

# Introduction

It is difficult to imagine another political space that raises such contentious debates—in the political, legal, and historical spheres—than the Middle East. Coming closer to an understanding of what we refer to as the contemporary Middle East will challenge, often confuse, and most certainly demand that we unpack existing narratives. The meta-narrative aspect of the Middle East is captured in discourse that endeavours to define its political, territorial, and cultural contours. In the end we suggest not just one geography, but multiple geographies and not a fixed, immovable space but one which, through its historical social formation, has been continually transformed.

The spatial dynamics of the exogenous (colonially defined borders) versus the endogenous plays out in how we read this region. Trying to unpack what we mean by the ‘Middle East’ opens up not just a territorial but also a cultural and political space and relates to this notion of meta-narrative in two distinct ways. First, there is a tendency to characterize what happens within these spaces as something discrete. For example, analysis of the interplay between politics and religion (Islam) in the region suggests that religion’s piercing of the public sphere is defining of the region. That is, by labelling something as an Islamist state or suggesting the influence of Islamist political parties, we have somehow defined not only the region but fixed everything that happens within it. Secondly, as Milton-Edwards has argued, analysis of the Middle East which suggests that, somehow distinct from other parts of the globe, conflict is ‘inevitable and endemic’ is pervasive.<sup>1</sup> Trying to explain why so much of Western scholarship codifies the Middle East in such specific ways pre-occupies Said’s seminal work, *Orientalism*. Certainly one answer may lie in the nature of the readings themselves and, as Said has argued:

... the Orient (‘out there’ towards the East) is corrected, even penalized, for lying outside the boundaries of European society, ‘our’ world; the Orient is thus *Orientalized*, a process that not only marks the Orient as the province of the Orientalist but also forces the uninitiated Western reader to accept Orientalist codifications... as the true Orient.<sup>2</sup>

Avoiding such a limited and reductionist view of the Middle East is our first and interminable task. As we fix our focus on minority rights in the Middle East, we are confronted with a second challenge. The concept of ‘minorities’ emerged as the Middle East itself emerged; a construct borne of ‘a traumatic epistemological

<sup>1</sup> B Milton-Edwards and P Hinchcliffe, *Conflicts in the Middle East since 1945* (2nd edn Routledge 2004) 1.

<sup>2</sup> E Said, *Orientalism* (Penguin Books 1995) 67.

transformation'.<sup>3</sup> Nations were carved from communities, sometimes dividing groupings between these newly formed states. Much like the exogenous construction of what we call the 'Middle East', understanding how to engage the minorities discourse in the context of this territorial ambit demands that we do not graft a conceptual concept on to a society or, as White argues, we risk 'losing sight of how the social and political groups these categories describe appeared and developed'.<sup>4</sup>

In examining the shifting constructions of religious and ethnic minorities in the Middle East, our focus will be on two primary questions; how the socio-political groups that we define as minorities engage (or are excluded from) various sites of power and, secondly how state practices with regard to minorities (and ostensibly based on Islamic authority) intersect and inform modern constitutionalism and international law. We are mindful that such analysis should not posit how 'old' or 'traditional' Islamic law exists side-by-side with 'new' or 'modern' constitutional law, as these divisions are never so clear in practice.

In the context of these challenges, and to enable the articulation of additional models of minority rights protection derived from within the non-Westernized world,<sup>5</sup> this volume seeks to examine the context within which minority rights operates within this contested region. The volume comprises six main chapters. Chapter 1 endeavours to decode and reframe the language which suggests that the Middle East, as a broad concept, and Islam, as a particular fixture within it, are somehow distinct from the larger debates which preoccupy most states. In Chapters 2 and 3, we provide an overview of minorities in the Middle East before grounding our discussion in three case studies—Iraq, Syria, and Lebanon in the final three chapters of the book.

Chapter 1 tackles some of the most contested terrain. The argument that the Middle East shares narratives both endogenously and exogenously is explored as we set out the historical, social, and territorial formation of the region, focussing on events that have helped shape and reshape this space externally and internally. The movement from pre-industrial to post-industrial societies, and the varying responses to these socio-economic transformations at sub-state, state, and regional levels, has necessitated the interplay between religion and politics, religion and rights, and the interface between politics and law. These myriad forces have generated not just one but multiple narratives at the state and civil society level, which are explored. These narratives are shared, remain indistinctive at times, and raise and explore pinpricking issues concerning the territorial dimension of each state and the attendant identities that have emerged within the region. Contemporary alliances, both intra-group and between groups, form the basis of our typology and provide the backdrop to our case studies.

<sup>3</sup> B White, 'The Nation-State Form and the Emergence of "Minorities" in Syria' (2007) 7(1) *Studies in Ethnicity and Nationalism* 64, 64.

<sup>4</sup> *Ibid* 81.

<sup>5</sup> This volume forms the third in a series of books. See J Castellino and E Dominguez Redondo, *Minority Rights in Asia: A Comparative Legal Analysis* (Oxford University Press 2006) and J Castellino and D Keane, *Minority Rights in the Pacific: A Comparative Legal Analysis* (Oxford University Press 2009).

The second section of Chapter 1 examines how conflicts since 1945 have shaped this region with particular reference to the Arab–Israeli conflicts and the post 9–11 ‘war on terror’. The Arab–Israeli conflicts have left an indelible imprint on both regional and international political landscapes. Their impact on the region has not only shaped intra-state discourse (in some cases as a source of deflection from internal dissent and unrest), but, equally, the Palestinian Diaspora has significantly altered the demographics and politics of receiving states where many have found temporary homes. The armed intervention in Iraq<sup>6</sup> and Afghanistan, and the resurgence of more radical elements within Islamist parties are the most visible by-products in the aftermath of attacks on US soil on 11 September. In the shadow of these interventions, expressed as wars of aggression, a form of ‘law-fare’ has emerged, which endeavours to extinguish the division between law and power and which has had an impact on domestic constitutionalism, globally.

As Fitzpatrick argued, the post-11 September ‘war’ on terrorism ‘tested the limits of the legalistic approach’ and saw powerful states such as the US attempt to stretch the bedrock of international human rights and humanitarian law principles beyond what they could bear, by carefully crafting legal lacunae and constructive ambiguities into relevant texts for political purposes. The discourse that accompanied this ‘war’, much like that of the Arab–Israeli conflict, sought to infiltrate and distract from a more critical and complex reading of what underpinned local and discrete conflicts, both in the Middle East and worldwide. While the impact of this armed conflict paradigm has been felt across the international political landscape, its effects have been most palpable in the Middle East and the Muslim world. In terms of relations with the West, the events of 11 September awoke the political dimensions of the cultural debate that underpinned Huntington’s ‘clash of civilizations’ hypothesis<sup>7</sup> and Lewis’s readings on the ‘role’ of Islam.<sup>8</sup> While the rhetoric may have been modified with a change in US and other administrations, the ‘rights-free zones’<sup>9</sup> created have been harder to dispel.

The interplay between religion and politics and religion and human rights is highlighted in the third section of the opening chapter. In contradistinction to arguments suggesting that the role of religion in the public space is somehow specific to the Middle East, we posit that issues related to human rights and democracy in the Middle East raise a multiplicity of views. The tension between the

<sup>6</sup> The presence of militant groups in Iraq, one offspring of the intervention, has had immediate and dire effects on the human rights situation in general, but the burden on minority communities has been particularly heavy. See P Taneja, *Assimilation, Exodus, Eradication: Iraq’s Minority Communities since 2003* (Minority Rights Group International 2007).

<sup>7</sup> See SP Huntington, ‘The Clash of Civilizations’ 72(3) *Foreign Affairs* 22–49.

<sup>8</sup> B Lewis, *Islam and History: Ideas, People and Events in the Middle East* (2nd edn Open Court 2001). For a more informative read see AM Emon, Mark Ellis, and Benjamin Glahn, *Islamic Law and International Human Rights Law* (Oxford University Press forthcoming).

<sup>9</sup> Fitzpatrick adapts this term, first introduced by HH Koh, ‘America’s Offshore Refugee Camps’ (1994) 29 *Richmond Law Review* 139, 140–1 to describe state policies that developed in the ‘war on terror’. See J Fitzpatrick, ‘Speaking Law to Power: The War against Terrorism and Human Rights’ (2003) 14(2) *European Journal of International Law* 242, 241–64.

public versus private space debate in the Muslim world is, in many ways, played out in many other jurisdictions.<sup>10</sup> While Islam, with its origins in the Arab world, does indeed factor at both state and civil society level and, therefore, contains characteristics inextricably linked to these multiple geographies, it is equally true that its practitioners are not homogenous. For Muslims, the question of faith in the public sphere engages, challenges and, for some, creates tension, not unlike the challenges posed by the seeping of religiosity into public discourses in the US with the Christian right, as well as in other jurisdictions.<sup>11</sup> Clearing away the idea of one 'Arab street' leaves open the possibility of many intersections, of different dialogues emerging at the interface of faith and politics in the Middle East.

Section 4 looks at the concept and definition of a minority. Whilst in the context of this review, it is necessary to examine the historical development of the minority rights regime, including definitional debates, there are significant studies devoted to minority rights and we will not endeavour to replicate these. Rather, woven throughout our review is an interrogation of the *process* by which we impose the conceptual category of a 'minority' on a society. As we will argue, the status of minority is one conferred, not adopted by the communities in question, and is reflective of how groups relate to sites of power.

The fifth and final section of Chapter 1 assesses the approach to human rights by Middle Eastern states with a review of state participation in the dual United Nations human rights regimes (treaty- and charter-based). We focus on questions of state compliance under each mechanism through an assessment of reservations and declarations to treaties aimed at nullifying or restricting specific treaty obligations; through engagement with the reporting obligations to treaty-based organs, and through participation of these states in the monitoring mechanisms. Comment is also offered on the attempts made to create a regional framework for the region in the form of the Arab Charter,<sup>12</sup> of Islamic human rights schemes such as the Beirut<sup>13</sup> and Cairo Declarations,<sup>14</sup> and the Universal Islamic Declaration of Human Rights,<sup>15</sup> which have emerged under the League of Arab States and the Organization of the Islamic Conference (OIC). Although challenges to the universality of the rights regime, which are raised frequently when Middle Eastern states interface with international human rights mechanisms,

<sup>10</sup> For an authoritative analysis of the role of religion in constitutional laws in every country in the world see J Temperman, *State-Religion Relationships and Human Rights Law* (Martinus Nijhoff/Brill 2010).

<sup>11</sup> See D Herbert, *Religion and Civil Society: Rethinking Public Religion in the Contemporary World* (Ashgate 2003).

<sup>12</sup> Adopted by the Governments of the Council of League of Arab States on 15 September 1994 and reprinted in (1997) 18 HRLJ 151.

<sup>13</sup> League of Arab States, Arab Charter on Human Rights, 22 May 2004, entered into force 15 March 2008.

<sup>14</sup> *Ibid.*

<sup>15</sup> Islamic Council of Europe, Universal Islamic Declaration of Human Rights, 19 September 1981.

suggest some degree of incompatibility, our accounting of the development and implementation of human rights law in the Middle East yields a more complicated record.<sup>16</sup>

Chapters 2 and 3 seek to provide a taxonomy and overview of minorities in the region. As the territorial ambit of the Middle East is both contested and dynamic, our approach to defining this 'territory' reads the Middle East broadly. Therefore, when auditing minorities in the region, we include the oil-producing countries of Bahrain, Kuwait, Saudi Arabia, Oman, Qatar, the United Arab Emirates, and Yemen;<sup>17</sup> the Fertile Crescent region of Israel/Occupied Territories, Jordan, Lebanon, Iraq, and Syria; the North African countries of Algeria, Egypt, Libya, Morocco, and Tunisia; the sub-Saharan members of the League of Arab States, namely, Sudan, Mauritania, Djibouti, Somalia, and the Comoros Islands; and, finally, the non-Arab states of Iran and Afghanistan. Our taxonomy draws from existing literature on minorities, although our classification and groupings reflect the nature of in-group/out-group relationships within a state(s). In a number of cases, the minority in question may either numerically, or politically, have a different relationship depending on individual states; dominant in one, subservient or 'at risk' in another. In as much as it is possible, we address this variance in our taxonomy. Whilst we have endeavoured to be exhaustive in identifying the groups within the region as well as their relationship to the state(s) in which they live, we do not provide a detailed audit of *all* minority groups in the region. Rather we have focussed on groups that are transnational and/or those that inform the socio-economic, cultural, or security developments within or between states in the region.

When grouping together minority communities in the Middle East, two primary categories emerge—religious minorities, in general, and Muslim ethnic groups. Yet we suggest that these classifications may not be sufficient to explain a particular group's minority status within a society. Some of the more recent scholarship on minorities has come from social scientists who have applied comparative methods to the study of minorities, using social science theories on minority-group formation and identity. Rose's 2001 summary of minority studies, for example, demonstrates how variables such as political and cultural factors were significant in determining minority status.<sup>18</sup> We draw from this literature to help us better understand how dominance and power, via exclusion and/or marginalization, factor in determining minority status. Deconstructing Islam as an actor that occupies a primary role in determining the minority status of groups has the effect of exposing a far more complex set of variables that 'cause the differentiation and social fact of minority status'.<sup>19</sup> That political and cultural factors

<sup>16</sup> For a similar discussion that encompassed the so-called 'Asian Values' debate see Castellino and Dominguez Redondo (n 5) 11–25.

<sup>17</sup> This area is also referred to as the Arabian Peninsula.

<sup>18</sup> A Rose, 'Minorities' in NJ Melzer and PW Baltes (eds), *International Encyclopaedia of the Social and Behavioural Sciences* vol 14 (Elsevier 2001) 901.

<sup>19</sup> *Ibid* 13.

play visible roles in determining minority status is perhaps most clearly illustrated in cases where the relative size of a particular community is not determinant of its status.

Our taxonomy is therefore divided into sociopolitical groupings. Although the primary categories of religion (subdivided) and ethnicity are retained, three additional categories have been added—majoritarian minorities, political minorities, and trapped minorities. Under the category of religious minorities we include: Jews, Copts, Maronites, Greek Orthodox, Greek Catholic, Latins, and Protestants. Under the subcategory of Islamic minorities, we look at: Alawites, Druze, Babism and the Baha'is, Ismailis, and Ahmadis. Majoritarian minorities are those who are numerically larger but excluded from sites of power, a category that includes the Shi'a in Bahrain for instance. Relative size distinguishes what we refer to as political minorities. Like 'majoritarian' groups, political minorities are excluded from power but are also a minority in terms of relative numbers; these include Shi'a in Saudi Arabia and Sunnis in Iran.

Finally, we detail what we refer to as 'trapped' minorities, as distinct from ethnic/national minorities. The term 'trapped minority' was first introduced by an Israeli sociologist when examining the effects of 're-territorialization' on the identity and consciousness of Palestinian citizens living within Israel.<sup>20</sup> We engage this concept in a broader arena, and define it as a segment from a larger group spread across two or more states. Trapped minorities are marginalized, or in the case of Palestinian-Israelis, doubly marginalized,<sup>21</sup> subject to hegemonic control by others within these states and, as such, excluded from access to sociopolitical and economic decision-making institutions. In addition to Israeli Arabs, we include Palestinians, Baluchis, and Kurds. Palestinian refugees and exiles have undoubtedly shaped their 'host' countries. Similarly, the Kurds are spread across Turkey, Syria, Iran, and Iraq. Their desire to exercise some form of self-determination in each of these states has brought them into conflict with all four states, with significant impact in two of our case studies—Syria and Iraq. Finally, we include the Baluchi community, an ethnic and nomadic group that straddles three countries—Afghanistan, Iran, and Pakistan. In their struggle to establish an independent Baluchistan, they have felt the sharp end of respective state actions in each of these host states.

Chapters 4 to 6 undertake three specific country analyses—Iraq, Syria, and Lebanon. These chapters will audit and analyse the historical and sociopolitical basis of identity formation within each of these states and how this is reflected in the legal regimes and institutions in each jurisdiction. The use of a case-based approach conforms to the objective and the structure of volumes 1 and 2 of the Oxford University Press series on minority rights. In these earlier volumes, as in this particular book, the objective is to provide a general overview of the region

<sup>20</sup> See D Rabinowitz, 'The Palestinian Citizens of Israel, the Concept of Trapped Minority and the Discourse of Transnationalism in Anthropology' (2001) 24(1) *Ethnic and Racial Studies* 64–85.

<sup>21</sup> *Ibid* 73–4, 76–7.

and the salient issues that engage minority rights (Chapters 1 to 3) as well as to provide detailed insights into the judicial, legislative, and administrative policies adopted within specific states for the protection of minorities (Chapters 4 to 6).

Nonetheless, the inclusion (and therefore exclusion) of particular countries (and indeed minority groups) may ignite some debate. For example, the current political landscape most certainly invites a closer examination of the regional pulls of Iran and Saudi Arabia, and the 'Arab spring' suggests that perhaps Egypt or Tunisia merit a closer review. That said, the focus of our inquiry is on issues related to minority communities in what we acknowledge to be a construct rather than a cohesive region. Here, we argue, minority status is best understood by examining how sociopolitical groups engage (or are excluded from) various sites of power and we have selected states that tell us something about *that* relationship. In undertaking this approach, we challenge some of the conceptions of minorities in the region and as a consequence, some of the 'exceptions' that are often read into our understanding of intergroup relations in the Middle East.

In specifically selecting Iraq, Syria, and Lebanon, several factors came into play. These states have shared borders (Iraq with Syria, and Syria with Lebanon) as well as the 'borderlessness' of historical narratives, experiences, and of social and cultural landscapes. Conflicts have also shaped and reshaped these states. The displacement of Palestinians and the contested territorial boundaries of Palestine have influenced both the demographics and the politics of Egypt, Jordan, Syria, and Lebanon. The Kurds too are spread across Turkey, Syria, Iraq, and Iran. For both Palestinians and Kurds, the struggle for self-determination rights has brought each into conflict with one or more of our case studies. In the case of Syria and Iraq, the governments themselves have been reluctant to recognize or focus on the minority rights problems that exist within their borders.<sup>22</sup> The political rhetoric of these states argues that minorities are protected, whilst the 'on-the-ground' facts of these minorities suggest a very different scenario. To the extent that human rights have become politicized, the Middle East is unexceptional. In this regard, our case studies reveal that the language of human rights and its engagement within these political landscapes is present, at least at the rhetorical and constitutional levels.

Whilst difficulties emerge when accessing recognized and empirically credible sources engaging with minority rights in Asia, this difficulty is accentuated when turning to the Middle East. Those trained in common law seek to understand such social issues through the lens of cases. Yet, relevant domestic case law often does not exist in the public domain, and law tends to be administrative, identifying systems and restraints, rather than rights-affirming in nature. Perhaps most critically, in the cases we have chosen, there is either limited or no currently sourced empirical data that provides a *forensic* accounting of minority status within these states, a problem particularly acute in Iraq. This difficulty was also

<sup>22</sup> The rootedness of the identity politics in Iraq was exposed in the regime change in Iraq in 2003. In the autonomous areas of Kurdish Iraq, however, the idea that minority rights are protected (which is the government position) is contested.

acute in our overview of minorities in the region. Although we found reference to governmental as well as NGO and academic reports necessary at times, we were aware of the attendant difficulties with sourcing,<sup>23</sup> accuracy,<sup>24</sup> and questions of bias<sup>25</sup> and, to the extent possible, we confined our extraction from these sources. Also for a number of groups or states within our review, there is a limited scholarship and other secondary sources on the minority rights question. In some cases, such as in Iraq, the internal domestic situation and the need to address live conflict issues have focussed attention on larger constitution-building exercises, which have marginalized or disregarded minority rights questions. This has made collection of information all the more urgent but, equally, all the more difficult.

To lessen the impact of some of these hurdles, the authors were able to benefit from their prior engagement in the Middle East, both as academics and advocates. This experience was useful not just in helping to analytically frame our examination but, on a more practical level, provided access to networks and individuals who were extremely helpful in providing information and critique. To this end, the authors would like to thank a number of colleagues, interns, and others who provided us with research support, insightful comments, commentaries, and good humour. In particular, we would like to thank Laura Deck, Michelle Farrell, Katie Hull, Siavash Iranparast, Benjamin Kastan, Chelsea Langston, William Lawrence, Susan Megy, Sundeep Mutgi, Baron Ojogho, Rebecca Pawul, Irene Pietropaoli, Yosef Schiff, David Vassallo, and Elizabeth Viole for their research and editing assistance. Particular thanks to Sawsan Al-Assaf, Laleh Khalili, Saad Jawad, Jillian Schwedler, and Ben White who kindly agreed to read sections of the book and provided critical guidance. The integrity of their work and generosity of their time were invaluable. With regard to in-country information on our case studies, both authors would like to thank Iman Abdulrahim, Roja Fazaeli, Jason Gluck, Kamran Hashemi, Orna Kohn, Carmi Lecker, Brendan O'Leary, Nelly Rihan, William Spencer, and Michael Youash for their guidance. Finally, the authors would also like to acknowledge the support given by our respective academic institutions, and particularly Orla Baxter (NUI, Galway). Whilst we have benefited enormously from these colleagues, any errors or limitations are the sole responsibility of the authors.

<sup>23</sup> Although, in most instances, it was possible to find multiple literatures or reports on a particular group, many of these tended to draw from the same source(s).

<sup>24</sup> One of the few academic databases focussing on minority rights with which we engaged was the Minorities at Risk Project at the University of Maryland. However, most of their data on the Middle East and North Africa was dated (usually including information only up to December 2006).

<sup>25</sup> In particular, the US Commission on International Religious Freedom (USCIRF) has been criticized for its 'ongoing preoccupation with Islamic law as an obstacle to religious freedom', which has led to 'an elaborate report on the treatment of religious freedom in constitutions in the Muslim world without publishing comparable studies on other parts of the world'. See AE Mayer, 'The Fatal Flaws in the US Constitutional Project for Iraq' (2007) 61(1) *Journal of International Affairs* 153, 159. Such focus by USCIRF has, on the one hand, provided a consistent source of data on minorities in the Middle East that is otherwise either unavailable or dispersed, whilst, on the other, suggestions of bias on the part of USCIRF give rise to questions of impartiality in their reporting.