Contested Universalities of International Law.  
Islam’s Struggle with Modernity

Ebrahim Afsah*

Heidelberg, Germany

This article explores the validity of Muslim claims for a particularistic Islamic law of nations. Such claims include the normative rejection of current international law in whose creation and continued development colonised peoples had little active role. Yet irrespective of its geographic origin and alleged normative shortcomings, international law is primarily a modern phenomenon serving functional needs not attainable by pre-modern precursors. Discussing the nature of religious law and examining the incomplete reception of the institutional “package” of modernity, the article aims to highlight why historical models of Muslim international relations share the same shortfalls as other unilateral attempts by “universal states” to regulate inter-group relations. The demand for greater recognition of religious law both domestically and internationally is a phenomenon driven by dissatisfaction with the costs of the modernisation process. The appeal of religious law is based on its perception as a language of justice. Nevertheless, reliance on religious law is unlikely to yield satisfactory results in either practical or intellectual terms, and is unlikely to resolve the contradictions of the global modernisation process.

* B.A. (London, SOAS), M.Phil. (Dublin), M.P.A. (Harvard), Ph.D. (Dublin). All translations are by the author unless noted otherwise. For correspondence use ebi@post.harvard.edu.
Modernity and International Law

Critiques of the alleged narrow cultural outlook of current international law often point to historical precursors as evidence of the rich traditions around the world that were cast aside by colonialism and the distinctly Christian basis on which Western European states had organised their affairs.¹ Such critiques miss the fundamental epistemological and normative character of today’s international law as a primarily modern phenomenon.

International relations began as soon as at least two polities came into social, economic or military contact. It is reasonable to expect that such contacts would eventually lead to the establishment of certain standards of appropriateness in interactions. Pre-modern cultural centres that conceived of themselves as “universal states”, i.e. as the respective centre of the known universe over which they had mutually exclusive, comprehensive ambitions,² displayed early types of “inter-group normativity” characterised by their unilateral form and substance, flowing from a civilised core to regulate relations with outside barbarians: “However, the predominant approach of ancient civilisations was geographically and culturally restricted. There was no conception of an international community of states co-existing within a defined framework.”³

The recognition of formal equality is a decisive characteristic of modern international law, constituting a departure from the mutually exclusive claims of universal authority distinctive of pre-modern conceptions of international relations:

Such systems of international rules and practices, however, were not truly international, in the modern sense of the term, since each system was primarily concerned with the relations within a limited area and within one (though often more than one) civilization and thus failed to be world-wide. Further, each system of international law was entirely exclusive since it did not recognize the principle of legal equality among nations which is inherent in the modern system of international law. It was for this very