

Badr on Religion, Colonialism, and Legal Pluralism: The Story and Legacy of the Egyptian Choice of Law Rules for Personal Status International and Interpersonal Conflicts of Law

Yehya Badr (Associate Professor, College of Law, Al-Yamamah University, KSA) presents his recent publication entitled **“Religion, Colonialism, and Legal Pluralism: The Story and Legacy of the Egyptian Choice of Law Rules for Personal Status International and Interpersonal Conflicts of Law”**, published in the Indiana Journal of Global Legal Studies, Issue 1 of Volume 31, 2024. The paper addresses the important issue of Egyptian choice of law rules for international and interpersonal conflicts of law.

The detailed summary, kindly provided by the author, reads as follows:

Personal status in Egypt is an example of legal pluralism, where different laws govern the personal affairs of Egyptian citizens based on their religion and foreigners based on their nationality. This system derives from the rules of Islamic Shariah and the Ottoman millet system, which was modified under pressure from Western powers after the Crimean War. Under this system, Non-Muslim Egyptians historically had the option of resolving personal status disputes through their respective religious courts (known as “Milli Courts”) in application of their religious laws, unless they opted for Sharia courts. In this case, Islamic Sharia would apply. Similarly, foreigners were exempt from Egyptian courts’ jurisdiction by virtue of privileges granted under foreign capitulations during Ottoman rule. This resulted in their personal status disputes being adjudicated by courts established by their consulates, known as “consular courts”. Furthermore, in response to financial difficulties and pressure from colonial powers during the foreign debt crisis of the 1860s, Egypt entered into a multilateral agreement to establish the so-called “Mixed Courts”. These courts had jurisdiction over

disputes between foreigners and Egyptians or between foreigners themselves. The Mixed Courts applied the so-called "Mixed Civil Code" which were enacted with the approval of the then colonial powers. Notably, the Mixed Courts were specifically excluded from hearing personal status disputes and operated independently of the Egyptian government under their own charter.

Thus, the Egyptian legal system was an example of true legal pluralism, designed to accommodate the interests of foreigners residing in Egypt and different religious communities through the establishment of five different courts. However, this form of legal pluralism gave rise to various problems, including conflicting decisions and confusion over the applicable law in disputes, particularly in matters of personal status. In particular, there were no established rules of choice of law for personal status disputes, except for the application of non-Muslim law in cases where both parties shared the same sect and rite.

This prompted Egypt to embark on a process of legislative and judicial consolidation. This consolidation used choice-of-law rules to govern personal status conflicts for both Egyptians and foreigners, with lasting consequences. The article examines Egypt's efforts to reduce legal pluralism by abolishing foreign capitulations through the Montreux Convention of 1937. In addition, it examines the adoption of choice-of-law rules for international personal status disputes included in the Convention, thus rendering Egypt's choice of law rules for international conflict of laws a product of an international treaty designed to accommodate the demands of Western colonial powers.

Moreover, the article examines the challenges posed by these rules, including the use of nationality as a connecting factor, as well as the unresolved issues related to the application of foreign law resulting from the aforementioned choice-of-law rules. These issues include the characterization and protection of Egyptian public policy.

Finally, the article explains the processes within Egyptian law aimed at limiting legal pluralism within Egyptian personal status law through legislative consolidation. This entailed the enactment of laws applicable to all Egyptians regardless of their faith. Judicial consolidation followed with the abolition of the Shariah courts and the Milli courts. However, religion continues to have a significant influence in determining the laws governing personal status disputes, as not all aspects of personal status have been consolidated. The latter focal point

includes a special examination of the challenges associated with the application of Islamic Shariah law to non-Muslims and the reluctance of the Coptic Orthodox Church to recognize divorce decrees issued by Egyptian courts.

As noted above, the Mixed Courts operated independently of the Egyptian government and on numerous occasions adjudicated personal status matters under the pretext of the Mixed Interest Theory. Under this theory, the Mixed Courts had jurisdiction over any dispute involving the interests of a foreigner. In addition, Egypt's religious courts vied for jurisdiction over personal status disputes involving non-Muslims, further complicating the legal landscape.