

BOOK REVIEWS

Fahd Sāliḥ al-‘Ajlān - Al-Taḥrīm wa al-Tajrīm fī Bayān al-‘Alāqah bayn al-Taḥrīm al-Shar‘ī wa al-Tajrīm al-Qānūnī [Prohibition and Criminalisation: Explaining the Relationship Between the Shariah’s Prohibition and the Law’s Criminalisation]

(Riyadh: Markaz al-Bayan lil-Buhuth wa-al-Dirasat, 2017), 210 pp.
ISBN: 978-603-8191-18-7

by Muhamad Sayuti Mansor, *Special Assistant to the Founding CEO cum Analyst, International Institute of Advanced Islamic Studies (IAIS) Malaysia.*
Email: sayuti@iais.org.my.

Al-‘Ajlān’s *al-Taḥrīm wa al-Tajrīm* is a unique contribution to the discourse on the legal enforcement of morality in Islam. This book aims to explain the correct relationship between the shariah’s prohibition and the law’s criminalisation amid the heated polemic over the extent of state’s intervention into the private lives of individuals, which gave rise to the argument that “*not all of what shariah prohibits needs to be criminalised.*”

The author provides a general overview of the conceptual relationship between shariah’s prohibition and law’s criminalisation in Chapter One. In the modern criminal law, when something is not categorised as a crime, it is deemed permissible and lawful. The law must therefore justify its legal permissibility (*ibahah qanuniyah*), even if it is morally incorrect. But the same cannot be true of shariah, which is based on the principle of “commanding right and forbidding wrong”. Instead, it is the law’s responsibility to safeguard and uphold the shariah’s rulings. This does not, however, imply that every single shariah restriction must be legislated or prosecuted in court. Due to the flexibility of discretionary punishment (*ta‘zir*) and consideration of the public interest (*maslahah*), the quest to forbid injustice can be done informally by everyone.

In Chapter Two, the author distinguishes between the western concept of crime and Islamic law. In the West, there is a strong link between crime and punishment that a crime can only be identified by the presence of punishment, without which it cannot be considered a crime at all. Therefore, moral wrongdoings such as fornication and homosexual acts are not considered crimes

in the West and should not be punished. On the other hands, shariah does not distinguish between the two, so such wrongdoings are still considered crimes despite the absence of stipulated punishments. The second distinction is the obligation to execute the specified punishment. While Western criminal law made it mandatory to carry out the punishment specified in the law, *ta'zir* offences are not required to be punished officially. For a minor offence, an informal warning or advice is sufficient, or it can even be completely absolved.

Chapter Three is dedicated to evidences supporting the criminalisation of shariah prohibitions. First, the author gives a detailed account of the qur'anic verses, *hadiths*, and Muslim scholars' consensus on the obligation to forbid wrongdoings of all kinds. Then, using the two related concepts of *ta'zir* and *hisbah*, he proceeds to defend the legitimacy for punishing all of these moral wrongdoings. *Ta'zir* encompasses all wrongdoings not specified in the textual sources including moral transgressions such as extramarital sex, abandoning the obligatory worships and eating publicly during the fasting month. The *ratio legis* for criminalising these offences lies in the violation of the religious prohibition itself, rather than in any other external elements. While the existence of several moral offences that are not punishable by *ta'zir* is regarded as an exception that does not affect this general rule.

On the practice of *hisbah*, the *muhtasib*'s important roles in enforcing public morality and modesty, upholding the public prayers, and prohibiting public manifestation of moral wrongdoings demonstrated that *hisbah* provides a significant mechanism to enforce morality. This is evident by the collection of the quranic verses, *hadiths*, practices of the rightly guided Caliphs, consensus, and the consideration of public interest that emphasises the importance of law enforcement in ensuring citizen's submission, as opposed to relying solely on individual consciousness.

In Chapter Four, the author attempts to mitigate the unintended consequences of strict moral enforcement and the possible power abuse through by taking public interest into account and employing shariah-oriented policy (*siyasa shar'iyah*). By making these two concepts preconditions, the state authority is required to consider factors such as offender's and society's interests, and circumstances under which the offender commit his or her offence before executing punishment. It also allows some flexibility, such as pardoning a first-time offender, using light punishment or dropping the charge entirely if there is no benefit or greater harm. Therefore, the criminalisation of shariah prohibitions is not done arbitrarily or whimsically but must adhere to clear and strict guidance stipulated by shariah guidelines.

In Chapter Five, the author responds to the objection of legal enforcement of morality. He compiles ten different contemporary approaches on the relationship

between shariah prohibition and legal criminalisation. In general, they denied a direct link between the two. Some of them even opposed criminalising shariah prohibitions on the grounds that they are considered as private affairs, or that shariah punishment is only limited to the Hereafter. Some restrict the shariah's right to criminalise to certain categories only, such as those related to "men's rights" (*huquq al-'ibad*), public interest or causing "harm to others". As for the rest, they either make it conditional upon the agreement of the majority and the existing legal provision, or do not provide any differentiation at all.

Each approach is then analysed and refuted. Al-'Ajlani primarily criticises the influence of secularism on these approaches, arguing that they cannot regard shariah prohibitions *per se* as a valid reason for criminalisation. The dichotomy between what is legal and what is moral also affected their view that they cannot perceive that it is God's prerogative to dictate what is good and bad and the need for the state power's policy to promote religious interests. Moreover, this secular worldview changed their approach to the law and criminalisation, especially in terms of legitimacy, legal characteristic, and the concept of religiosity. The author then illustrates the ideal moderate approach to this matter that supports the legal enforcement of morality and the right to criminalise shariah prohibitions.

Al-'Ajlani's final chapter attempts to uphold his view on the legal enforcement of morality in Islam, despite the fact that some moral wrongdoings are not punishable by law. Primarily, the author did not deny that some moral wrongdoings, such as backbiting and lying, are difficult to punish. Next, he discusses the difference between criminalisation and punishment in Islamic law, arguing that moral transgression can still be considered a crime without its penalty being imposed. Moreover, this incapacity to punish is frequently due to external constraints, such as when it has become a common hardship (*'umum al-balwa*), a reduction in the society's religiosity or a changing reality. Inherently, it is the crime itself that must be prohibited. Thus, legal punishment is only a procedural and technical way of prohibiting wrongdoings, not an end in itself.

This work is an excellent masterpiece in safeguarding the Islamic principle of legal enforcement of morality. Nonetheless, certain concerns must be expressed here. First, Al-'Ajlani's focus on the negative connotation of legal permissibility of the moral misconduct appears to take for granted the modern legal system's position on the neutrality of modern law towards morality. The concept that modern law simply eliminates morality from its realms rather than recognising it remains untested. Second, while this book is intended to be a critique of the modern legal system, it may unintentionally fall into the trap of modernism. While criticising the separation between what is legal and moral, the author relied on another modern state logic; the over-reliance on state authority

and legislation to enforce morality. Finally, this work may be more suited to targeting secularists and “liberal” Muslims. Although political Islamists assert the same argument, their motivation may differ. As they are trying to impose shariah within the framework of the modern system, and the author suggests to implement it from the perspective of Islamic criminal law, most probably, they are two sides of the same coin.

Joseph .J. Kaminski, Islam, Liberalism and Ontology: A Critical Reevaluation

(New York: Routledge, 2021), 198 pp.

ISBN: 978-0-367-53985-6

by Mohamed Fouz Mohamed Zacky, *Ph.D. candidate in Political Science, International Islamic University Malaysia.*

Email: zackymfm@gmail.com.

Islam, Liberalism and Ontology: A Critical Reevaluation is an ambitious work that challenges the fundamental direction of the entire debate of reconciling Islam with liberal ideas. Joseph J. Kaminski, an assistant professor of political science at the International University of Sarajevo, presents his core argument in this book, stating that “liberalism - Enlightenment, and Political- and Islam operate on fundamentally different baseline assumptions about the nature and reality of itself. The stark differences regarding the overarching ontology of both discourses make reconciling them very problematic.”

He also criticises the reality that most academic endeavours that juxtapose Islam with the Liberal worldview are predicated on the presumptions that both are compatible from the beginning, which fails to produce a critical dialogue between the two doctrines. In the introductory part, the author includes some remarks on comparative political theory and contemporary debates that inspire his research. He interestingly states that one of his work engages in ‘the more orthodox sources first and then moving on to less orthodox ones’. Thereby, the comparative political effort can make a broad ontological claim on a particular discourse. In other words, Kaminski argues that ‘it makes no sense to base one’s argument about liberalism and or Islam on sources widely seen as overly reformist or outside the mainstream’. The author’s overarching arguments are outlined in nine chapters, including introduction and the conclusion.

Chapters two and three examine the enlightenment roots of liberalism and its so-called modest version of political liberalism. Initially, Kaminski