

## **Book Review**

***Islam, Law, and the Modern State: (re)imagining  
Liberal Theory in Muslim Contexts.* By Arif  
A. Jamal. London: Routledge, 2018. ISBN-13: 978-  
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As a part of the International Consortium for Law and Religious Studies (ICLARS) series on law and religion, Arif A. Jamal's *Islam, Law and the Modern State*, which emerged out of his doctoral thesis, is a renewed contribution which comments on the relationship between Islam and the modern state through the prism of legislation as far as policy formulation is concerned. The main problem addressed by this book is the Muslim societies' attempts to relate their inherited pre-modern legal and political heritage to the modern political order. This involves the role of religion in constitutional structures. Jamal proposes *justice as discourse* as a renewed framework that could be applied in the Muslim contexts without compromising Muslim heritage and liberal values and principles. Jamal focuses on contemporary Muslim societies due to the challenge of Islamism arising in countries like Iran, Afghanistan, and Syria. However, its analysis is not confined to any particular country rendering its content to philosophy rather than ethnography. Criticizing the marginalization of the role of religious deliberation, the book aims to break out of the dichotomy between a theocracy and anti-religious secular which are oft-suggested solutions for the public role of religious reason.

The book is divided into five chapters that broadly cover three themes—justice as discourse, Muslim contexts, and the application of

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justice as discourse in Muslim contexts. The opening chapter “Developing the concept of ‘justice as discourse’” develops a theoretical normative perspective on the lines of liberal theory “for identifying the role of religion in public political discourse and its impact on the making of law in Muslim contexts” (7). The initial parts of the chapter describe a range of liberal theory’s positions— John Rawls’ *Political Liberalism*, its criticisms and responses, and alternatives. The Rawlsian framework restricts the use of religious reasons in public discourse by considering them what Rawls calls *comprehensive doctrines* whose reasoning should not be the basis of a political conception of justice. John Rawls’ project is to arrive at a public conception of justice which can be arrived at by an *overlapping consensus* in a society deeply divided by various religious, moral, and philosophical (comprehensive) doctrines. Jamal presents his own version of the communitarian critique of Rawls as a response to its side-lining the role of religious reason in the public sphere. Borrowing from (though not confined to) Paul Weithman and Jurgen Habermas’ critique of Rawls, both of whom propose a position that is less restrictive of the use religious reason in the public sphere, Jamal attempts to show that considering religious reasons does not compromise with a ‘stable’ order of society. Jamal constructs *justice as discourse* as a theory whereby justice lies in *discourse*, that is, a willingness to listen to others’ view. He argues for recognizing commitment to diversity. Justice as discourse proposes that “religiously inspired language be given a wide space in public political debate, and allowed to be influential upon but never solely decisive of state policy or to be invoked as the justification of official state action” (31). The last part of the chapter is devoted to differentiating *justice as discourse* from alternative theories laid by Veit Bader who considers the role of religion in political discourses, and Abdullahi An-Na’im whose work specifically considers Muslim environments.

In continuation with the theme of chapter one, Chapter two “Justice as discourse in application” clarifies the similarities and differences between *justice as discourse* and classical liberal

positions. It begins by stating the principles which Jamal's theory shares with classical liberalism as far as diversity, neutrality, and limits to religion are concerned. While the classical liberal theory is concerned with the expression of religious arguments in public debate, "justice as discourse draws it around the implementation of policy justified by religious convictions" (45). The chapter also considers the form in which secularism is implied in his theory—"a this-worldly secular but one that does not seek to expunge religious convictions from any public role" (49)—thereby examining its implementation in the state, law, civil society and politics. Chapters three and four are on "Muslim Contexts." The third chapter unpacks special characteristics and structures of those aspects of Muslim contexts and their heritage which are concerned with issues of political and legal structure. It examines the idea of "Muslim contexts" by studying both unity and diversity in them. It also offers an interpretative account of the interactions of power, religion, and the law in the relevant history of Muslim contexts. It concludes that a distinction between 'religio-legal' authority and political authority has emerged as a legacy of the Muslim heritage. The fourth chapter adds a contemporary dimension to this legacy. It explores attitudes in Muslim communities which favour democratic liberal principles.

The fifth and last chapter entitled "Terms of engagement: (re)imagining religion, law, state and society for Muslim contexts" explores the normative usefulness of liberal theory, particularly the framework of justice as discourse in analyzing the interaction between religion, law, and politics in Muslim contexts. It proposes a new alignment which separates "religion, law, and politics as three distinct concepts and reconnects them in a new manner" (102) such that they are 'public' in a liberal sense. It counters the challenge posed by liberalism to Muslim contexts and explains how they can be addressed within the new framework of justice as discourse. Developing upon this framework, it proposes an institutional model that would be appropriate for a Muslim majority state.

Jamal's intention is to demonstrate the compatibility and normative relevance of liberal values and principles in Muslim contexts which counter the dominant perceptions about a clash between Islam and liberalism. Justice as discourse asserts that amidst diversity, an absolute consensus cannot be arrived at. However, the inability to arrive at a consensus does not imply silencing religious views but encouraging them in the public sphere. It is exactly here that Jamal's theory departs from the standard position on religion adopted by John Rawls and Jurgen Habermas. Despite accepting the inclusion of religious language in public debate, Jamal has his own reservations about its role in dictating public policy. It seems that Jamal is trying to make a communitarian accommodation to the liberal theory so that it suits the Muslim contexts. It is not difficult to understand why he does so. One obvious response is that it avoids the possible emergence of Islamism in his theoretical framework. But the question arises, is a separation of Islamic values from state policy possible, given the religious orientation of Muslims? Given the inseparability of *din* (faith) and *dunya* (world), how can a separation of the sacred and the secular be possible? The author brings in the conception of *dawla* (state) to ensure the soundness of his theory. His response challenges the dominant understanding that secularism is possible if and only if a separation between religion and state occurs. So, disestablishment of religion is a necessary condition for political secularity. Jamal's response proposes that if the church-state separation model cannot work for the Muslim contexts given the centrality of religion to national culture, a separation of jurisdiction in the laws would be feasible. This is a creative solution. In this way, religion will not govern the state even if it can play the role of a guide. Accepting this, it is conceivable to think of a distinction between sacred law and profane administrative law.

Apart from a similarity to the communitarian approach, Jamal's analysis resonates other thinkers as well. His claim regarding the persistence of differences despite attempts to negotiation is similar to Nilufer Gole's (Turkish sociologist) criticism of classical liberalism. The idea behind justice as discourse is also similar to

Rajeev Bhargava's idea of 'principled distance' in the Indian context. Drawing analogy between Jamal and Bhargava, one can assert that Jamal is not in favour of formal equality with the motto 'one size fits all' when it comes to the place of religious reasons in the public sphere. The main contribution of Jamal's theory is that it doesn't restrain the expression of religious arguments but their applicability in public policy.

To sum up, Jamal's *justice as discourse* conceives of justice as a verb rather than a noun since it focuses on the political deliberative process rather than the content of justice. Since Jamal takes a cue from Rawls' book, his work typically focuses on democratic constitutional setups. One of the strengths of the book is that it is rooted in contemporary literature and thoroughly engages with all possible significant works in the field of liberal theory and Islam. One of the problems with this analysis is that Jamal considers the importance attached to the sources of the Quran and the *Sunnah* essential to the definition of Muslim contexts. Such a universalistic and essential understanding can be challenged by anthropological accounts which present detailed studies about the heterogeneous nature of community and. However, in terms of content, the book ignores the problems faced by Muslims in non-Muslim majority states where they constitute a minority (although the author acknowledges the limited scope of his study). The dilemma of opting for secular law or Islamic law is a pertinent issue in contemporary societies (E.g. India). Nevertheless, Jamal's *Islam, Law and the Modern State* is a well-researched treatise which develops a framework that invites Muslims to actively engage with liberal values instead of being passive receptors of the West. By evading the role of religious arguments as a source of public policy decisions, Jamal's proposed theory of 'justice as discourse' offers a creative solution for Muslim societies. It facilitates active engagement in the public sphere without bracketing religious arguments in a way that doesn't jeopardize liberal values. It is a valuable contribution relevant to policymakers, students, and scholars alike.