



## **Globalization Initiatives and Arab Penal Codes\***

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**Abstract:** This paper argues that most of the Arab Countries penal codes started to be globalized at the establishment stages of the globalization. Hence, this paper explains the multidimensional factors and aspects of the formation of the penal codes in Arab countries outlining those aspects and changes in the Arab Penal Codes.

**Keywords:** Penal Code, Globalization, Islamic Law, Punishment, Codification, Arab Countries.

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## I. Introduction

This paper argues that most of the Arab Countries penal codes started to be globalized at the establishment stages of the globalization.<sup>1</sup> Hence, this paper explains the multidimensional factors and aspects of the formation of the penal codes in Arab countries outlining those aspects and changes in the Arab Penal Codes. Despite the fact that firstly, the usage of the word Globalization which appeared in 1940s, together with the word 'globalism'. 'Globalization' first entered a dictionary (of American English) in 1961. Notions of 'globality', as a condition, have begun to circulate more recently.<sup>2</sup> Secondly, the nature of the penal code, since, it is the liability of national state to legislate and implement its national penal codes on all types of crimes that occur within its political boundaries, according to its own social contexts and economic interests, etc. As one of the features of national sovereignty, the penal code still based on the doctrine of "territory" that despite saying it has been developed, but not more than crimes.

### I. Naming (Penal Code)

Most of Arab countries call it as *Qanoun El 'Euqubat* which literally means "Penal Code", however, Kuwaiti legislature used the Ottoman's term *Qanoun Jazaei*, "Law of Penalty",

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<sup>1</sup> It should be noted that still there are some Arab Penal codes adopting the Classical Islamic Criminal Rules and traditional criminalization such as GCC countries with different degrees

<sup>2</sup> "In the English language, the noun 'globe' began to denote 'the planet' several hundred years ago, once it was determined that the earth was round". J. A. Scholte. (2002). What Is Globalization? The Definitional Issue – Again. Centre for the Study of Globalization and Regionalization (CSGR), University of Warwick. [Online]. p. 4. Available: <http://www.csgr.org>

some other countries like Lebanon, Syria, and Jordan relatively used terms derived from the latter as *El Sharia El Jazaeia* (Sharia doesn't denote Islamic Legal Rules but merely means Code), *Qanoun El Ejraeat El Jazeia* (Code of Criminal Procedure). And case law in Iraq,<sup>3</sup> Syria, Lebanon, and Jordan is named as *Qanoun Ossoul El Muhakmat El Jazeia* and *Qanoun El Egra'at Wa El Muhakmat El Jzaeia* (Code of Criminal Procedure).

## II. Developments of Penal Codes in Arab Countries

### 2.1. Before Islam

#### 2.1.1. Pharaonic Era

Deputy of King was acting as General Attorney, Judges to be appointed by King and They used to give oath before King (They were independent from the King authority), Egypt used to have two types of courts (Criminal and Civil courts), Criminal Courts were two types, Special Criminal courts for National Security and Ordinary courts for the public, each criminal court had its own criminal procedures. With regard to Penal code, ancient Egypt legal system was Common law based on custom and judicial precedent, and at the same time there were some codes such as Criminal code, but it was for certain types of crimes such as Theft, Treason, Adultery, etc. so Diodorus reports to us the following "In their administration of justice the Egyptians also showed no merely casual interest, holding that the decisions of the courts exercise the greatest influence upon community life, and this in each of their two aspects. For it was evident

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<sup>3</sup> El Hafeth Hesham (1963). Lectures on the Legal History of Iraq. p. 24.

to them that if the offenders against the law should be punished and the injured parties should be afforded succor there would be an ideal correction of wrongdoing; but if, on the other hand, the fear which wrongdoers have of the judgments of the courts should be brought to naught by bribery or favor, they saw that the break-up of community life would follow. Consequently, by appointing the best men from the most important cities as judges over the whole land they did not fall short of the end which they had in mind.”<sup>4</sup>

### 2.1.2. Code of Hammurabi (1792-1750 B.C.)

The Code of Hammurabi was one of several sets of laws in the ancient ME and also one of the first forms of law,<sup>5</sup> Many Criminal issues were treated by Code of Hammurabi are compliant with Sharia penal such the concept of collective responsibility, Retaliation (*Qassass*) (Eye for Eye), Blood-money, *Dia*, etc. So, there can be no doubt that the first and chief principle of the ancient Semitic lawgivers was the *lex talionis*: “life for life, eye for eye,” etc. as already mentioned in this review, this idea underlies the entire codes of Hammurabi and of the Old Testament.<sup>6</sup> Such a law was fundamentally necessary in a rude community, and indeed may be said to be inherent in human nature. The essence of self-protection both for the individual and for the community was retribution, not

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<sup>4</sup> Russel VerSteeg, (2002). Law in Ancient Egypt. (Chicago). p. 3

<sup>5</sup> Prince, J. (1904). The Code of Hammurabi. The American Journal of Theology, 8(3), 601-609. Retrieved from <http://www.jstor.org/stable/3153895>

<sup>6</sup> “THE discovery of the Code of Hammurabi is the most important event which has taken place in the development of Assyriological science since the days of Rawlinson and Layard. In his Introduction, pp. xi, xii, Professor Harper' gives an admirably clear and brief exposition of the discovery and nature of the code”, Id.

only for deeds actually done, but for deeds planned: "And ye shall do to him that which he had thought to do unto his neighbor." This is a clear development of the *lex talionis*. Another principle was "one crime, one punishment." Thus in nearly every case the death penalty excluded any other punishment, therein showing us a more merciful law than that against high treason followed by English forefathers as late as the very beginning of the nineteenth century.

### 2.1.3. Arab before Islam

Arabs had a tribal life, and deepened tribal culture which did not embolden the evolution of individualism. Arab had their own methods of dispensing justice, based on custom and usage. So it is worth to mentioned that a crime committed by a single offender, revenge used to be taken from the whole tribe and often set a sequence reaction in motion. As a consequence, insignificant matters sometimes resulted in bloodstained controversies that often took years to be settled. "The involved actions such as violence and raiding were regarded as a manly occupation, associated with honour and social prestige. This created an extremely violent atmosphere; regard for human life and weaker elements of society were almost non-existing. All that counted was the right of the stronger because only he could enforce it."<sup>7</sup> However, like Islamic Penal there were punishments such as execution, exile, right hand cut off, Blood-money, etc.

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<sup>7</sup> Al Awabdeh Mohamed. (2005). History and prospect of Islamic Criminal Law with respect to the Human Rights, PhD dissertation at Humboldt University of Berlin.

## 2.2. 2nd Dominance of Islamic law

### 2.2.1. Sources of Jurisprudence Propagation

With the development of the classical schools of Islamic law came the articulation of the principles of *usul al-fiqh*, (the roots or sources of jurisprudence).<sup>8</sup> Although the *usul* are often called sources of the sharia, merely the Qur'an and the Sunnah are material sources. Ultimately, the study of *usul al-fiqh* is concerned with establishing a science of proofs of the Islamic derivation of substantive legal principles, thus enabling the jurist to discern which legal rules are correct statements of sharia principles. The rules shown by this science to be authentically Islamic are known as the *furu al-fiqh*, the branches of jurisprudence.<sup>9</sup> The study of *usul* has been one of the major preoccupations of Muslim jurists over the centuries and continues to be so in the early twenty-first century. As the subsequent history of the development of the *shariah* demonstrates, the influence of al-Shafii on the formulation of the classical Sunni theory of *usul al-fiqh*—a formulation that was basically complete by the ninth century—was considerable. With the foundation of the classical schools of Islamic law and the formulation of the fundamental principles of *usul al-fiqh*, the sharia became a jurists' law, and exhaustive training in law and supplementary disciplines was essential for interpreting how the sharia applied to a given problem.<sup>10</sup>

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<sup>8</sup> Phillips, A.A.B. (1990) *The Evolution of Fiqh*: International Islamic Publishing House; Riyadh.

<sup>9</sup> Hallaq, Wael B. 'Was the Gate of Ijtihad Closed', *International Journal of Middle East Studies*. Vol. 16 No. 1 (Mar., 1984)

<sup>10</sup> Kamali M. H. *Principles of Islamic Jurisprudence*, available at

[http://vahdat-news.ir/files/en/content/2011/6/4/352\\_175.pdf](http://vahdat-news.ir/files/en/content/2011/6/4/352_175.pdf)

In Islamic criminal laws everything prohibited based on sharia rules is a Crime. Unlike in Western law where only that which has a specified punishment is a Crime, in Islamic law every crime is punishable but not every punishment is specified

crimes and punishments in Sharia are:

- Adultery: death by stoning.
- Highway robbery: execution; crucifixion; exile; imprisonment; or right hand and left foot cut off.
- Theft: right hand cut off (second offence: left foot cut off; imprisonment for further offences).
- Slander: 80 lashes
- Drinking wine or any other intoxicant.
- Apostasy.
- Rebellion.

Muslim criminal law arranged punishments for various offences into four broad categories: *Kisas (Retaliation)*, *Hudod (Limits)*, *Tazeer (Discretionary Punishment)* and *Diya (Blood-money)*

### **2.3. Codification**

This phase is considered foundational stage of recent penal codes in Arab countries which are almost globalized penal codes. However, this phase passed through two stages the first one was based on paradigm penal code approach, this is transitional stage (From Classical Sharia Penal System to the positive penal codes). So, Penal codes in Arab countries in this stage were founded mainly based on three models: Othman

Penal Code of 1858, Egyptian Penal Code of 1904, and Sudanese Penal Code of 1925. Second stage of this phase started with waiving the doctrine of single source by adopting new penal codes based on Comparative law approach.

### 2.3.1. Othman Penal Code of 1858

After the French Penal Code of 1810, which was a shifting point in the history of the Criminal Law. In that regard, the Ottoman Empire on August 9, 1858, a new criminal code, based on the French Code of 1810,<sup>11</sup> was adopted, marking the empire's first clear rupture with traditional law. It paid nominally to the Sharia by stating that it was not in opposition to it. The code was to be administered by a hierarchy of secular courts using laws of procedure adopted from French models. With minor modifications it remained the criminal code of the empire until the beginning of the republic, and the other Arab Countries such as Lebanon, Syria, Iraq, and Palestine used it until much later, under the title (*Qanoun El Jazaie El Othmani*) (Ottoman penal code).<sup>12</sup>

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<sup>11</sup> Ziadeh, Farhat J. "Criminal Law." In the Oxford Encyclopedia of the Islamic World. Oxford Islamic Studies available at: <http://www.oxfordislamicstudies.com/article/opr/t236/e0170>

<sup>12</sup> "The oldest Ottoman code of criminal and fiscal law is the one attributed to Mehmed II following his conquest of Constantinople in 1453, although some parts of it might have been the product of a later time under Bayezid II (r. 1481–1512), who is credited with a qānūn of his own. Of the many qānūns compiled in the reign of Sultan Süleyman the Lawgiver (Qānūnī, Turkish Kanuni), one was a criminal code compiled possibly between 1539 and 1541. It contained all the sections of the earlier criminal codes and a number of other provisions, and it was arranged according to offenses, not according to penalties of fines and strokes". Id.



### 2.3.2. Egypt Penal Code of 1904

Legal reform took place in Egypt since it was virtual self-government in matters of legislation, rapid steps were taken toward legal reform, particularly after the creation of the Mixed Courts in 1876 to protect “foreign” interests. Long before that, Mohamed Ali, upon assuming power in 1805 discarded the Ottoman system of administration and to institute in its place his own arrangements. Laws and regulations multiplied and had to be unified in a new code entitled *al-Muntakhabat* (selections), which was published in 1829–1830. The Ottoman Penal Code of 1851 was also applied, after the accession of Saied Pasha in 1854, in a version adapted to Egyptian circumstances, but, crimes and punishments still were not well defined, people were not equal before the law, and criminal responsibility was not limited to the individual perpetrator. Genuine criminal reform started with the Mixed Courts system, but since those courts had limited criminal jurisdiction, substantial reform acquired a momentum only with the establishment of the National Courts and the adoption of the National Penal Code and the Code of Criminal Inquiry in 1883. These codes were adapted from the French codes either directly or by way of the Mixed codes. In 1904 the Criminal Code was amended extensively with elements taken from the Indian, Belgian, and Italian codes.<sup>13</sup>

### 2.3.3. Sudanese Penal Code of 1925

Since Sudan was under British guidance, a penal code, based on the Indian Penal Code of 1860, was introduced for the first time in 1899. In 1925 this was systematically revised into a new code, but the bases of the earlier one remained integral. It differs from the

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<sup>13</sup> Id.

codes of the major Arab countries in that it is based on Anglo-Saxon law, especially in its definitions and examples.<sup>14</sup>

#### **2.4. Waiving the doctrine of single source, Development based on Comparative law approach**

Comparative law,<sup>15</sup> Since the principle of comparative law is to compare national laws, it can characterize to certain extent the notion of global law. To a large degree, and due to its complementary effect, comparative law can be viewed as an initiative step toward the formation of globalized law, because it contributes in the determination to construct unified legal models with prevalent application at the global level. It should be born in mind also that Globalization of law means that “the law and its practice in a global environment”, or “a multicultural, multinational, and multidisciplinary legal phenomenon finding its roots in international and comparative law and emerging through the international legal practice that was prompted by the globalization of the world economy”,<sup>16</sup> which portrays the unabridged notion of the globalization of law. Accordingly, the Arab modern penal codes generally reveal this fact as follows:

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<sup>14</sup> Abdelsalam Hassan. (2008). History of Law Reform in Sudan, available at

<http://www.redress.org/downloads/country-reports/HISTORY%20LAW%20REFORM%20FINALFeb08.pdf>

<sup>15</sup> Comparative law is the comparison between i) national laws of different countries (e.g., comparing French law and English law) or ii) groups of legal systems (e.g., comparing common law and civil law systems), See, for example. P.D.V. Marsh, (1994). Comparative Contract Law: England, France & Germany.

<sup>16</sup> L. G. Pierrick, (2007). “Global law: A legal phenomenon emerging from the process of globalization,” Indiana Journal of Global Legal Studies, vol. 14, no. 1, p. 127.

- Egypt: In 1937 and the extension of Egyptian criminal jurisdiction to all residents of Egypt, a new criminal code was promulgated and remains in force.
- Algeria: Penal Code of 1966; based on French Penal Code; amended several times, in 1969, 1975, 1982, 1989 1990.
- Jordan: Penal Code of 1960 Based on Egyptian Penal Code, Lebanese Penal Code of 1951 and Ottoman Penal Code.
- Iraq: Penal Code of 1969; Based on Egyptian Penal Code of 1937, 1918 Baghdad Code and Ottoman Penal Code.
- Tunisia: Penal Code of 1913 Based on French Penal Code, Egypt Penal Code, Italian Penal Code, Ottoman Penal Code.
- Kuwait: Penal Code of 1960 Based on Bahrain Code of 1955 and Ottoman Penal Code
- Bahrain: Penal Code of 1976 based on Bahrain Code of 1955, which based on Indian Code of 1860.
- Lebanon: Penal Code of 1943 based on French Penal Code, Swiss Penal code, Italian Penal Codes and Ottoman Penal Code.
- Libya: Penal Code of 1953 Based on Italian Penal Code, Egyptian Penal Code, and Islamic Law after 1973 amendment.
- Morocco: Penal Code of 1962 based on French Penal Code and Islamic law.
- Syria: Penal Code of 1949 Based on Lebanese Penal Code; Ottoman Penal Code
- Qatar: Code of 2004 Based on Qatari Penal Code of 1971, Islamic Law
- UAE: Federal Penal Code of 1987 Based on Egyptian, and Islamic Law.
- Somalia: Penal Code of 1964 Based on Italian Penal Code of 1930, and Indian Penal Code of 1860
- Oman: Penal Code of 1974 Based on Custom, and Islamic Traditions

- Sudan: Penal Code of 1991 Based on Islamic Law, and Previous Penal Codes
- Yemen: Penal Code of 1994 Based on Islamic Law.
- KSA: Sharia Classical Rules, and other regulations such as anti-bribery law.
- Palestine: Penal Code of 1936 and its amended version of 1960 based on Cyprus Code, 1928; Ottoman Penal Code

### **III. Conclusion**

Mostly penal code in globalization context is not attracted by many scholars since there are some legal fields have always been more internationalized than others. Areas of law most closely connected with international trade and multinational companies, such as international business contracts, antitrust law and competition policy, high finance, intellectual property, etc. However, this article argues that nearly the middle of the 20 century witness a startling variety of new legal forms in most of Arab countries in the penal codes which sometimes differ substantially in nature, content, and scale from the largely state-based criminal laws of the past several centuries as it was indicated during Pharaonic era, Hammurabi's code, Islamic dominate criminalization, etc., which means the first initiatives of the legal globalization in Arab countries (for example) started even in most localized legal field such as the penal codes. However, it should be mentioned that now the globalization of criminal laws in Arab countries took more advanced steps since the legal globalization in criminal arenas now aims at the arrangement of values in society, involving the shared principles which are integral foundation of the punishment. Accordingly, there are some global crimes which possess the universal interest and they can be committed across the borders such as terrorism, the drug trade, white slave trade and the sale of organs., money laundering, etc. Moreover, the

internationalization of human rights without bearing any interest to dissimilarities among worldwide societies guided to a change in the scheme of punishment and criminal strategy in the states.

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