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Lawyers Committee for Human Rights: Islam and Justice: Debating the Future of Human Rights in the Middle East and North Africa

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BOOK REVIEW

ISLAM AND JUSTICE: Debating the Future of Human Rights in the Middle East and North Africa. By Lawyer's Committee for Human Rights

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One of the most contentious issues in international human rights law is the extent to which human rights standards as embodied in various international treaties can be accepted and applied in countries with "non-Western" religious and cultural traditions. In particular, the tensions between Islamic law and international civil and political rights illustrate many of the problematic issues inherent to the global debate on the conflict between culturally or religiously contingent human rights and universal standards. Due to seemingly intractable rifts between Islamic law and universal human rights, an increasing number of Muslim religious scholars, academics, and human rights advocates have thoughtfully considered the extent to which Islamic law actually precludes or limits the implementation of international human rights standards in those countries governed partially or fully by Islamic law.

In an effort to encourage further inquiry on the interrelation between Islamic law and tradition, politics, and human rights standards in the Middle East and North Africa, the Lawyer's Committee for Human Rights convened a 1996 conference which included human rights activists, academics, Islamists, and professionals.[1] The diverse backgrounds and wide range of

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[1] A partial list of the participants includes: Abdelwahab Al-Affendi, a London based journalist and academic who served as a diplomat with the Sudanese For-

experiences of these participants enabled them to contribute unique insights on how their countries of origin incorporate Islamic law into their political systems, as well as on the more wide-ranging debate on the future of human rights in the Middle East and North Africa.

The participants' hope was to reach some kind of consensus as to what may or may not constitute a fair trial for the countries of the Middle East and North Africa. The conference proceedings, compiled under the title *Islam and Justice: Debating the Future of Human Rights in the Middle East and North Africa*, is a welcome addition to the small but growing body of literature concerning Islam and human rights.[2] Among the merits of the present volume are its nuanced, theoretical presentation, its fact-based discussions of the minimum standards for a fair trial, and its treatment of central issues like: the origins of human rights and their compatibility with Islamic ethics; how the politicization of human rights by the West may undermine public confidence in the application of human rights principles in the Middle East; and the manner in which some

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eign Service; Omar Azziman, a Professor of Law and the first President of the Morrocan organization for Human Rights; Dr. Aicha Belarbi, a professor and board member of women's and human rights groups in Morocco; Heba Ezzat, an editor of the women's page in Al-Sh'ab newspaper in Cairo; Sheikh Rached Al-Ghannaouchi, an exiled leader of the Tunisian opposition An-Nahdah Party; Bahey Eddin Hassan, the director of the Cairo Institute for Human Rights Studies; Abdol Karim Lahidji, President of the League for the Defense of Human Rights in Iran; Rajsoomer Lallah, a member of the Human Rights Committee since 1977; Dr. Abdullahi An-Na'im, a professor of law and prior executive director of Human Rights Watch/Africa; Bacre Waly N'Diaye, a Senegalese Barrister and Special Rapporteur of the U.N. Human Rights Commission on Extrajudicial, Summary and Arbitrary Executions; and Azzam Tamimi, the Director of Liberty for the Muslim World.

[2] For related literature on Islam and human rights see Riffat Hassan, *Religious Human Rights and the Qu'ran*, 10 EMORY INT'L L. REV. 85 (1996); Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash Within a Construct*, 15 MICH. J. INT'L L. 307 (1994)[hereinafter referred to as "Universal"]; Heiner Bielefeldt, *Muslim Voices in the Human Rights Debate*, 17 HUM. RTS. Q. 587-617 (1995); DAVID LITTLE, ET AL., HUMAN RIGHTS AND THE CONFLICT OF CULTURES: WESTERN AND ISLAMIC PERSPECTIVES ON RELIGIOUS LIBERTY (1988); ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS (1991); ABUL-A'LA MAWDUDI, HUMAN RIGHTS IN ISLAM (1976); ABDULLAHI AHMED AN-NA'IM, TOWARD AN ISLAMIC REFORMATION, CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW (1990); Susan Waltz, *Making Waves: The Political Impact of Human Rights Groups in North Africa*, 29 J. MOD. AFR. STUD. 481 (1991); KEVIN DWYER, ARAB VOICES: THE HUMAN RIGHTS DEBATE IN THE MIDDLE EAST (1991).

Muslim governments have exploited Islamic law to justify human rights abuses. The book also offers alternative strategies for integrating international human rights standards into the socio-political structure of predominantly Muslim societies.[3]

A large portion of the book is set aside for country-specific case studies. In an effort to gain a richer understanding of how Islamic law and international human rights standards interact with the political reality of present-day Muslim countries, however, the participants also addressed the broader issue of how to define Islam and Islamic law.

In marked contrast to the prevalent view of Islam as some kind of a monolithic fixed entity,[4] purveyed by both Western scholars[5] and government representatives,[6] the participants

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[3] In this book review, the term "Muslim countries" designates those countries discussed in the debate that have a predominantly Muslim population. Although the terms "Islamic" and "Muslim" are often used interchangeably, I choose to use the term Muslim countries for the reasons given by Ann Mayer in her article *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash Within a Construct*:

> "Islamic" is best reserved for indicating normative religious principles — or ones that are presented as being normative. . . .One should distinguish also between what Muslims universally accept as being Islamic in the sense of being mandated by their religion and what only a segment of Muslim opinion or a governmental elite endorses as Islamic. . . . [Therefore] [i]t is better to call [countries in the Middle East and North Africa] "Muslim" countries, to indicate that the majority of their inhabitants are Muslims.

Mayer, *supra* note 2, at 321.

[4] Attempts have been made to codify Islam's approach to civil and political rights in the 1990 Cairo Declaration on Human Rights in Islam issue by the Organization of the Islamic Conference) an international organization to which all Muslim nations subscribe). Though it is beyond the scope of this review to elaborate on the provisions of the Cairo Declaration, the accepted view is that many of its provisions are antithetical to the International Covenant on Civil and Political Rights. However, since the issuance of the non-binding Cairo Declaration, most of the twenty-five states that officially proclaim Islam to be the State religion and/or the *Shari'a* to be the principal source of law have not implemented the Islamic human rights embodied in the Declaration. This lack of domestic implementation demonstrates that "persisting differences belie the notion that governments of Muslim countries do share a common rights philosophy or that there is anything like a monolithic 'Islam' determining their laws affecting human rights or their willingness to endorse the internationally accepted norms." Mayer, *supra* note 2, at 321.

[5] For example, Samuel Huntington in *Clash of Civilizations* argued that the promotion of human rights by Western countries creates a backlash mentality by Islamic "Civilizations" which in turn fosters religious fundamentalism in Islamic societies. *See* Samuel P. Huntington, *The Clash of Civilizations*, 72 FOREIGN AFF.

opted for a more complex and dynamic understanding of Islam's normative prescriptions, practical injunctions, political ramifications and cultural traditions. Accordingly, in light of the political evolution of disparate institutions and traditions found in Muslim States,[7] the participants found it impractical to pass judgment on Islam's alleged incompatibility with human rights standards without reference to the institutionalization of Islamic law in each State's context. Therefore, the participants were continually challenged throughout the conference, to contextually define Islam/Islamic law.[8] Although this issue was

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22, Summer 1993; *see also* Samuel P. Huntington, *The Islamic-Confucian Connection*, NEW PERSP. Q., Summer (1993).

[6] "Both Iran and Saudi Arabia have been in the forefront of the campaign to persuade international opinion that Islam mandates a distinctive approach to rights issues." Mayer, *supra* note 2, at 308. Mayer supports this assertion by pointing to various speeches given by Iranian and Saudi Arabian rulers. For instance, she cites an interview with King Fahd, King of Saudi Arabia where he stated:

> The democratic system that is predominant in the world is not a suitable system for the peoples of our region. Our people's make up and unique qualities are different from those of the rest of the world. We cannot import the methods used by people in other countries and apply them to our people. We have our Islamic beliefs that constitute a complete and fully-integrated system . . .

Id. at 319 *citing* Interview with King Fahd, King of Saudi Arabia, in Kuwait (Mar. 28, 1992), *quoted in Empty Reform, Saudi Arabia's New Basic Laws*, MIDDLE E. WATCH, May 1992, at 2. She also argues that since the Islamic Revolution, Iran has advocated the position that international human rights norms conflict with Islamic norms. *See id.* at 315-18.

[7] Twenty-five States have officially proclaimed Islam to be the state religion and/or *Shari'a* to be the principal source of law. Iran, for example, is explicitly an Islamic State, while a few States, like Turkey, the Gambia, and Senegal, are avowedly secular. The majority of the other States attempt to fuse both perspectives, typically by limiting *Shari'a* and *Shari'a* court jurisdiction to personal status law, such as, domestic relations and inheritance. *See* Donna E. Arzt, *Religious Human Rights in Muslim States of the Middle East and North Africa*, 10 EMORY INT'L L. REV. 139-40 (1996).

[8] "Islamic law" is also known as the *"Shari'a"* or the law and ways of life prescribed by Allah for his followers. It is viewed by many Muslims as "a vehicle to solve all problems civil, criminal, and international" and draws its principles from these sources in descending order: 1) the *Qu'ran*; 2) the *Sunna* (teachings of the Prophet Mohammed not found in the *Qu'ran*); 3) the *Hadith* (stories and anecdotes in the Sunna); 4) *Ijma* (Ulumas or religious scholars reach a consensus on an issue which is interpreted as ijma); 5) *Qiyas* (new cases that require the use of legal precedent); and 6) secondary sources that can be used for logic and reasoning in legal cases. The Arabic word *"fiqh"* refers to legal jurisprudence developed by Muslim scholars based on their knowledge of the *Shari'a*. *See generally*, THE OXFORD ENCLYCLOPEDIA OF THE MODERN ISLAMIC WORLD (John Esposito ed., 1995).

not definitively resolved, one participant suggested that instead of using the monolithic term "Islam" or even "Islamic law," one should employ the term "Islamic legal tradition or culture, [since] [w]hen people talk about *Shari'a,* I really do not know what is involved." (p.18).

Organized thematically into six chapters, *Islam and Justice* recapitulates the efforts of the participants to determine both what is actually meant by Islamic law, and how Islamic legal tradition compares, both theoretically and practically, to international human rights standards. Summing up the participants goals, the book's introduction states: "[u]nderlying the discussion . . . was a common recognition of the need for regional societies to move away from polarization and political violence toward social peace and political development, and a shared aspiration that the implementation of mutually agreed upon human rights standards would form a premise on which such progress could be envisioned." (p. 4).

Islam and Justice begins by analyzing the tensions between Islamic law and the universal implementations of international conventions through specific references to the judiciary systems in Morocco, Sudan, and Iran. It highlights several instances where a government, either fully or by piecemeal, has tried to institute Islamic law as the governing law of a State. Particular tensions include: (1) the varying interpretations offered by the different schools of Islamic jurisprudence as to the components of an incriminating act under the *Shari'a* or under *Quisas* (a penalty derived from interpretation of texts); (2) the problem of *ijtihad* (interpretation from religious source texts) that allows judges to convict a person of an offense for an act that was not previously considered to be criminal; and (3) the limitation of testimonial competence of women and non-Muslims. Although the participants agreed on many of the elements of a fair trial, e.g. an independent judiciary, the certainty of what constitutes a crime and equality before the law, they observed that some Middle Eastern and North African States

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Muslim reformers argue that the *Shari'a* should not be regarded as a detailed code that dictates prescribed answers to every legal problem but that active reasoning or *"ijtihad"* should be utilized to do justice to modern needs that the *Qu'ran* or the *Hadith* do not directly address. *See* Heiner Bielefeldt, *Muslim Voices in the Human Rights Debate*, 17 HUM. RTS. Q. 587, 607 (1995).

had not fulfilled their obligations under Article 14 (which guarantees a fair trial) of the International Covenant on Civil and Political Rights[9] due, in part, to the foregoing tensions.

In keeping with the recognized need to focus on specific Muslim State systems, the participants also examined the obstacles to the implementation of fair trial provisions in Sudan, Iran, Egypt, and Morocco (p. 31). The overriding theme of the discussion was summed up by Rajsoomer Lallah: "I doubt whether it would be true to say that Islam constitutes one monolithic tradition which prevails in each and every Islamic State. Each State has evolved its own tradition. Can it, however, be said that, because of those differences, there is anything in the Islamic tradition generally which is repugnant to the notion of fair trial?" (p.38). In other words, is Islamic legal tradition simply being manipulated to justify human rights abuses in countries like Sudan and Iran?

Most of the participants agreed that human rights abuses, like arbitrary detention and restriction of movement perpetrated by the Sudanese and Iranian governments, blatantly contradicted Islamic principles of justice. Participants questioned, however, whether laws that justified abuses of power in Sudan and Iran were reflective of the popular will or whether the governments so intimidated and repressed their respective populations that nothing in the legal institutions of those countries could be deemed reflective of the "will of the people."

After examining specific state systems and legal traditions, the discussion moved to the broader question of the origins of human rights, and comparisons made between international human rights standards and Islamic norms. Not surprisingly, the participants held widely divergent views on this topic. Some looked at it as a purely Western invention; others found the Islamic tradition to contain many of the human rights standards embodied in the International Covenant on Civil and Political Rights.[10]

First, Rajsoomer Lallah attempted to "explode the myth that human rights are a Western invention" by emphasizing

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[9] 999 U.N.T.S. 171, 6 I.L.M. 368 (1967). Adopted by the General Assembly of the United Nations on December 16, 1966 (G.A.Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316, at 52).

[10] *See* International Covenant on Civil and Political Rights, *supra* note 9.

two points: 1) standards of justice similar to those in human rights instruments were historically administered in both African and Middle Eastern societies; and 2) the Universal Declaration on Human Rights and the Covenant on Civil and Political Rights gives expression to aspirations of people from all cultural and religious traditions (these aspirations do not belong to any particular region in the world.) (p. 53). In particular, he disputed the "myth" that certain cultural traditions are wholly incompatible with international human rights standards. For example, he pointed out that certain African States resisted implementing human rights standards on the ground that "these norms [are] not consistent with the African personality." (p. 56). Balking at this assertion, he challenged the presumptuous premise that the "African personality" is some sort of fixed entity rather than evolving, malleable concept. (p.56).

Second, other participants acknowledged the universal applicability of human rights, regardless of their origin, based on the acceptance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights by most Muslim countries. They pointed to proof of the impact of non-Western participation in the formulation of the 1945 U.N. Charter and human rights treaties, as evidenced by the first Article of the International Covenant on Civil and Political Rights, on of the right to self-determination (an Article evidently not in the self-interest of most European nations at that time.) (p. 64). Third, some participants went further and argued that, far from being a Western or United Nations' invention, human rights, for the most part, were inherent to traditional Islamic ethics. Lastly, regardless of the position one takes on the origin of human rights, Rajsoomer Lallah warned of the dangers of the "propagandist aspect" of the issue since, as he argued, "when human rights are abused as an instrument of political policy, or religious policy, then it is useful to say human rights are a Western invention." (p. 64).

In an attempt to bring the Muslim and human rights communities together, Chapter Four of the volume focuses on regional implementation of human rights and on strategies for making human rights credible to people in Muslim countries. Hanny Megally posited that one of the greatest obstacles to regional acceptance of human rights is that many local human

rights activists in the Middle East and North Africa have political affiliations that affect their credibility as human rights advocates. He argued that, often times, Muslim lawyers and academics who engage in human rights discourse compromise their impartiality because they come from the social and political elite of their respective countries. According to Megally, human rights activists' political engagement arguably encourages the belief among Muslims that human rights are "synonymous with double standards and selectivity, [since] governments us[e] human rights for their own purposes; [and] political opposition us[es] human rights for their own purposes." (p. 71). Despite concerns of political partisanship and fear of censorship, participants seemed to come to a consensus that human rights advocates had to concentrate their resources on making human rights organizations credible to the populations they serve (p.86-87) while continuing to emphasize non-political advocacy.

In one of the unique and controversial contributions to the literature on Islam and Human Rights, the conference's final order of business was to address the existing ideological rifts within the Muslim world between Islamists and Non-Islamists (or secularists). In so doing, the participants hoped to identify areas of disagreement and mutual distrust where "internal discourse is needed to resolve [major] difficulties." (p. 89). The resulting discussion focused primarily on secularist participants trying to ascertain the Islamist position on human rights, women's rights, Islamic law, and democracy.

For instance, when asked what Islamists meant by "human rights,"— were they referring to international standards or "Islamic" human rights?—Sheikh Rached Al-Ghannouchi argued that although international standards of human rights like the right to freedom, the right to life, the right to a fair trial, and the right of freedom of movement are inherent to Islamic principles, such "rights," as the right to use one's body in homosexual acts, are not. Pointing to another central rift between Islamists and non-Islamists, Aicha Belarbi criticized the Islamist support of the unequal treatment of women under Islamic law that subjects them to polygamy, subjugates them to their fathers, brothers, and husbands, as well as limits their reproductive rights. She noted that Islamists usually claim they are not against wo-

men's rights, but that they give women an inferior social and political status. (p. 95). Sheikh Rached Al-Ghannouchi retorted that Islamic law itself does not impede women's rights but rather that injustices against women can be blamed on "cultural backwardness" in the Middle East and North Africa.

Lastly, secularists at the Conference questioned whether Islamist groups truly embrace the right to freedom of association and expression inherent to "democratic" systems. In an attempt to allay secularist fears, Abdullahi An-Na'im called on Islamists to define their vision of an Islamic state governed by the *Shari'a*. (p.106). Though realizing that no final consensus may be reached by Islamists and secularists on the issue of human rights, he urged the two groups to find a sense of common ground through the incorporation of each others values via continued dialogue. Consequently, he asked for

> Islamists to know what they are calling for, and its limitations, and its problems, and to address those problems internally before they present their case to the world, let alone seize power in order to implement *Shari'a*. Secularists should not only challenge the broad and unsubstantiated claims of Islamists, but also reflect on the meaning of secularism in the Muslim context. (p.106-107).

Although the general format of *Islam and Justice: Debating the Future of Human Rights in the Middle East and North Africa* captures the spirited debate among participants, the book would benefit from more extensive commentary by the editors at the end and/or beginning of each chapter. Those unfamiliar with Islamic legal tradition and the debate over the conflict between international human rights standards and Islamic norms will have to turn to other sources to supplement their understanding of: the "Islamist versus secularist" debate in the Middle East; the substance, procedure and sources of Islamic law; and the historical development and methodology of Islamic jurisprudence. The inherent problem in transcribing the proceedings of such a conference is that often times controversial issues and positions are raised but not fully explained or substantiated by the participants. Accordingly, some crucial areas of conflict between Islamic legal tradition and human rights, like discrimination against women and non-Muslims, are treated in a somewhat cursory manner.

For instance, few of the participants pointed to specific references in the *Qu'ran* and the *Hadith* that either refuted or supported an argument that the *Shari'a* is compatible with international human rights standards, especially in problematic cases like the legal equality of women and non-Muslims. One participant referred to existing *ijtihad* supporting the legal equality of women under Islamic law but did not give enough information on the source of this *itjihad* and what, if any, influence it has over the portion of the Muslim population that is not involved in the academic human rights debate. Moreover, in light of the human rights advocacy experience of many of the participants, it would have been useful if the discussion had investigated further the relative merits of alternative strategies for making international human rights standards credible to predominately Muslim societies.

Despite the restrictive format, however, this book is a valuable contribution to the subject of human rights and Islamic legal tradition in that it updates the experienced reader on current theories and political realities regarding the future of human rights in the Middle East and North Africa. It also introduces those new to the subject to the defining issues of an ongoing debate. The Conference, in and of itself, was quite remarkable for gathering such a diverse range of participants who were able to interweave the external and internal discourse on Islamic legal tradition and human rights into a coherent attempt at understanding rival positions. In so doing, the participants hopefully have laid the groundwork for similar discussions. Although a reader may finish the book feeling discouraged about the actualization of international human rights in the Middle East and North Africa, it is important to bear in mind that sustained dialogue between Muslim scholars, human rights activists and academics of this kind is a requisite step toward achieving social justice in the region.