

However, Day is much less authoritative on the Reformed churches. Though he includes a helpful entry on the Dutch Remonstrant Brotherhood of 46 congregations and about 8,000 members, he ignores their Irish cousins: the Non-Subscribing Presbyterian Church of Ireland (of 34 congregations) which grew out of the 'New Licht' theology of the late eighteenth century and rejected the *Westminster Confession of Faith*. More seriously, there is no mention of the Free Church of Scotland (Continuing) that emerged from the schism in the Free Church of Scotland in 2000, nor is the split noted in the entry for the Free Kirk itself.

It is almost inevitable in a work of this nature that no reviewer will agree with every one of the author's judgments. For example, to describe the Hicksite Quakers of America as 'a split from the more orthodox Quakers' might seem fair enough to an American, but most British Friends would take precisely the opposite view: across the spectrum of American Friends the liberal Hicksites (who eschew dogma, paid pastors and 'programmed' worship) are much the closest in spirit to Britain Yearly Meeting. Similarly, whether the Scottish Episcopal Church was 'disestablished and disendowed' in 1689 depends on one's perspective; Presbyterians would claim that all that happened was that the Kirk returned to Presbyterian government, with the result that those who wanted to retain episcopacy had to leave. But minor criticisms apart, Day has produced a very useful *Rough Guide* to a wide range of exotic ecclesiastical fauna: without it I might have imagined that the Plumstead Peculiars were a cricket side.

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*INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW* by MASHOOD A BADERIN, Oxford University Press, 2003, xxi + 278 pp (hardback £60) ISBN 0-19-926659-X.

The book under review is the latest addition to the long running 'Oxford Monographs in International Law'. Among international lawyers, this is widely regarded as one of the most prestigious series in which academic work can be published. As with a number of the previous books in the series, Dr Baderin's study is based upon a PhD thesis supervised by Professor David Harris at the University of Nottingham. Two of those books, the studies by Dominic McGoldrick on the International Covenant on Civil and Political Rights and by Matthew Craven on the International Covenant on Economic, Social and Cultural Rights, are widely regarded as being among the most authoritative texts on their subjects. While only time will tell if this monograph will achieve the same exalted status, it is, in the opinion of this reviewer at least, a well-written and researched analysis of a very important issue.

The book is composed of two main substantive parts sandwiched between the introduction and conclusions. Chapter Two, which comprises the first

substantive part, discusses the relationship between human rights and Islamic law. Here Dr Baderin discusses what human rights and Islamic law are. In the discussion on the latter, particular emphasis is placed upon the principle of *maslahah* (the principle of welfare or benefit) and the role it plays in Islamic law. This part of the book provides the conceptual framework for the study. The second substantive part of the book, which is composed of Chapters Three and Four, examines some of the provisions of the two International Covenants in the light of Islamic law. Reference is also occasionally made, where appropriate, to the provisions of the Convention on the Elimination of Racial Discrimination 1966 and the 1979 Women's Convention.

One of the strengths of this study is that it examines in substantial detail the actual practice of Muslim states and the discourse that takes place, under the various reporting mechanisms, between the treaty bodies and Islamic states. This gives a flavour of not only the various approaches adopted by those states but also the practical problems they face in giving effect to some of their treaty obligations. As the study repeatedly demonstrates, problems only exist with regard to some, and certainly by no means all, of the treaty provisions in question. The fundamental concern, however, is how, if it is possible, Islamic law and practices and these treaty provisions can be reconciled. In many senses that is the underlying theme of the work, the method by which reconciliation and accommodation can be achieved, where necessary, in a symbiotic relationship between *Shari'ah* and those human rights treaties under examination.

As Dr Baderin rightly notes, any proposed methodology to reconcile those areas of perceived conflict between Islamic law and certain international treaty provisions must be legitimate under both systems. Dr Baderin's proposed solutions are utilising the principle of *maslahah* under Islamic law and primarily, although not exclusively, the doctrine of the 'margin of appreciation' under human rights treaties. The basic aim of any religious 'reformist' theory must be to achieve the successful reformulation of theory so that it is able to accommodate certain international human rights treaty provisions, while at the same time remaining true to the principles upon which the faith is based. The principle of *maslahah* is one that has been widely utilised by theorists who can be classified as 'religious utilitarianists'. This approach can be contrasted with many other theorists, who can be labelled 'religious contextualists'. This latter group tend to base their arguments on the notion that revealed text and practices must be understood in their particular context. Religious utilitarianists are in many respects constricted by orthodoxy. They do not challenge many aspects of orthodox reasoning and assumptions and thus attempt reform by placing a greater emphasis on the notion of public interest, than is traditional in much of orthodox teaching. Dr Baderin's approach squarely fits into this approach. There is much, in a practical context, to be said for adopting it. Religious utilitarianists have the ear of legislators, in the sense that legislative reforms in many countries have tended to adopt the approaches utilised by them, as opposed to those adopted by the religious liberals. In

practice therefore, it is currently a more realistic proposition. Dr Baderin also suggests the creation, by Islamic states, of an authoritative body to help human rights treaty committees with understanding the content of Islamic law and its obligations. As a proposal, it is an interesting one. Yet, the practical obstacles in not only establishing it but in states and their populations accepting its rulings, are more problematic. The sheer richness in the variety and diversity of legitimate Islamic legal reasoning and approaches to the same issues will be difficult to overcome.

There are also problems with the proposed utilisation of the margin of appreciation. The margin of appreciation is of course a tool of interpretation and takes many forms. Under international human rights treaties, states bear the primary responsibility for the protection of human rights. The state's obligation is to ensure that the level of protection does not fall below a certain threshold. The manner in which rights are protected is, however, within the state's discretion. In this sense, the margin of appreciation is a recognition of cultural diversity. The margin of appreciation is also often relevant in determining whether a state actually owes an obligation or if its approach to a particular issue is compatible with the standards set by a treaty. Certainly in those cases, however, where there is a clear conflict between practices justified on the basis of Islamic injunctions and the obligation under a human rights treaty provision, there is little doubt as to the minimum obligation owed by the state. The margin of appreciation, if it is relevant in these cases, is concerned with the manner in which the state protects the right in question. Yet, the manner in which Dr Baderin implies it should be used, seems to be primarily concerned with the level of protection. Human rights treaty bodies cannot draw different standards for states, depending upon the religious obligations and practices of their populations.

The literature as how best to achieve reconciliation between the two systems, where needed, is enormous. As with Dr Baderin's proposals, it is always possible to point out the potential problems. The above comments should not detract the reader from the overall quality of this monograph. This book is informative, well written and well researched. It highlights and discusses an important issue. The extensive bibliography and exhaustive reference to the practice of the committees established by various human rights treaties will ensure that this is compulsory reading for anyone who wishes significantly to further their knowledge of this issue. Discussion on the relationship between Islam, human rights and democracy has been at the fore of international discourse and diplomacy since the rise of the Taliban in Afghanistan and the events of September 2001. Detailed and genuinely informed analysis of Islam, in English, is always in short supply. The arrival of this monograph, by one of the world's major publishing houses, is not only timely but also very welcome. The author of the volume under review should be congratulated for the contribution to the literature. It is a valuable one.

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