab is at the site of such intense struggle he argues that the headscarf debate in France 'has had a subtext of immigration and assimilation' (p 102), a theme to which he later returns when he says that France talks of integration, rather than multiculturalism (p 521). Not surprisingly, this is of particular concern to McGoldrick, in a country where 8-9 per cent of French are Muslims (p 53), where there is an absence of

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<sup>2</sup> (Princeton, Princeton University Press 2002) 95.

Muslims in politics and the media (p 56), and where ‘Muslim women face multiple discrimination-gender, religious and racial’ (p 56).

By contrast, McGoldrick notes, in Germany with no official religion and where Muslims constitute three and a half million (p109), ‘The sight of girls, including pupils at schools, and women in headscarves-hijab, was relatively normal ...’ (p110). The first case was that of Fereshta Ludin, a schoolteacher, who wished to wear the hijab and was denied a permanent post as a teacher because of her refusal to remove it. But the Constitutional Court ruled by five votes to three that German states had the power to ban only if they passed specific legislation on the matter. This was initially hailed as a victory for women teachers wearing headscarves in school, however, states soon passed legislation which introduced the ban (p115). In Switzerland the case of *Dahlab v Switzerland* 1996<sup>3</sup> prohibited teachers from working if they refused not to remove the hijab thereby ‘protecting pupils by preserving religious harmony.’ In *Dahlab* as McGoldrick points out the problem with the hijab was that it was perceived as a ‘powerful external symbol’ (p 131).

But it is the position of the hijab in Turkey that McGoldrick finds most fascinating (p 132). A country which is 99 per cent Muslim also bans the hijab in schools and in higher educational establishments. No doubt much stems from Ataturk’s programme of revolutionary social and political reform. In 1934 the Dress Regulations Act imposed a ban on wearing religious attire and in the 1980’s and 1990’s went on to provide the leading Strasbourg cases with *Karaduman v Turkey* 1993<sup>4</sup> which considered the question as to whether a University student who had completed her degree could be refused her certificate because, in the photograph that she had submitted of herself, she was wearing a headscarf (p 137). This refusal was upheld on the grounds that she had failed to comply with University regulations since the court held that this did not constitute an interference with her freedom of religion. Similarly, in *Sahin v Turkey* 2005<sup>5</sup>, the court considered whether a University student should be permitted to wear the headscarf in attending University lectures (p 140) McGoldrick notes that the cleverly constructed argument in *Sahin* (p 146) located her wearing of the headscarf ‘as a purely religious act,’ such that this meaning alone influenced the court in arriving at their decision, whereby they eschewed the myriad of other reasons why a woman might wish to wear the hijab. The complexity of the meaning of the hijab did not escape Judge Tulkens as was evident in her dissenting judgment as she said:

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<sup>3</sup> *Dahlab v. Switzerland*, (Application No.42393/98), ECHR 2001-V.

<sup>4</sup> *Karaduman v Turkey* (1993) 74 DR 93.

<sup>5</sup> *Leyla Sahin v. Turkey*, (Application no. 44774/98), Judgment of 29.6.2004EHRR 8 [2004]; 10 BHRC 590, [2006] ELR 73.

“Turning to equality, the majority focus on the protection of women's rights and the principle of sexual equality (see paras [115] and [116] of the judgment). By converse implication, wearing the headscarf is considered synonymous with the alienation of women. The ban on wearing the headscarf is therefore seen as promoting equality between men and women. However, what, in fact, is the connection between the ban and sexual equality? The judgment does not say. Indeed, what is the signification of wearing the headscarf? As the German Constitutional Court noted in its judgment of 24 September 2003,<sup>6</sup> wearing the headscarf has no single meaning; it is a practise that is engaged in for a variety of reasons. It does not necessarily symbolise the submission of women to men and there are those who maintain that, in certain cases, it can even be a means of emancipating women. What is lacking in this debate is the opinion of women, both those who wear the headscarf and those who choose not to.”<sup>7</sup> (p163-4).

Although the book focuses on the headscarf debate it goes beyond headscarves and considers the way in which states are seeking to restrict other forms of religious attire. McGoldrick considers at some length the position in the UK with regard to Islamic headscarves focusing on the recent ‘jilbab case’ where Shabina Begum, a pupil at Denbigh High School in Luton wished to wear a long dress to school but was prevented from so doing, and where the House of Lords ruled that her right to religious freedom had not been infringed.

He also discusses the situation in the Netherlands where the Dutch government is considering banning the burqa/niqab (face covering) and where specifically Utrecht city council is planning to stop social security benefits to women who wear the burqa.

McGoldrick has written an important book which goes beyond a scholastic narrative and attempts to grapple with the complexity of meaning attached to wearing Islamic dress not only by the wearer but also as it is understood by the observer. ‘Because of the way it is perceived and understood, the symbolism attached to this simple piece of clothing worn by women has managed to place it within a series of major contemporary issues - identity, multiculturalism, liberalism and religious fundamentalism’ (p 308).

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<sup>6</sup> Federal Constitutional Court of Germany, judgment of the Second Division of 24 September 2003, 2BvR 1436/042.

<sup>7</sup> Para [11], per Judge Tulkens.



After going to press, an Employment Tribunal in the UK has decided in the case of a teacher who wished to wear the face veil, that she was not unfairly discriminated against in being prevented from so doing.<sup>8</sup> A pupil at a Buckinghamshire school has been banned from wearing the niqab.<sup>9</sup> However, it should also be pointed out that the headscarf originated in the Christian culture and is worn by women throughout the world and especially by women in catholic countries. It should also be asked (Hijab!, niqab!, jilbab!), why is there a revivalism in these expressions of dress, which cannot merely be explained by religious conformity or sexual oppression. It is worthy of note, too, that the headscarf worn by those at the centre of this fixated interest is worn in exactly the same way as an enduring piece of 1960's fashion iconography sported in the US especially by the late Jackie O, and in the UK by amongst others, Queen Elizabeth 11, and Princess Margaret. All of this suggests perhaps that this interest is less about the garment and more about its signification.

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<sup>8</sup> See the case of Aisha Azmi - *The Guardian*, March 31, 2007.

<sup>9</sup> *R (on the application of X) v The Headteacher of Y School and another*, Queen's Bench Division, Judgment: Approved By The Court For Handing Down (Subject To Editorial Corrections), [2007] EWHC 298 (Admin), [2007] All ER (D) 267 (Feb), (Approved judgment).

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**‘TRUE TALES OF TRYING TIMES - LEGAL FABLES FOR TODAY’**

***Robert E. Rains* (Wildy, Simmonds & Hill Publishing)  
ISBN 9781898029908 £12.95**

*Mary Welstead\**

For those of us who became lawyers because we loved story telling in all its forms, Professor Rains’s book of legal fables is a feast first, to be voraciously devoured as a ravenous gourmand and second, to be delicately sampled, as a selective gourmet, and dipped into in the years to come. To add to the metaphor, Justice Michael Eakin of the Pennsylvania Supreme Court, in his foreword to Professor Rains’s book, uses the language of the wine connoisseur to describe the fables, ‘... the wine is sweet and quite palatable. It is well worth the drinking.’

Professor Rains, who was originally in private practice, now teaches law students in Pennsylvania and is also engaged in helping those who cannot afford legal fees to seek justice. All are appropriate occupations for one who spends what spare time he has in writing fables and trying to understand, with some difficulty, the legal profession and why they do what they do.

In his book, Professor Rains has selected a number of cases from the US courts. He succinctly narrates each story, many of which are replete with the black humour common to matters of law, in a gentle wry manner, not unlike the story telling of the memorable PG Wodehouse. At the end of each story, in pithy verse form, he extracts the moral for the reader. These stories are true fables; their subject matter ranges widely over all areas of law but for this author, as a family lawyer, the section on ‘Love and War’ was perhaps the most appealing. The story of the woman who resided in the County of Suffolk in the Commonwealth of Massachusetts will give the reader a brief sample of the fun to be found in Professor Rains’s writings. The woman wanted a baby and the testosterone-fuelled man, sex:

“The man had four children by a prior marriage, and the woman had none. The man said that the woman should not worry because a fortune-teller had told him that he would

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have six children. So the man and the woman did have sex, but no new children arrived. After several months of having sex, the man remembered that he had forgotten to tell the woman that he had also had a vasectomy. But, nothing ventured nothing gained, they kept having sex anyway, until one day the man found someone else. This made the woman mad and she stopped having sex with him. Then the woman sued the man for all sorts of legal misdeeds, such as infliction of emotional distress and fraud and battery, for not having told her about his vasectomy in the beginning. After all, he knew her biological clock was ticking. The court was, of course, shocked – shocked! – that a man might say, or not say, things to a woman in a deceitful manner to try to get her to have sex with him, but reluctantly concluded that such matters are beyond the expertise and jurisdiction of our legal system.

Moral:

Choose well with whom you copulate  
If you intend to populate;  
For even if you raise a squawk,  
The law won't punish pillow talk."

Without wishing to spoil the readers' future pleasure by revealing too much of the book's contents, one or two examples of the moral endings may intrigue and serve as appetizers.

"The Party at Grandma's and Who Was to Blame

Moral:

When you break into Grandma's pad,  
Be smart and bring your friends along;  
Then if the party turns out bad,  
The law can't prove just who did wrong."

"The Booty That Brought Down the Bandit

Moral:

When filching goods, don't take the chance  
Of stuffing bottles down your pants,  
Because if you are seen and chased,  
They'll slow you down and go to waste.  
So, as you choose which goods to lift,  
Recall the race goes to the swift."

The fables are beautifully illustrated with the delightful simple line drawings of the EA Jacobsen partnership, a visual presentation partnership of two sisters.

This is a book which all lawyers, the embryonic, the aging and cynical practitioner and the law professor, should acquire and read because the whole point of fables is that they teach us all lessons in a more palatable form. The embryonic lawyers will realise that, in spite of reading learned treatises on statutory interpretation, the law is as much about the bizarre nature of human relationships which cannot easily be resolved by what they learned at law school. They will also learn the advantages of remembering the facts of legal decisions in the form of fascinating and, frequently amusing, stories with a moral to them. The more cynical older lawyer will, hopefully, be reminded that the precedents they use involve, not merely the anonymous characters symbolized by the legal citation of *M v M* (2007), but real human beings who have lives to live outside the confines of the court. On a bad day, they may also be reminded that the law can be fun. For the academic professor, she will learn that jurisprudence can be as much about the moral lessons to be learned from fables as it is about the minutiae of angels dancing on a pin head contained in the works of Oxford legal philosophers. As a result, her students will probably have a happier time at law school.

Normal human beings will also enjoy the book and in addition have their prejudices, that the law is totally comprehensible to ordinary mortals, proven. For this author, the book simply remains confirmation that life is more than anything else about story telling.

Professor Rains is to be congratulated and, hopefully, encouraged to provide yet more fabular food on which lawyers may feast.