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## Law and Society Activities in Egypt

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► **To cite this version:**

Baudouin Dupret. Law and Society Activities in Egypt. Encyclopedia of Law and Society (D.S. Clark, ed., Sage), 2007. hal-02624291

**HAL Id: hal-02624291**

**<https://hal.science/hal-02624291>**

Submitted on 26 May 2020

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One cannot consider contemporary Egyptian law a mere instrument of imperialist domination. Although the system was originally the product of legal transplants, it “Egyptianized” itself and has transformed into a full-fledged judicial apparatus and legal order. The Montreux Agreement (1937) abolished consular and mixed courts and made national courts responsible in all cases.

Administrative courts were created in 1946 and a constitutional court in 1969. The government abolished religious courts in 1955 and personal status matters entered the jurisdiction of specialized divisions of ordinary courts. After the Revolution of July 1952 and the establishment of the Republic, the state instituted several new jurisdictions. In the 1970s and 1980s, the revolutionary and socialist regime evolved into an economically liberal one, which explains how the Supreme Constitutional Court ruled that public sector privatization was constitutional under the socialist-oriented constitution.

The Egyptian legislature codified family law at the beginning of the twentieth century and it remains the only branch of law in which the law applicable depends upon the parties’ religious affiliation. Nevertheless, family law has been relatively responsive to some of the changing needs in Egyptian society. The legislature introduced limitations, for instance, for marriage repudiation and polygamy, two sensitive institutions of Islamic law.

In the 1970s and 1980s, codifiers attempted to “Islamicize” Egyptian law, which culminated in the draft codes discussed and prepared within the People’s Assembly (but never promulgated) and in an amendment to the Constitution in

1980 that made the shari'a the main source of legislation. The Supreme Constitutional Court limited the scope of this provision to conclusive and well-established principles of Islamic law. However, this "implementation of shari'a" remains the main slogan of political opposition and especially for the officially banned but still active Muslim Brotherhood. Litigants referred different issues, such as wearing the veil in public schools, female circumcision, and academic and religious freedom to the judiciary, which issued often nuanced but sometimes infamous rulings.

Special courts continue to have jurisdiction with regard to offenses of a political, military, and moral nature. Military justice is part of the permanent judicial system in the country. These courts do not generally respect fundamental human rights concerning freedom of speech, association, and appeal against judgments. The state used a military court to judge the Islamist militants involved in the assassination of former president Anwar Sadat (1918-1981). The Constitution of 1971 authorizes the president to proclaim a state of emergency. State security courts then examine violations of the emergency law as well as violations of ordinary legislation that the president decides to refer to them. They judge without appeal, after a summary procedure. The president in 2002 annulled the verdicts for debauchery of 50 of the 52 supposed gay men in the 2001 "Queen Boat" case, which was first adjudicated before a state security court, leaving the remaining two prosecuted for contempt of religion.

Human rights violations remain a central concern in Egypt. Imperialist domination, class oppression, authoritarian regimes, regional conflicts, conflicting values, sectarian attrition, and economic predicament converged in menacing the

rule of law and the good administration of justice. The law itself was sometimes used to negate people's fundamental rights. Police stations were and still are frequently places where brutality and torture are practiced on a daily basis. People are arrested without any formal charge and are never presented in court, on the ground of their political orientation. This holds especially true for Islamic activists whose "administrative" detention often stretches over many years. More and more nongovernmental organizations (NGOs) engage the struggle against these abuses and for law reform in the field of human rights. Cause lawyering has become one of the means used to promote these goals. The police often harass NGO militants with restrictive regulations sought to limit their activities.

Despite the length and relative inefficiency of judicial procedures, people often use courts. This is probably due to the low claim filing costs and improvement in the reduction of judicial corruption. Litigating, moreover, is often combined with other means of conflict resolution and therefore constitutes one of many strategic means in people's hands to achieve justice. Seventy years ago, the famous Egyptian novelist and dramatist Tawfiq al-Hakim (1898-1987) described the conflict between people's conception of law and justice, on one hand, the judiciary and the provisions of procedural and substantive law it must implement, on the other. More recently, Hamdi al-Batran, a police officer, published his diary, describing societal violence, bureaucratic conflicts, police stations and prosecution offices, local crimes and sociolegal guises.

The practice of different types of customary law is still very much alive in Egypt. Sometimes, customary law functions parallel to state law. Sometimes, state law acknowledges custom's authority or denies it. Customary law is not limited to

tribe-dominated areas. It is widely used for adjudication. More often, one can observe various degrees of influence of the state and its law on customary law and justice, but also principles inspired by customary law affecting state law.

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#### **FURTHER READINGS**

Batran (al-), Hamdi. (1998). *Yawmiyyât dâbit fî al-aryâf* (Diary of a Police Officer in the Countryside). Cairo: Dar al-Hilal.

Bernard-Maugiron, Nathalie, and Baudouin Dupret, eds. (2002). *Egypt and Its Laws*. London: Kluwer Law International.

Boëtsch Gilles, Baudouin Dupret, and Jean-Noël Ferrié, eds. (1997). *Droits et sociétés dans le monde arabe et musulman: perspectives socio-anthropologiques*. Aix-en-Provence: Presses de l'Université d'Aix-Marseille

Dupret, Baudouin. (2000). *Au Nom de Quel Droit: Répertoires Juridiques et Référence Religieuse dans la Société Égyptienne Musulmane Dontemporaine*. Paris: LGDJ—Maison des sciences de l'homme.

Dupret, Baudouin, Maurits Berger, and Laila al-Zwaini, eds. (1999). *Legal Pluralism in the Arab World*. London: Kluwer Law International.

Dupret, Baudouin, and Nathalie Bernard-Maugiron, eds. (1998). "Droits d'Égypte." *Égypte—Monde Arabe* 34 (special issue).

Hakim (al-), Tawfiq. (1937). *Yawmiyyât nâ'ib fî-l-aryâf* (Diary of a Prosecutor In the Countryside). Cairo: Maktabat al-adab.

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Words (Text & Further Reading) = 1,000