

Islamism, Statehood and Human Rights: A World of Difference by OLUFEMI OJO ILESANMI [Intersentia, Cambridge, 2016, 276pp, ISBN 978-1780683317, €65 (p/bk)]

This book's central concern is with the relationship and apparent incompatibility between Islamism and the secular human rights. The motive for the work appears to be the imposition of Islamic law, *Shari'ah*, in the north of Nigeria, the author's home state, since 1999. But the author sets the experience of his country in a wider intellectual and international context, examining both the debates of traditional and liberal Islamic scholars and the experience of other Muslim countries, such as Turkey, Malaysia and Sudan.

Dr Ilesanmi draws on his interdisciplinary experience in law, ethics and public theology to create an interesting and informative discussion of the tension between theocratic legal regimes in which rights and duties are prescribed in the teachings of the Prophet Mohammed and the international human rights standards that have developed since the middle of the twentieth century.

One small criticism of the text is the habit, which comes from an academic dissertation, of telling the reader in advance what he is about to do and, having done it, then telling him or her what he has done. But that is a small niggle, which applies only when one reads the book from cover to cover, and does not seriously detract from an interesting and rewarding read.

Islamic law was introduced in northern Nigeria in part by the nomadic Fulani tribes. When the British colonized the north of Nigeria in the early twentieth century, the colonial rulers adopted a method of indirect rule and allowed the Muslim courts to survive in an arrangement which upheld three legal systems, namely the general law, Muslim law and customary law. But over time the British restricted and then abolished the criminal jurisdiction of the Muslim courts replacing it with a common law penal code and also a Bill of Rights in the Constitution in order to protect non-Muslims in the north. Many years of corrupt military government after independence gave rise to a conservative movement in the north of the country which sought to restore traditional values and to reduce the gap between rich and poor. When democracy was re-established in the new Constitution of 1999, *Shari'ah* was introduced in Zamfara State and 12 other states in the north of the country with both popular support and also vigilante riots and intimidation. It was a controversial move which resulted in violence and many deaths.

Dr Ilesanmi discusses the case of *Zamfara State v Bariya* which was heard in 2000 shortly after the introduction of *Shari'ah*, in order to highlight the concerns of human rights campaigners over the imposition of *Shari'ah* in the northern states. The case concerned a pregnant unmarried teenager who admitted that she had had pre-marital sex but who asserted that she had been raped by three middle-aged associates of her father after he had pawned her to them for his debts. She was sentenced to 100 lashes for *zina* (unlawful sex) and to a further 80 lashes for false accusation but when, on appeal, she withdrew the allegation of rape, the latter sentence was overturned. She was flogged one month after her baby was born but no man was charged with *zina*, although unlawful sex had clearly occurred, and no DNA tests were carried out to test her allegations. Her seven witnesses who were to speak to the rape did not testify and she had no legal representation. The case was criticized both nationally and internationally and there was also criticism within the Muslim community that the trial had not been consistent with *adalah*, the Muslim ideal of balance, justice and harmony.

In his analysis of the circumstances of northern Nigeria Dr Ilesanmi expresses concern about the unequal application of *Shari'ah*. He notes that a disproportionate number of women were imprisoned for *huddud*, ie crimes on which specific sanctions were laid down in the *Qur'an* and the practice of Mohammed (the *Sunna*). It appeared that the wealthy were not subjected to *Shari'ah* punishments. It was discriminatory as Muslims were put under pressure to accept *Shari'ah* courts or were given no choice and there was a risk that non-Muslims in those states would be treated as second-class citizens. Human rights organizations criticized several aspects of the legal regimes of the northern states: physical punishments such as flogging, the right of a husband to physically correct his wife, the treatment of children and failures to respect rights of religious freedom all of which involved clashes with human rights norms. But the Maliki school of Islamic law, which is favoured in Zamfara State, gives precedence to *Shari'ah*, as divinely

doi:10.1017/S0020589316000543

ordained law, over state, federal or international law. Thus, in that tradition, religiously inspired law trumps human rights norms.

Dr Ilesanmi's presentation of the history of Islam in the northern states and of the developments since the adoption of the 1999 Constitution is very informative but his work also is particularly valuable for presenting Nigeria's circumstances in a much wider context. In the earlier chapters of the book he discusses how human rights standards emerged from the thought and the distinctive history of the West. He contrasts those standards with the separate system of theocratic rights and protections of human dignity which are prescribed by Allah in Islam. Both systems emerged from the Abrahamic tradition. But while secularism had developed out of the Judeo-Christian tradition, Islam had retained a theocratic tradition. In Chapter 2, in which he discusses and seeks to define theocracies, he points out that in Islamic theocracies there is no distinction between law on the one hand and religion and morals on the other. Nor is there a distinction between the sacred and the secular. Thus the introduction of *Shari'ah* in 1999 was aimed to desecularize justice.

In Chapter 3 Dr Ilesanmi discusses criminal justice in Islam and Islamic jurisprudence, explaining the contrasting schools of thought within Islam. In Chapters 4 and 5 he reviews and then analyses three contemporary Islamic regimes, in Turkey, Malaysia and Sudan and their relationship with international human rights standards. None of the three States has applied *hudud* but discriminatory practices have emerged. He suggests that Turkey has had a record of compliance with human rights norms and pluralism because of the traditions of its military upholding Kemalist secularism, its military and judicial elites, and its vocal secularists. But he records concerns that its free democracy has been decaying since the early 1990s, that public officials and security agents collaborate to violate human rights, and that pressures to create a theocracy are growing. Multiracial Malaysia has the best record of compliance with human rights of the three States but because the constitution recognizes Islam as the religion of the federation, there are voices calling for the adoption of *Shariah* at the federal level and there is evidence of discrimination on the grounds of race and religion. In Sudan there is a clear contrast between constitutional formality and the reality of the exercise of power. It has a constitution which strongly supports human rights but the Islamists who control the State do not believe in a multi-religious or multiracial State. Dr Ilesanmi gives the celebrated case of Dr Meriam Ishag which took place in 2014 as an example. Dr Ishag, who had a Muslim father, had married a Catholic US citizen, and claimed to have been raised as a Christian by her mother, was condemned to be whipped for unlawful sex, because the court did not recognize her marriage to a non-Muslim, and sentenced to death for apostasy. Fortunately, the sentence was not carried out; she was released on appeal and she and her husband moved to the United States.

Of particular interest is Dr Ilesanmi's coverage in Chapter 5 of the range of views of Islamic legal and political scholars. He shows how modernist/leftist Muslim scholars draw on the Prophet Mohamed's earlier teachings when he was in Mecca, where he did not hold temporal power and was one voice among many. Such scholars emphasize the teachings (in Sura II) that there is no compulsion in religion, and they seek to engage with human rights. Traditionalist and fundamentalist scholars draw more on the teachings of the Prophet after he gained temporal power in Medina (Sura IX) which support a dichotomy between the House of Islam and the House of War and suggest a fusion of religion and the State. Other scholars are divided on whether the injunctions in Sura IX are to be read as absolute, eternal, and universal. Islam in common with other religions has a debate on whether specific texts are rulings or guidance whose authority is contingent upon the time and circumstances in which they were made or are of universal application.

Dr Ilesanmi observes that whatever side one may be on the internal debate among Muslim scholars, great respect is shown to the sources of *Shari'ah*. He quotes Ayatollah Mousave Khomeini:

When we want to find out what is right and what is wrong we do not go to the United Nations; we go to the Holy Koran.

Similar sentiments would be expressed by people of other religions about their Scriptures. But a theocracy, whatever the religion, is a different matter: it is hard to disagree with his conclusion that it is very difficult to say that contemporary Islamic theocracies, where they operate as the sole or overriding arbiter of the law in their jurisdiction, are compatible with conventional readings of international human rights.

PATRICK S HODGE*

*Justice, UK Supreme Court.