BOOK REVIEW:
Emilia Powell's *Islamic Law and International Law*

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About the Author

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Review

This book belongs on the shelf of Islamic studies scholars and experts in global affairs. It covers a lot of ground: the relationship between domestic legal systems and international law, quantifiable indices to measure the "Islamicness" of Muslim-majority countries, informal means for conflict resolution between states, and multimethod scholarly approaches that blend empirical data with ethnography, hypothesis testing, and qualitative analyses. "At its most basic level," however, "this book stresses the importance of incorporating non-Western—in the context of this book, Islamic—modes of legal thinking into international resolution venues."[1] "The intent of this book," says Powell, "is a constructive one."[2] Its constructive project is to bridge the apparent gulf between Islamic law and international law for the sake of "global peace."[3]

1. Emilia Justyna Powell, Islamic Law and International Law 287 (2006).
2. *Id.* at 6.
3. *Id.* at 288.

The advocacy to build bridges between two different legal systems is premised on two key observations. First, that international law is not sufficiently pluralistic. It is an expression of the legal culture of Western societies, historically rooted in Christianity, even though it has now transcended its religious origins. Second, there exists sufficient similarity between the Islamic legal tradition and international law to allow the two to coevolve. "This coevolution," says Powell, "can foster international justice and restore public trust in the positive nature of international law and Islamic law."[4]

The anthropologist Kwame Anthony Appiah, offers the very same point in relation to the traditional religions of West Africa: "The question of what it means to be modern is one that Africans and Westerners may ask together."[5] He further argues that "unless all of us understand each other, and understand each other as reasonable, we shall not treat each other with the proper respect."[6] It seems to me that Powell's work, if anything, aims to further the noble aim of intercultural literacy, understanding, and cooperation.

The first of the two premises above—that international law is not sufficiently pluralistic—relies on extensive qualitative and quantitative evidence. Examining 160 contentious cases and advisory opinions in the International Court of Justice from 1945–2012, for example, she notes that only one single case made any reference to Islamic law.[7] She observes that "not only judges, but also the entire community of litigators and states' advocates who practice at The Hague are by and large trained in the West."[8] She quotes an ICJ judge from one of her interviews, Awn Shawkat Al-Khaswaneh, who laments that the Court is culturally "distant for people in the Islamic world. There is no doubt that international law now seems to reflect more Western values and Western interests."[9] This is a significant assertion. "As I write this book," says Powell, the United States and Western Europe are going through a spell of nationalistic movements, movements that portray Muslims, Islam, and sharia as 'the other' . . . The reality is that most people do not understand Islam."[10]

This brings us to the second premise: "the Islamic legal tradition is not, ab initio, across the board, in fundamental contradiction with international law."[11] This proposition is argued with care throughout the book, keeping in mind the historical and philosophical multiformity of Islamic thought and societies, without relinquishing, through an empirical study of thirty "Islamic Law States," the quest to discover common patterns of behavior among them on the

4. *Id.*
5. Kwame Anthony Appiah, In My Father's House: Africa in the Philosophy of Culture 107 (1992).
6. *Id.* at 134.
7. Powell, *supra* note 1, at 208.
8. *Id.*
9. *Id.*
10. *Id.* at 286.
11. *Id.*

international scene. Both systems, according to Powell, accept the rule of law, value justice, and seek to resolve disputes in a peaceful manner.

Powell informs us that sharia-based resolutions to conflict tend toward nonbinding third-party mediation or conciliation efforts, while the prevailing international system prefers binding arbitration or adjudication through international courts. These divergent preferences, however, are just that—preferences. Each system is able to accommodate the preferences of the other, while remaining fully faithful to its own principles, out of deference to custom or a commitment to pluralism. Islamic law has always been hybrid, notes Powell, having existed side by side with civil, common, and customary law throughout its history.[12] The international legal system, likewise, enshrines impartiality in Article 9 of its Statute, which declares that "judges are to be elected to represent 'the main forms of civilization and of the principal legal systems of the world.'"

Mutual accommodation is possible, argues the book. It is not only possible, it is imperative, if we are to live together as a global and multicultural civilization in peace. The perils of ignoring the wisdom in this book are in recent memory. Take the example of 9/11. In the aftermath of that tragedy, could we have followed a different path than the one we embarked on with the so-called war on terror? While hindsight is 20/20, it is worth considering this counterfactual in light of the book under discussion.

About two weeks after the attacks, while the United States was mobilizing against Afghanistan, the *New York Times* reported: "The Rev. Jesse Jackson said today that he may try to meet with Afghanistan's Taliban rulers in an effort to persuade them to hand over Osama bin Laden and his Al Qaeda terrorist associates . . . Mr. Jackson said he received a telephone call on Wednesday from Mohammed Shaheen, a spokesman for the Taliban embassy in Pakistan, who suggested that he lead a delegation to Afghanistan to mediate between that nation's rulers and the United States . . . 'We would like to see the situation resolved in a way that preserves the dignity and the integrity of all sides,' Mr. Jackson said . . . 'War and bloodshed are easy. But peace is difficult.'"[13]

A week or so prior to engaging with Rev. Jackson, the Taliban had requested evidence of Bin Laden's involvement in the attacks, with offers to have him tried under the sharia, whether in Afghanistan or in a third/neutral venue, offers that were categorically rebuffed and even mocked. Maybe all of us, on recalling these offers by the Taliban today, will find them to be as ridiculous as they appeared to those in power back then. But think about it; why? Why do we find this offer ridiculous and unworkable? Look where we are as a consequence. In November 2018, Brown University's Costs of War Project

12. *Id.* at 275.

13. Raymond Hernandez, *Jesse Jackson Says He May Try to Meet with Taliban Leaders*, N.Y. Times (Sept. 27, 2001), https://www.nytimes.com/2001/09/27/international/jesse-jackson-says-he-may-try-to-meet-with-taliban-leaders.html.

estimated the number of lives lost in Iraq, Afghanistan, and Pakistan from the U.S. wars since 9/11 as being at least 480,000, "more than 244,000 of them civilians."[14] Could there have been some kind of accommodation reached to avoid compounding the one tragedy of 9/11 with a seemingly endless one, many times over?

Perhaps this is not a fair question. 9/11 was an extreme situation. The veneer of respectability that law gives to power in the international arena simply may not apply at such times, when only blood can requite for blood. Nonetheless, one day, if we answer the call of this book, we may see as possible that to which we have erstwhile been blind. Such is its promise. The work may be seen as a counterpart to arguments offered by scholars like Mohammad Fadel and Andrew March on the possibility of an overlapping consensus between traditional Islam and liberal citizenship with minimalist conceptions of each. It may also be seen in line with empirical work on Islamic societies done by scholars in security studies like Robert Pape (*The Strategic Logic of Suicide Terrorism*), sociologists like Charles Kurzman (*Why Are There So Few Muslim Terrorists?*), political science like Stephen Fish (*Are Muslims Distinctive?*), and Daniel Philpott (*Religious Freedom and Islam*).

While in good academic company, when it comes to policy, we can be confident that she will not find herself in what Michael Desch calls a *Cult of the Irrelevant.* The irrelevant, according to him, "increasingly equate rigor with the use of particular techniques (mathematics and universal models) and ignore broader criteria of relevance."[15] Powell has not ignored broader criteria of relevance. Rather, she has conditioned her quantitative study by the broader criteria itself, very much in line with scholars like Charles Merriam, "one of the founders of the modern discipline of political science," who saw, according to historian Barry Karl, "science as the essential precondition of a useful activism."[16] One never knows when good scholarship will be dusted off the shelf by someone in the right place at the right time.

14. Murtaza Hussain, *It's Time for America to Reckon with the Staggering Death Toll of the Post-9/11 Wars*, Intercept (Sept. 19, 2018), https://theintercept.com/2018/11/19/civilian-casualties-us-war-on-terror.

15. Michael Desch, Cult of the Irrelevant: The Waning Influence of Social Science on National Security 2 (2019).

16. *Id.*