

ORIGINAL

Legal pluralism and islamic law: challenges and reforms in the arab world

Pluralismo Jurídico y Derecho islámico: desafíos y reformas en el mundo árabe

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ABSTRACT

In this article, I presented a comparative and critical analysis of the Arab legal system, aiming to understand its normative structure, historical evolution, and relevance in the international context. Based on a rigorous methodological approach, I examined the sources of law—including Sharia, statutory legislation, jurisprudence, and custom—as well as the institutional configurations of representative countries such as Egypt, Morocco, and Saudi Arabia. I addressed contemporary legal reforms in the areas of family, gender, and human rights, highlighting the tensions between Islamic tradition and legal modernity, as well as the challenges faced in harmonizing legal systems with international standards. I contributed to the debate on legal pluralism, representative justice, and legitimacy in global governance by proposing a contextualized and non-Eurocentric reading of comparative law. Among the main contributions of this work, I emphasized the articulation of theoretical frameworks with indexed sources, the integration of diverse legal experiences, and the projection of proposals to strengthen the normative agency of the Arab world in multilateral arenas. I directed this study toward researchers, jurists, and diplomats interested in institutional transformation, international legal cooperation, and the reform of the global legal order from a critical and pluralistic perspective.

Keywords: Islamic Law; Sharia; Legal Pluralism; Human Rights; Legal Harmonization.

RESUMEN

En este artículo presenté un análisis comparativo y crítico del sistema jurídico árabe, con el propósito de comprender su estructura normativa, evolución histórica y relevancia en el contexto internacional. A partir de un enfoque metodológico riguroso, examiné las fuentes del derecho —incluyendo la *Sharía*, la legislación positiva, la jurisprudencia y la costumbre— así como la configuración institucional de países representativos como Egipto, Marruecos y Arabia Saudita. Abordé las reformas jurídicas contemporáneas en materia de familia, género y derechos humanos, destacando las tensiones entre tradición islámica y modernidad jurídica, así como los desafíos que enfrentan los procesos de armonización jurídica con estándares internacionales. Contribuí al debate sobre pluralismo jurídico, justicia representativa y legitimidad en la gobernanza global, proponiendo una lectura contextualizada y no eurocéntrica del derecho comparado. Entre los principales aportes de este trabajo destacué la articulación de marcos teóricos con fuentes indexadas, la integración de experiencias jurídicas diversas y la proyección de propuestas para fortalecer la agencia normativa del mundo árabe en espacios multilaterales. Dirigí este estudio a investigadores, juristas y diplomáticos interesados en la transformación institucional, la cooperación jurídica internacional y la reforma del orden jurídico global desde una perspectiva crítica y plural.

Palabras clave: Derecho Islámico; *Sharía*; Pluralismo Jurídico; Derechos Humanos; Armonización Jurídica.

INTRODUCTION

In the current context of institutional transformation and the reconfiguration of global governance, the study of the Arab legal system takes on strategic relevance. This is not only because of its influence in more than twenty member states of the Arab League, but also because of its unique articulation between Islamic law (Sharia), positive law, and local legal traditions. This complexity has generated a hybrid model that challenges the classic categories of comparative law and questions the universality of international legal standards.⁽¹⁾

Arab legal diversity is expressed from the classical schools of fiqh (Hanafi, Maliki, Shafi'i, Hanbali) to constitutional reforms that seek to harmonize Islamic tradition with international human rights commitments.

⁽²⁾ Egypt, Morocco, and Saudi Arabia illustrate this plurality by combining codified systems with religious courts and customary structures, creating tensions between legal modernization and identity preservation.⁽³⁾

Based on this issue, the central question of this study is formulated as follows: How are the tensions between Islamic tradition and legal modernity articulated in the legal reform processes of Egypt, Morocco, and Saudi Arabia, and what implications does this articulation have for international legal legitimacy?

These three countries were selected based on criteria of doctrinal representativeness, institutional contrast, and geopolitical relevance. Egypt represents a codified model with Roman-Germanic influence, but with Sharia as the main source of personal status law. Morocco embodies a mixed system, with reforms that integrate legal pluralism and human rights. Saudi Arabia constitutes a pure religious model, based on the Hanbali school, without formal codification or a written constitution. This triad allows us to observe three distinct normative configurations within the Islamic legal universe: codified, hybrid, and theocratic.

This comparative approach allows us to understand the specificity of Arab law and contribute to the debate on legal legitimacy in non-Western contexts, challenging ethnocentric views and promoting a pluralistic reading of global law.^(4,5) The objective of the study is to critically analyze the historical foundations, normative sources, and institutional dynamics of the Arab legal system, through the cases of Egypt, Morocco, and Saudi Arabia, in order to evaluate its reforms and its capacity for harmonization with international standards of human rights and legal governance.

METHOD

This study was developed using a qualitative analytical-comparative approach, aimed at examining the normative structure, historical evolution, and institutional dynamics of the Arab legal system in contexts of normative pluralism. The qualitative dimension allowed for the interpretation of the doctrinal and legal meanings underlying the normative sources, while the comparative approach facilitated the identification of patterns and contrasts between the legal models of Egypt, Morocco, and Saudi Arabia.

The methodological strategy was organized on three levels: (1) systematization of legal sources (Sharia, positive law, jurisprudence, and custom); (2) analysis of reforms in family, gender, and human rights; and (3) critical evaluation of challenges in relation to international standards. This structure allowed for a contextualized and non-reductionist reading of the selected legal systems.

The selection of cases was based on a typological sampling: Egypt represents a codified and constitutionalized model; Morocco, a mixed system that integrates Islamic, positive, and customary law; and Saudi Arabia, a traditional religious model without formal codification. This diversity allowed for a comparison of degrees of secularization and openness to international harmonization.

Documentary analysis was used as the main technique, prioritizing indexed, verifiable, and accessible academic sources. The databases used included Dialnet (Arab constitutionalism, mixed courts, law schools), SciELO Mexico (legal reforms and postcolonialism), Redalyc (Islamic private law), Google Books and Scholar (doctrinal works on Islamic law and human rights), Oxford, Cambridge, and Leiden University Press (historical and contemporary manuals), the Dadun repository of the University of Navarra (Islamic jurisprudence in minority), and the CEUG Virtual Library (comparative legal systems).

Validity was ensured through theoretical triangulation, categorical saturation, and exhaustive bibliographic tracking. Reliability was strengthened through cross-checking of doctrinal sources and methodological transparency.

The main limitations were restricted access to primary sources, the lack of official translations, and doctrinal variability among legal schools. These barriers were mitigated through indexed literature and doctrinal contextualization.

DEVELOPMENT

Historical and normative foundations of the Arab legal system

Islamic law is one of the oldest and most complex legal systems in the world, whose evolution is closely linked to the expansion of Islam as a religion, civilization, and political order. Its main source, Sharia—literally “the path”—is not limited to legal codification, but represents a set of ethical, ritual, and legal norms derived from the Quran, the Sunnah (prophetic tradition), consensus (*ijmā'*), analogy (*qiyās*), interpretation (*ijtihad*),

and custom (*urf'*).^(2,6)

The Quran, Islam's holy book comparable to the Christian Bible, is a guide to life and the ultimate revelation of Allah. Composed of 114 suras and more than 6 000 verses, it includes verses of spiritual, ethical, guiding, and legal content. Its normative dimension distributes the verses according to legal subjects, with a systematicity similar to Roman-German-French codes. Legal literature identifies ten verses of a constitutional nature, seventy on personal status, another seventy on civil relations, ten on economic and financial law, thirteen on procedural law, and twenty-five on international relations.⁽⁷⁾ These verses are memorized and recited as an expression of praise, facilitating normative knowledge among the Muslim population.

The Koranic revelation, received by the prophet Muhammad between 610 and 632, established the fundamental principles of the Islamic order. Its application in diverse contexts prompted the development of complementary sources such as *fiqh* (jurisprudence), legal consensus (*ijmā'*), analogy (*qiyās*)—increasingly used to adapt the law to new realities—and custom (*urf'*) in certain communities. This system was consolidated between the eighth and tenth centuries with the formation of the four Sunni legal schools: Hanafi, Maliki, Shafi'i, and Hanbali,⁽⁸⁾ which differ in their interpretive methods and in the role assigned to reason, custom, and political authority in normative production.^(9,10)

The Hanafi school, founded by Abū Ḥanīfa (699–767 AD) in Baghdad, is characterized by its flexibility and openness to analogical reasoning, which facilitated its adoption in multicultural contexts such as the Ottoman Empire. The Maliki school, predominant in the Maghreb and Al-Andalus, attaches great importance to the legal practice of the community of Medina. The Shafi'i school, founded by al-Shāfi'ī (767–820 AD), systematized the use of consensus and analogy. The Hanbali school, which is literalist in nature, is based almost exclusively on the Qur'an and the Sunnah, and predominates in Saudi Arabia.

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The evolution of Islamic law was not linear. Since the 19th century, European colonialism introduced civil codes inspired by the Napoleonic model—such as the Egyptian Civil Code of 1949—which subordinated Sharia law to centralized state structures.⁽¹²⁾ This codification, presented as modernization, marginalized traditional schools and reconfigured the role of the *ulemas*.⁽¹³⁾

Nevertheless, Sharia law remains in force, especially in family law, inheritance, and public morality. Coexistence with positive law has given rise to hybrid systems, where legitimacy is debated between religious tradition, state rationality, and international standards. Reforms have oscillated between harmonization with human rights and the reaffirmation of Sharia law as an expression of cultural identity and legal sovereignty.

Institutional structure and reforms in Arab legal systems

The institutional structure of law in Arab countries articulates religious, state, and customary sources, reflecting Islamic heritage and codification processes since the 19th century. Although Sharia law is a common reference point, models differ: Egypt has a written constitution (2014) that recognizes it as the main source, creating tensions between liberal constitutionalism and Islamic norms.^(1,15) Morocco reformed its Constitution in 2011, incorporating legal pluralism and judicial strengthening.⁽¹⁶⁾ Saudi Arabia, without a formal Constitution, is governed by Sharia law, royal decrees, and administrative rules, consolidating religious supremacy without systematic codification.⁽²⁾

Positive legislation has been influenced by European models. Egypt adopted the Civil Code of 1949, harmonizing Islamic and Roman-Germanic law. Morocco incorporated French codes, maintaining religious jurisdictions such as the *Mudawwana*, reformed in 2004 with principles of gender equality. Saudi Arabia legislates by royal decree, without systematic codification, which leads to a high degree of judicial discretion.

Case law plays an interpretative role. Egypt has developed constitutional doctrine that limits contradictory religious norms. Morocco has a Constitutional Council without general binding force. In Saudi Arabia, judges apply *fiqh* according to personal criteria, leading to variability.

Custom (*urf'*) remains relevant in rural areas. Morocco institutionalizes local practices through *jama'as* and *'aduls*.⁽⁵⁾ Saudi Arabia maintains tribal influence subordinate to Sharia law. Egypt has reduced its influence, favoring codified legislation.

Judicial models also differ. Egypt applies religious rules in civil courts according to confession, after abolishing mixed courts in 1949.⁽¹⁷⁾ Morocco harmonizes family courts with state supervision. Saudi Arabia operates exclusively with Islamic judges trained in Hanbali jurisprudence.⁽¹⁶⁾

Analysis of reforms

Reforms in family, gender, and human rights show progress and limitations. Morocco stands out for the Mudawwana (2004), which expanded women's autonomy, although child marriage persists: between 2014 and 2018, more than 20 % of requests were authorized by the courts.⁽¹⁶⁾ Egypt passed Law No. 1 of 2000 on khul', allowing women to divorce without proof of harm, but with the waiver of economic rights.⁽¹⁵⁾ The system maintains confessional inequalities in access to civil rights.⁽¹⁾

Since 2018, Saudi Arabia has relaxed male guardianship and authorized women to drive, but without codification or judicial independence, which limits the guarantee of universal rights (2). Recent studies indicate that more than 60 % of judicial decisions continue to be based on Hanbali interpretations without effective institutional control.

In Egypt, the adoption of the new Labor Law No. 14 of 2025 introduced advances in contractual equity, labor protection, and recognition of remote and platform work. The extension of maternity leave and the standardization of dismissals seek to bring the country closer to ILO standards, although they exclude domestic workers and civil servants, which limits their effective scope.⁽⁷⁾ At the same time, the draft of the new Penal Code has raised international concerns because it grants broad discretionary powers to the Public Prosecutor's Office, which could weaken basic procedural guarantees.

In response to the youth protests of 2025, Morocco has accelerated social reforms focused on education, health, and employment. The 2026 budget allocates more than €13 billion to these sectors, representing nearly 10 % of the national GDP.⁽²⁾ In addition, the reform of the Family Code has restricted polygamy and prohibited the marriage of minors under the age of 17, although it has not modified the inequality between men and women in inheritance due to its contradiction with the Koran^(4,5). These reforms, although significant, have been described as timid by feminist groups, who denounce the persistence of patriarchal norms in the Mudawwana.

Saudi Arabia, under the framework of Vision 2030, has enacted a new Investment Law that eliminates discrimination between local and foreign companies, simplifies licensing, and seeks to attract direct investment.⁽¹¹⁾ However, serious deficiencies in the protection of migrant workers persist, as evidenced by the complaint filed with the ILO for wage theft and forced labor.⁽¹⁰⁾ Although women's rights in terms of mobility, employment, and education have been expanded, the judicial system still lacks formal codification and effective institutional control, making it difficult to guarantee universal rights.⁽⁹⁾

Taken together, these cases reveal that the coexistence of Sharia and positive law generates hybrid systems where legal legitimacy is disputed between religious tradition, state rationality, and international standards.^(5,14) Although significant, reforms face structural, cultural, and political obstacles that condition their implementation and effectiveness.

CONCLUSIONS

The structure of Islamic law should not be seen as an anomaly compared to the Western model, but rather as a legitimate expression of legal pluralism that enriches the debate on global justice. Comparative analysis reveals that it is not a closed system, but rather a dynamic and adaptable one in terms of doctrine and interpretation. Arab legal schools have provided hermeneutic tools that favor its harmonization with international law. This harmonization has been key to ensuring regulatory consistency, human rights, and global legal legitimacy, but it must be bidirectional: international law must also recognize the epistemological legitimacy of Islamic law, avoiding impositive or reductionist approaches.

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