

lapping consensus across cultures and genders that the author seems to uphold.

Still, at a time when ethno-cultural and women's perspectives are running high on the global agenda, Knop's intriguing approach must be given credit for thoughtfully shedding light on the multifaceted and typically controversial role of interpretation in the international legal history of self-determination and group identities in general.

University of Munich Gaetano Pentassuglia
School of Law

Baderin, Mashood A. *International Human Rights and Islamic Law*. New York, NY: Oxford University Press, 2003. Pp. 279, including Annex, Glossary, Bibliography and Index;
Khan, Mainul Ahsan. *Human Rights in the Muslim World: Fundamentalism, Constitutionalism and International Politics*. Durham, NC: Carolina Academic Press, 2003. Pp. 489, including Appendix of Documents, Glossary of Islamic Terms and Index.

Despite the similarity in their titles, these are quite different books in many ways. I am examining them together because their combined subjects and themes are revealing of the complexity and contingency of protecting and promoting human rights today, which is the point I shall be attempting to make in this review. The compatibility of Islamic law with modern notions of democracy and constitutionalism, and more recently human rights, are familiar themes in current Islamic scholarship. This sort of scholarship is particularly important for informing public policy in the present international environment, amidst claims of a 'clash of civilizations', to rationalize extraordinary measures in the 'war against terrorism' in which Islam is popularly represented as inherently violent and incompatible with civility and peaceful co-existence. But the sort of dialogue that Baderin seeks to promote between international human rights and Islamic law can work only when it is

mutual and not a *solitary dance*. Whatever conceptual or theoretical clarity such a dialogue may achieve needs to work through the complex realities of national politics and international relations that Khan analyses in his book in relation to a particular region of the world.

Baderin declares his aim in writing *International Human Rights and Islamic Law* to be 'construct[ing] dialogue between international human rights law and Islamic law to promote the realization of human rights within the context of application of Islamic law in Muslim States'. (at 2) He rightly emphasizes the practical importance of conceptual differences between the two systems, and proposes a framework to mediate tensions that underlie perceptions of the inherent incompatibility of Islamic law and human rights law. This framework draws on the Islamic law principles of '*maqasid-al-Shari'ah*' (overall goal of the *Shari'ah*) and '*maslahah*' (welfare), on the one hand, and the human rights law principle of 'margin of appreciation', on the other.

In Chapter 2 Baderin presents a masterful and thoroughly documented definition, exploration, and historical analysis of both 'human rights' and 'Islamic law'. He also introduces a distinction between universality of, and universalism in, human rights. (at 23–26) "Universality of" human rights refers to the universal quality or global acceptance of the human rights idea, while "universalism in" human rights relates to the actual interpretation and application of the human rights idea'. (at 23) This distinction between universality as a theoretical construct and universalism as a sociological and political reality can be useful because promoting consensus around the former can be conducive to overcoming obvious difficulties with the latter. But as I will emphasize later in this brief review, the failure to live up to the values of international legality and universality of human rights can render theoretical consensus meaningless.

Baderin discusses four categories of Islamic responses to the human rights debate (at 13–16): namely, the inherent incompatibility claim; the view that true human rights can

only be fully realized within *Shari'ah*; the claim that human rights is nothing but part of an agenda of cultural imperialism that should be rejected; and finally, the compatibility claim. The author condemns the apologetics of many Muslim scholars who focus on the damaging implications of power relations, and the hypocrisy of leading state proponents of human rights. He supports, on the contrary, the compatibility claim, and seeks to enhance it through the Islamic law principles of *maslahah* and *maqasid-al-Shari'ah*. Baderin, however, also challenges the way in which 'Islamic Law is represented within Anglo-American scholarship as an essentially defective legal system' that is beyond redemption or mediation (at 10–11).

Chapters 3 and 4 are devoted to an insightful, well-informed and highly instructive analysis of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR), respectively, in relation to relevant principles of Islamic law. In applying his approach to nine substantive rights under the ICESR that were not already covered by the ICCPR, Baderin concludes that with the exception of issues related to adultery, fornication and children born out of wedlock where the margin of appreciation can mediate the tension, it is cultural rather than Islamic law factors that militate against women's rights to employment and social participation. Throughout his analysis in these chapters, as elsewhere in the book, Baderin rightly insists that only an inclusive, evolutionary and constructive method of interpretation can bring the best out of both Islamic law and human rights law for the desirable objective of enhancing the protection and promotion of human rights in the Muslim world.

Many of the possibilities and limitations of Baderin's approach are clear in his item-by-item application of *maslahah* and *maqasid-al-Shari'ah* on the one hand, and margin of appreciation, on the other, to address apparent inconsistencies between Islamic law and human rights law. For example, in his discussion of the Islamic *hudud* punishments, such as amputations and crucifixion, in

relation to the ICCPR's prohibition of torture or cruel, inhuman or degrading treatment and punishment (at 75–85), Baderin explains the many procedural and regulatory safeguards in the application of *hudud*. But he also concedes that the Qur'anic source of these punishments precludes their direct repeal or abolition as a matter of Islamic law. In the face of this apparent deadlock, he concludes that 'it is more feasible to seek for reconciliation between the *hudud* punishments and the prohibition of cruel, inhuman and degrading punishments under international human rights law indirectly through legal procedural shields available within Islamic law'. (at 85)

Another example of the difficulties involved can be found in Baderin's treatment of the question of freedom of religion and belief (at 118–125). After a thorough review of current Islamic scholarship on the subject, the author apparently endorses the view that 'Islamic law prohibits the compulsion of anyone in matters of faith'. (at 122) He then raises the question of apostasy, which apparently challenges that view. In this regard, Baderin attempts reconciliation by first supporting an interpretation of Islamic law that precludes the death penalty for apostasy *simpliciter*, while suggesting that it can be dealt with 'within the legislative discretion of the Islamic state'. (at 124) He apparently endorses the view that contemporary Islamic scholarship and the practice of some Muslim states are consonant with Article 18(3) of the ICCPR which permits limitations of freedom of religion and belief to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. (at 124–125) An assessment of whether or not this is true would of course have to be on a case-by-case basis, but Baderin's analysis fails to account for the civil law consequences of apostasy, as distinguished from criminal punishment as a capital crime. It is not clear whether the author would support under Article 18(3) such Islamic law principles as the coercive judicial dissolution of the marriage of an apostate to a Muslim spouse, or barring him/her from inheriting from Muslims or leaving an inheritance to Muslims.

To the limited extent that it deals with human rights, Khan's *Human Rights in the Muslim World* is an exposition and analysis of the state of human rights in certain parts, mainly Asian, of the Muslim world, rather than a theory or coherent methodology for promoting human rights. Within its selected field, this book is a useful resource on constitutionalism and Islamic history, law and theology.

In Chapter 1, Khan brings considerable knowledge of constitutionalism and Islamic history to his 83-page treatment of Muslim nation-states, their pre-colonial and colonial pasts, as well as their emergence as independent entities. He discusses nationalism, socialism, liberal democracy, the Iranian revolution, as well as Sufism and spirituality (which he calls 'ritualism'). Chapter 2 starts by discussing the role of Islamic *Shari'ah* in Muslim nation-states, and the sources of *Shari'ah*, followed by a discussion of the dialectics of complementary rights and duties under Islamic law, and an examination of historical legal reforms aimed at bringing Islamic traditions in line with the constitutional needs of emerging nation-states. This is followed by a largely theological examination of the Islamic economic system, and a theological and political analysis of *jihad*, from a review of early Islamic history to present efforts by some Muslim states to acquire weapons of mass destruction as instruments of state power.

The 100-page long Chapter 3 is an extensive discussion of 'the conduct of state' under Islamic law. Taking the Medina state of the Prophet Muhammad and first Caliphs as a central concept, Khan launches into a detailed historical, theological and legal analysis of events and processes relevant to the subject of the conduct of state. He also examines a broad range of other issues, such as the conduct of war and peace, law of crimes, citizenship and *naskh* (abrogation). Under human rights, he covers humanism and freedom, spiritual dimensions, political authority, Muslim nation-states and dichotomies between theory and actual practice in Muslim societies. He also considers what he calls Islamic consti-

tutionalism in exploring foundations of human rights in Islamic law. Unfortunately, by omitting an analysis of Islamic law in relation to specific human rights instruments such as the Universal Declaration of Human Rights, the ICCPR or the ICESR, Khan's treatment of human rights falls short of what many readers would expect from the title of this book.

Chapter 4 is devoted to a discussion of the rise and fall of communism and socialism, and the impact of these developments on the politics and ideology of Muslim nation-states. Khan again deploys his extensive knowledge of Muslim Asia and its relations with the Soviet Union, and the resurgence of Islam in post-Soviet independent states. His analysis of the demise of communism also touches on national and regional conflicts. This line of analysis is continued in Chapter 5, which focuses on the Soviet-Afghan relationship, and on to the rise and fall of the Taliban in Afghanistan. Chapter 6 is a brief 15-page discussion of the relationship between Iran and the United States, including suggestions on how to improve it.

Chapter 7 provides an analysis of internal politics within and across two regional bodies, the CIS (former Soviet Republics) and the Economic Cooperation Organization (ECO), which includes the six Muslim CIS countries of Azerbaijan, Kazakhstan, Uzbekistan, Kyrgyzstan, Turkmenistan and Tajikistan as well as Turkey, Afghanistan, Iran and Pakistan. In this chapter Khan examines the role of Islam in the economics and politics of these regional groups, and suggests possible future scenarios for developments in these fields. The final Chapter 8 is an extensive and authoritative discussion of the role of Islam in South Asia (India, Pakistan and Bangladesh), including the security implications of the Indo-Pakistan conflict and arms race.

Throughout his book, Baderin emphasizes the point that substantive justice, rather than formal legalistic equality, is more meaningful to the majority of Muslims around the world. In an open-minded and honest atmosphere of dialogue that is truly committed to the promotion and protection of human rights, the

sort of powerful and insightful analysis he is presenting would make a very positive contribution. As noted at the beginning of this review, however, the sort of dialogue Baderin is trying to promote is futile if other parts of the world are not willing to participate, and cannot engage Muslims unless they can see its relevance to the actual realization of substantive justice, not just legalistic equality. Whatever degree of theoretical clarity about, and level of commitment to, human rights may exist among Muslims or other groups of people can only have sustainable practical outcomes through the sort of realities of national politics and international relations presented by Khan.

Since they are supposed to be the rights of every human being everywhere, human rights are by definition universal, but this quality can only be a product of a consensus-building process, and not the hegemony of universalizing claims from one specific cultural or context perspective or another. In view of the inherent ethnocentricity of all human beings, and the fact that we can only know and experience the world as ourselves, men or women, Arab, Indian, Irish or Jew, and so forth, who are the product of their own cultures and context, any universal concept is by definition a construct, and cannot be simply proclaimed or taken as given.

Moreover, the daily interpretation and application of human rights norms — what Baderin calls ‘universalism in’ human rights — requires close collaboration among different countries, in good will and with due respect and sensitivity to the cultural and contextual diversity of the world. This is exceedingly difficult under the current conditions of huge differentials in power and resources among different parts of the world, especially between the rich developed countries of the ‘North’ and poor developing countries of the ‘South’. How can one expect developed rich countries to make significant financial and other contributions to the realization of human rights in poor developing countries, without attempting to influence the interpretation of human rights, or the prior-

ities and practical strategies for their implementation?

However scholars like Baderin and Khan strive to promote dialogue or clarify complex histories and context, people everywhere are more likely to look at what governments do, more than what scholars say. In my personal experience, Muslims called on to participate in efforts to promote cross-cultural understanding and peaceful coexistence are routinely faced with charges of high treason or dangerous naivety in view of the actual conduct of major powers. In particular, the manner in which the United States has pursued its ‘crusade’ against international terrorism since the atrocities of September 11, with the active support of the United Kingdom and a few other countries, is seen as a total repudiation of the foundational principles of international legality on which human rights are premised.

In my view, the invasion and continued occupation of Iraq by the United States and the United Kingdom is tantamount to 19th-century colonialism. The legal definition of colonialism is the usurpation of the sovereignty of a people through military invasion and occupation by one or more foreign powers, which is exactly what the United States and United Kingdom have done in Iraq since April 2003. Such repudiation of the foundational principles of international law itself deprives international human rights law of the basis of its legal authority and binding force. In the everyday common sense of lay people everywhere, one cannot seriously speak of international law when powerful states can simply invade and occupy other countries whenever they deem fit, appoint their own nationals as absolute military or civilian administrators of the invaded country, with no accountability to any institutional international authority. If there is no international law, then there is no legal basis for international human rights law. From this perspective, human rights discourse may make interesting speculations about moral philosophy, but will have no binding force on any state.

The point here is not to simply condemn the

governments of the United States and United Kingdom, as these governments still have a relatively better record in respecting human rights standards than most other governments around the world. Rather, my point is that genuine and consistent acceptance of the universality of human rights does not 'come naturally' to Western countries simply because these rights are the 'product' of their own culture and experience, while other societies have to struggle with this idea.

I am raising these issues and concerns not in order to discredit the human rights idea, or declare its impending demise in international relations. Rather, the object is to challenge all those who believe in the possibility of these rights to think in more creative, yet pragmatic

ways about how to recover the initiative and continue to achieve stronger and more sustainable protection of human rights everywhere. Scholars like Baderin and Khan should not, of course, be expected to redress a structural imbalance in power relations between Islamic and Western societies. But scholars and professionals everywhere are in a better position to influence policy, especially the foreign policy of their respective countries. They can all engage in whatever other activities are necessary for the practical realization of human rights throughout the world, and not only the Muslim world.

Charles Howard

Abdullahi An-Na'im

Candler Professor of Law,

School of Law,

Emory University