

BOOK REVIEWS

Emilia Justyna Powell, *Islamic Law and International Law: Peaceful Resolution of Disputes* (Oxford University Press 2020), XiV + 314 pp

The scholarships in comparative law in general and those linked to Islamic law in particular are instinctively divided between the external and internal scholars i.e., the scholarships that come from a Muslim and a non-Muslim. Whereas both offer a significant contribution to the literature, the external scholarships often lack the depth necessary to understand a legal tradition such as Islamic law which is foreign to them. However, E J Powell's monograph seems to have managed to considerably avoid this pitfall. For instance, the author's claim – that in the literature blanket claims are made about the attitudes of all ILS towards international law (p3) – is heavily relied on Western literature rather than those from ILS but she acknowledges this although without offering any further details as to how this is being done. However, the only pitfall in the monograph is the lack of appreciation of the longstanding effect of colonialism in ILS. For instance, the author's claim - that historical patterns seem unhelpful in providing any solid answers in this regard (Islamic milieu and international law in the context of peaceful resolution of disputes) (p2) – disregards the colonial effect in the development of a consistent Islamic legal framework in ILS. However, the author recognises the intermingling of the Islamic and secular laws in ILS that shaped their state practice, but she abstains from offering a scholarly analysis of the relevant law that can be said Islamic. For instance, usury (Riba) is prohibited in Islam so any disputes concerning the legality of a usury agreement whether between individuals and states are void in Islamic law. If any state changes this law by mixing up with secular law that does not prohibit in business transactions, that state cannot be said an Islamic Law State (ILS) as the law is not Islamic. However, that can still be called a Muslim state where the majority of the population are Muslims. The secular law that Islamic law interacts and intermingles with is the continuous effect of colonialism in the Muslim world which E J Powell does not consider to be the key overarching reason. The author only states that the interaction between Islamic and secular law became more evident when the former came into contact with the European nation-state system (p 59) but she abstains from emphasising that the forceful imposition of the latter during the colonial period and even after decolonisation when Muslim states became officially free from the colonial power and its rule most of the states could not actually set themselves free from the neo-colonialism from the former colonisers. Therefore, the book is purely based on state practices of the ILS which are more Muslim majority states rather than Islamic *per se*. Hence, the term 'Islamic milieu' to identify the state practices of ILS is logical.

The author argues that if Shari'a is implemented as the official law of an ILS that has a different status than Shari'a as a symbol (p9) but this argument remains unsubstantiated. This is because Shari'a is not a non-legal source (although some of it can be non-legal but not its entirety) in Islamic legal tradition but it has the same status of official law irrespective of whether the government or ruler implemented it as official law or not. The status quo of Shari'a is already given by default in the key sources of Islamic law such as the Qur'an and Sunna. It does not need official recognition. Therefore, any state which has recognised Islamic law as its official law but does not implement Shari'a hardly falls within the category of ILS. This is because their claim to be an ILS is itself inconsistent with the fundamental principle of Islamic law i.e., the status of Shari'a as the key source of Islamic law that evolved from the Qur'an, Sunna, Ijma, and Qiyas in Islamic jurisprudence (*usul al-fiqh*). Therefore, the claim that it addressed the compatibility between Islamic and international law is questionable. Rather, the author's claim should be that the monograph addressed the compatibility between 'the laws of ILS and international law'. This approach also requires explaining the use of the term ILS. This is because, although these states officially acknowledged Islamic law in their constitution and other domestic legal instruments, they do not necessarily apply this in practice. The author incorporates into the category of ILS those states with an identifiable substantial segment of their legal systems that are charged with the obligatory implementation of Islamic law, and where Muslims constitute at least 50 per cent of the population (p 42). This categorisation is questionable for the reasons outlined above. However, the author rightly recognises the tensions relevant to this categorisation and focuses on the state practices that currently prevail rather than their nexus with Islamic law (p 43) for empirical reasons i.e., states' behaviour.

The monograph is more about dispute resolution in international law as opposed to Islamic law (p 6). The author states, in the introduction, that the monograph explores the compatibility between Islamic and international law concerning the peaceful resolution of disputes (p 2). In terms of their compatibility, this monograph offers a great deal of analysis about the procedures that ILS observe. However, the author only offers a cursory analysis of the Islamic substantive law on dispute resolution which is known as *Shura*. As *Shura* offers dispute resolution mechanisms to resolve disputes between states, individuals, and states and individuals, the literature in this area is an excellent source to study. E J Powell does not explore this. However, this area of law has not been explored adequately by scholars from outside of the ILS either. As a result, Western scholars often conclude that there is a lack of development or inconsistency in the resolution of disputes among the ILS. So, this monograph has adopted an indifferent approach like many other scholarships from the West.

The monograph argues the need for an understanding of the evolution of Islamic theological and doctrinal evolution (citing Bassiouni) but it argues for the effect of a balanced approach between secular law and religious law that shaped ILS's preference to recourse to international law (p 5). However, what Bassiouni has emphasised here is the Islamic theological and doctrinal evolution but not merely the practice of a state which claims its domestic legal framework to be Islamic. Therefore, this argument is misleading to some extent. The monograph offers an analysis of the compatibility between the state practices of ILS and that of international law. However, the key argument is clear and cogent where the author claims that the attitude of ILS heavily depends on the amalgamation of secular laws with religious laws. So, the author offers a practical approach to international law concerning the peaceful resolution of disputes based on the state practices of the ILS aligned with their domestic laws as they stand - which may not be particularly Islamic. However, the author rightly argues that Islamic and international law share many similarities in the basic principles of inter-state laws.

The author discusses international law, Islamic law, and Islamic international law in chapter 2. Although the discussions are mostly descriptive, this chapter offers a particularly good outline of the nature of these laws. Hence, this chapter is an excellent resource for anyone who wants to understand the functioning of these legal systems in outline. However, the section on 'Islamic law' is based on a holistic approach between Islam and culture that is prevalent in different Muslim states (p 33). This is because the author does not offer the classical Islamic law and its evolution in the modern world but she clarifies this by stating that '... efforts should not be misunderstood as equating Shari'a with merely a legal system of laws' (p 34). While this is a good warning to give, on the one hand, it is concerning on the other hand because in a discussion about Islamic law any reader would appreciate a discussion about the role of Shari'a and its interplay in shaping the law. However, the author redirects the readers to Bassiouni who discussed the relationship between the Shari'a and Islamic law as the former is the source of the latter. Although Bassiouni offered a very good discussion on the relationship between Sharia and Islamic law, the readers would need at least a basic understanding of the evolution of Islamic jurisprudence and its role in making Islamic law. For instance, the Shari'a is a source of Islamic law but how that Shari'a has been evolving through Islamic jurisprudence on the resolution of international disputes, which is the focal point of this book, would be an excellent contribution to the literature. The question here is 'how one can claim that a state law is Islamic without offering analysis about the nexus between the Shari'a (as a key source) and law?' Instead, the author leaves this question for the scholars of Islamic and comparative law to answer (p 35). However, chapter 2 discusses the definition of Shari'a offered by scholars, its characteristics, constitutive elements, and the relationship between Shari'a, secular institutions, and Islamic law. Chapter 2 also discusses the relationship

between Shari'a and secular law and governance. The author refers to An Na'im to support the view that "Shari'a contains not only legal but also non-regal rules which makes this diverse and even contesting" (p 37) but this scholar blatantly refuses to accept that Shari'a can be the basis of state law.¹ However, the section of this chapter on 'Islamic international law' offers a very good insight on the different sources of Islamic international law such as *Siyar*. It offers many references to Islamic classical scholars like *Al-Shaybani*.

The author suggests one of the aspects of the diverse nature of Islamic law in ILS i.e., the frequent renegotiation between Islamic and Secular law (p 50). Whereas this is a very good aspect of this book, it abstains from discussing another important aspect (which is perhaps the most important aspect) of Islamic law i.e., the legal-political legacies that emerged by its evolution throughout history. For this reason, a state like Turkey can still be recognised as a Muslim state due to the legal-political legacies that this country has incorporated from Islam not only as a religion but also as a source of law.² Moreover, the ruling party's imposition of Islamic law as opposed to secular law in public sphere shows the country's potential drift towards Islamic law rather than a balanced framework of Islamic and secular law. Whereas the author recognises the diversity within ILS that shapes the law as empirically observed, this is not only because of a balanced approach between Islamic and secular law but also between the diversity of the schools of thought in a nation-state setting. For instance, the interaction among Hanafi, Maliki, Shafi, and Hanbali jurists and the interpretation of the Shari'a. Therefore, E J Powell's book is more about the Islamic law that has mingled with secular law in a Muslim majority state rather than the Islamic law that has evolved in line with the Shari'a and under the auspices of Islamic jurisprudence from diverse schools of thought.

Chapter 3 discusses the relationship and differences between international law and Islamic law concerning the resolution of disputes. It offers an excellent account of the historical interaction between these two potentially conflicting legal systems. The author offers a very careful approach by neither adopting the extreme approach to these systems based on dissimilarities nor advocating for the similarities by ignoring the dissimilarities. Rather, the author takes a stance in the middle to discuss both the similarities and dissimilarities in the interaction. This chapter argues this interaction as a step forward to the development of an inter-civilizational dialogue. This is a good methodological approach for which this monograph stands out. Chapter 4 is a well-structured chapter that emphasises the procedural convergence between Islamic and international law that provides the platform for increased

1 An-Na'im A., *Islam and the Secular State* (Harvard University Press, 2009).

2 Sabuj M., *The Legitimacy of Use of Force in Public and Islamic International Law* (Palgrave MacMillan, 2021) chapter 4.

legitimacy of the international law among the ILS. The literature featured in this chapter is diverse and rich. The focus of this chapter is on the Islamic approach to conflict management that shapes the inter-state relationship between ILS. It also contrasts the dispute resolution cultures between the ILS and international law. The author's observation in this chapter regarding the interjection of Shari'a in the resolution of inter-state disputes is very interesting and shows the empirical understanding of the functioning of the Shari'a at the state level and inter-state level.

Chapter 5 builds on the argument made in chapter 1 that ILS do not stick to any particular method of dispute. In other words, ILS's choice of dispute resolution mechanisms is somewhat irregular. This chapter offers a cogent analysis of the state behaviour in the resolution of territorial disputes between ILS themselves as well as ILS and other states. In this regard, the author offers a great deal of discussion of the key methods of dispute resolution that ILS frequently resort to such as arbitration and adjudication. The chapter also discusses the role of less formal methods of dispute resolution such as conciliation, mediation, negotiation, and good offices. The discussion on the Islamic conception of land ownership and sovereignty is fascinating. Also, the data covered in the empirical study on the ILS' attempts at peaceful settlement of territorial disputes are very extensive which covers from 1945 to 2012. Because the data does not cover beyond 2012 and the book is published in 2020 it does not offer the most recent state practices of the ILS. This aspect of the study is particularly important for ILS which have undergone a significant socio-political change since 2012 that occurred from the Arab Spring. However, this author's analysis of the ICJ's jurisprudence on matters involving one or more Muslim states, discussed in chapter 6, is commendable. The argument that ILS puts a premium on conciliation over adjudication and often prefer to less formal methods of dispute resolution is based on empirical analysis of the very common state practices of the ILS.

Chapter 7 shifts into a more investigative discussion about the difference in the schools of thought and also the geographic location of ILS. It offers a regional understanding of the characteristic of ILS in the resolution of disputes such as in the Middle East, Asia, and Europe. The author's view here is that the emphasis on the idea that different regional versions of Islamic law may shape the relationship between ILS and international conflict management is relatively little (p 240). The author has put forward this view in a very systematic way as she offered an in-depth analysis of the regional variations of the ILS in terms of developing their jurisprudence surrounding the resolution of international disputes. Also, the argument that legal schools in the Islamic milieu have substantially weakened over time is very true. However, the author slightly overlooks the scholarly engagement of the schools of Islamic thought in addressing the legitimacy of Public international law in Muslim states.

Whereas the influence and incorporation of secular law in ILS is a strong and empirical argument made by the author, this methodology overlooks the role and purpose of Shari'a that shaped Islamic law throughout the history and in the modern world under the auspices of Islamic jurisprudence which is not limited to any single domestic jurisdiction. For instance, the Arab Spring in the 21st Century gives the world a strong message about the aspiration of Muslims to establish Islamic legal and political entities at the state level and inter-state level. This message is clear from the Muslims in general and those of young generations in particular for Muslim states to revive Islamic law rather than negotiating with foreign law. Although this message does not directly single out secular law, it endorses an Islamic conception of diversity and cooperation between Muslims and non-Muslims as opposed to a balance between a secular and Islamic legal system. For instance, the legitimacy of the Afghan government supported by the West was always questioned for not being Islamic enough by the Taliban authorities although the former claimed the country as an Islamic Republic. Similarly, how Islamic is the Taliban government would be when they form a government would depend on the application of Islamic law according to the Sharia and Islamic jurisprudence rather than a mixture of Islamic law and Taliban's interpretation of that law. Likewise, answer to the question how Islamic is the Islamic Republic of Pakistan, would depend on the application of Islamic law according to the Shari'a and Islamic jurisprudence rather than adopting a balanced approach between Islamic law and Secular law by state authorities who found this suitable for political purposes.

Powell's monograph is a welcome addition to the literature that examines 'the interaction between the laws of Muslims states with that of international law concerning the peaceful resolution of inter-state disputes' from an empirical perspective. There is much to be earned from a close reading of the arguments and analyses which explore many Muslim states in the Middle East, Asia, and Africa. This monograph offers an excellent analysis of the empirically obtained data in Muslim states in order to identify their legal characteristics at the state level and inter-state level. Therefore, this monograph is an excellent read for scholars and lawyers of international and comparative law. If international comparative law scholarship in general, and Islamic law and international law scholarship in particular, is to make a real progress, more work of this sort is needed.

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