

Islamic Law and International Law: Peaceful Resolution of Disputes

Emilia Justyna Powell

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Brave. Informed. Self-aware. Intensely curious, yet on a quest.

These descriptors capture Emilia Powell's ambitious and illuminating study of Islamic law and international law. The challenges in undertaking this study are huge, hence the first descriptor: brave. To name just three challenges: (a) the category of "Islamic law" is a bit of a misnomer. As Powell explains, it is probably more accurate to say that sharia is a set of law-like precepts (p. 34–39). Islamic legal scholars and judges are also trying to divine law from texts written to define God's will for human beings, so this is a challenge Powell shares with everyone writing about Islamic law. (b) The category of Islamic Law States (ILS) is definable, but so varied that one can reasonably ask how to draw general conclusions. (c) Powell is not a scholar of sharia. Powell carefully explicates these and other challenges, hence the descriptors "informed" and "self-aware."

Powell approaches her research subject with humility. The first and last chapter clearly state what this book is and what it is not: "this work is principally about international law and how it is perceived via the lens of the Islamic legal tradition" (p. 6). Powell wants to understand how Islamic law shapes encounters with international law. She focuses on the resolution of territorial disputes, which allows her to examine a core feature of international law (the obligation to peacefully resolve disputes), and a hard case for this core feature (ongoing disputes about territory). Because the resolution of territorial disputes has been extensively studied by political scientists, Powell can compare the engagement of Islamic and non-Islamic law states in third-party dispute resolution.

Powell allows herself the time and space needed to set up the study. Over half of the book is devoted to explaining the fraught concept of Islamic law, the category of ILS, variations within this category (including legal, substantive, institutional, and ideational variations), and similarities and differences between Islamic law and international law. This is where the descriptor "curious" comes in. Powell cleverly uses translated texts, including translated formal laws and constitutions, books written to explain Islamic law, examinations of ILS engagement with international legal mechanisms, legal rulings, and interviews with Islamic law scholars and judges to learn about the topic she is studying. Those inside and outside of the Islamic law tradition should thank Powell for her thoughtful and well written effort. Since Islamic law scholars disagree intensely about fundamental principles of Islamic law, many readers may take issue with Powell's explanations. This reader appreciates that someone really smart did everything she could imagine to learn Islamic law, and then translate it into categories and variables that Western lawyers and Western social scientists use to examine domestic legal systems. Even if

one thinks she got it wrong (personally, I would not know), the book provides a helpful baseline from which to agree, disagree or build.

While Powell is open and deeply curious about the Islamic law and ILS, she is on a quest and she comes to this project with some fundamental priors. She is building on her co-authored book *Domestic law goes global: legal traditions and international courts*. Whereas this earlier book focused on how common law, civil law and Islamic law shaped encounters with international courts, Powell's new book is deeper in its investigation of relevant domestic tradition, as well as its engagement with international law more generally. Yet because she expects domestic traditions to matter, she is really asking *how* the Islamic tradition matters. This focus explains why she does not delve deeply into how power and interest shape the encounters she studies. Second, Powell is a committed positivist political scientist who believes that systematic evaluations of patterned past behavior can generate insights that predict future behavior. Third, Powell is a quantitative social scientist, thus a scholar willing to reduce complex ideas into a numeric code, yet she is simultaneously committed to dispelling simplistic myths about Islam and ILS. These social science priors indelibly color the study.

The benefit of her approach is that Powell insists that Islamic states are not some strange "other." Like Western states, domestic Islamic legal traditions shape ILS encounters with international law. Like Western states, Islamic law can be studied using the tools of Western social science. Like Western states, the idea of the "peaceful resolution of disputes" is fundamental to the Islamic law tradition. These are important claims, and she convincingly supports them. We are therefore able to move beyond political caricatures and beyond more deeply informed findings that Islamic law states (and Asian states) do not create regional international courts, and that they have qualms about embracing Western forms of dispute settlement.

Powell makes a convincing case that despite significant variation, the ILS category exists, and it is important for the reasons Powell stresses: the number of people committed to Islam and sharia represents a huge percentage of the world's population. I am also persuaded by her explication of similarities and differences that exist alongside her claim that Islam and the West share important values. Islamic law, Powell argues, has a different take on these values, and Powell explains four important and distinct shared features of the Islamic tradition. There is a "unique logic of justice," a commitment to "non-confrontational dispute settlement," a shared understanding of the "collective embeddedness of the third party" and a commitment to the notion that Islamic traditions must be incorporated into the dispute resolution process (p. 11, elaborated on pp. 106–112). This focus on ideas and values demonstrates the extent to which Powell sees legal culture and core social values as fundamentally important.

Readers from outside of the tradition of quantitative social science will still question whether Powell's methods can be used to answer the profound questions she is posing. As Powell demonstrates, the 37 ILS vary in important and significant ways. Powell grapples with this variation, and this is the first place that readers might disagree with her methods. Chapter two compares constitutions and formal legal texts. Chapters 5 and 6 covers a range of domestic institutions, including legal systems, educational systems, prevalence of women in the judiciary, regional and global treaty commitments and more. Chapter 7 covers seven Islamic schools of jurisprudence (Hanafi, Hanbali, Maliki, Shafi, Jafari, Zaidi, Ibadi), and the regional neighborhood (Middle East, Africa, Asia/Oceania). The formalism in this comparison may lead readers to wonder if she is really capturing the variation that exists. These readers may then question the correlations between the varied Islamic legal traditions and the state's willingness to engage in formal and informal international dispute settlement.

Islamic Law and International Law: The Peaceful Resolution of Disputes is careful, innovative, well-written, deeply informative, and a significant contribution to demystifying a large part of the world. Powell is a social scientist at heart, but her larger objective is to help Western readers appreciate admirable features of Islamic law, and to find common ground. She does find common ground, and Powell is right that Western law needs to bend if international law is going to be inclusive and legitimate in the eyes of different peoples. Her book charts a path towards this goal.

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