
This brief monograph is a version of Debs’ doctoral dissertation, written over fifty years ago and originally published in 1963. It takes Egypt as a case study for the development of modern national law based on a synthesis of components from both Western and local traditional law. Focusing on the law of landed property, Debs argues that Western civil law was superimposed on indigenous legal institutions in a conscious manner. For this reason, the Egyptian case must be distinguished from the Turkish secular case, on the one hand, and the Saudi Arabian traditional one, on the other (pp. 1-2).

Chapter 1, “The Classical Islamic Law of Property,” starts with the sharʿī classification of lands as ʿushr, kharāj, state lands of the private domain, mawāt and waqf. Next, Debs clarifies the three basic forms of sharʿī land tenure, that is, private property (mulk), pious endowment (waqf) and state-owned properties. Unlike the first two, state-owned properties—historically the most important in the Muslim world—generally were defined and governed, not by the shariʿa but by state administrative law (p. 8). In the Mamluk system, which remained largely intact in Egypt until the beginning of the 19th century, the majority of landed property and all agricultural lands were held by the state, either directly or by way of tax farming or alternative forms of concessions. Private lands were few and concentrated in urban areas. It seems that waqf assets were few as well, although their status was ambiguous because it was possible to create an endowment on state land (rizqah).

Chapter 2, “Traditional Islamic Law in the Modern Era,” describes the land tenure system created by Muhammad Ali, who attempted to restore landed property formally owned by the state to its actual control. After this objective was accomplished, Muhammad Ali distributed a massive quantity of state land, in small portions and as kharāj land, to the fellahin; thus he became the main landowner in Egypt. He also created and renewed land concessions for close associates of his regime, and introduced state decrees (qanun) that regulated rights and interests relating to state lands. Debs follows the sequence of land decrees from 1846 through 1854 and until the land law of 1858, which remained in force until the adoption of civil codes in the last quarter of the 19th century. As a result of the policies of Muhammad Ali and his successors, in 1875, on the eve of the adoption of the civil codes, kharāj land constituted 3.5 million feddans out of a total of 5 million feddans of arable land; mulk lands amounted to 1.2 million feddans. By contrast, waqf lands were not extensively affected by Muhammad Ali’s policies, although he had succeeded in strengthening state control over public endowments (awqāf khayrīyya).

In Chapter 3, “The Introduction of a Western Code System,” Debs discusses Ottoman sovereignty and the capitulations. He argues that the abuse of the legal system under the capitulations regime was the main reason for the introduction of Western
In Chapter 4, "Property Law under the First Civil Codes," Debs challenges the common belief that the adoption of the French civil code signaled a total rupture with Egyptian legal tradition. In fact, he argues, change in the realm of land law was neither comprehensive nor abrupt. French law did not have effective equivalents for several elements of the existing system of land tenure (e.g., kharāj lands, mawāt and abʿadiyya—i.e., uncultivated state lands that were granted to dignitaries, Bedouin sheikhs and members of the royal family.). As a result, Islamic law continued to play a major role, and special laws, most based on Islamic law, were required. Even in those areas where the civil codes completely superseded Islamic law, many of the provisions of the new codes were themselves based on traditional Islamic legal institutions. Debs demonstrates how the introduction of the civil codes affected each type of property—state lands, waqf and private lands—and how each type was administered.

Chapter 5 deals with the development of a national legal system during the first half of the 20th century. The 19th century legal system proved unsuitable for a national framework, because it was personal rather than territorial and because it granted foreigners extra-territorial privileges that were inconsistent with modern concepts of sovereignty. Thus, the 20th century reforms had two objectives: the abolition (1) of the legal privileges of foreigners and (2) of the communal courts for personal status. For each type of court, Debs analyzes the codes that were applied, e.g., the new codes of personal status (from the 1920s), succession (1943) and waqf (1946). Because the civil code that had been prepared for the native courts was ambiguous, inconsistent, not sufficiently comprehensive, and unsuitable for local circumstances, there was a need for a new and authentic national civil code. Within Egyptian professional elites, opinions were divided between those who preferred a new code based on the shari’ā and those who preferred a code based on a Western model. The compromise position, represented by the group led by Sanhūrī, held that shari’ā-based rules should be incorporated only if they were in accordance with the requirements of a modern state. Thus, approximately 80% of the 1949 Civil Code was based on the old civil code and on judicial precedents of the Egyptian civil courts. In a few cases, the new code incorporated principles as well as concrete rules from the shari’ā (e.g., the long-term rent of waqf properties [bikr] and preemption).

In the 6th and final chapter of the book, "Property Law under the Civil Code of 1949," Debs states that the 1949 Code is simultaneously national, modern, Western and uniform. He then discusses those sections of the code that deal with property law and their sources of inspiration. Chronologically, the book ends with the agrarian and waqf reforms immediately following the 1952 Coup.
One wonders about the wisdom of publishing without revision a work written over half a century ago. According to Debs, “there has been no significant change to the basic Egyptian law of property since I wrote this thesis” (p. xv). He adds that what has changed during the last decade is the growing interest of the West in Islamic law, although in Western eyes this law is still associated with extremism and violence. He believes that his description of Islamic law demonstrates that it is sophisticated, coherent, rational and effective, and well-suited to serve the needs of its societies.

In a first foreword to the book, Frank Vogel writes that “despite the passage of years, no study I am aware of renders Dr. Debs’ work obsolete or even significantly overlaps with it.” He also asserts that the methods used by Debs are rarely found today and deserve emulation, for three reasons: first, the work does not assume a sharp rupture between anything Islamic and anything modern or Western; second, it understands Islamic property law not as a rigid body of doctrine but rather as a law that developed continuously until the late Ottoman period and third, it is not only a work of social and political history but also of law (pp. ix-xi). In a second forward to the book, Ridwan al-Sayyid corroborates Vogel’s view that Debs’ thesis remains “a fine piece of scholarship” (pp. xiii-xiv).

Since the research for this book was carried out ca. 1960, the Egyptian state and court archives have been opened to Western scholars, and a number of groundbreaking studies on topics directly related to the subjects treated by Debs have appeared (see below). Although Debs’ book includes valuable information and analysis, in my view, the decision to republish it in its original form, with no attention to, or mention of, subsequent scholarship was unwise.

The 2010 edition of the book is often anachronistic. For example, Debs remains faithful to the view that the French occupation of the country in 1798 launched the modern period of Egyptian history (p. 37). At present, most historians hold that the French occupation did not have significant and lasting effects on Egyptian culture and that the beginning of modern Egyptian history occurred when the Egyptian economy was incorporated into the developing global market (in the mid 18th century, according to some; in the mid 19th century, according to others).¹

The issue of \textit{waqf} is another example of anachronism. Debs writes:

\begin{quote}
[B]y the operation of the law of \textit{waqf}, extensive areas of land had been immobilized and removed from the mainstream of the economy. Burdened by legal restrictions on alienation, disposition, and exploitation, \textit{waqf} property could not be efficiently employed to achieve a high level of productivity … in general, total income received by all \textit{waqf} beneficiaries in Egypt was at an exceedingly low rate of return on the total value of all \textit{waqf} property in that country (p. 109).
\end{quote}

Such claims about the low rate of return on \textit{waqf} assets are typical of scholarship written in the first three-quarters of the 20th century. Recent studies of the operation of \textit{waqf}s, based on archival research, challenge these assumptions by demonstrating

¹ See, for example, Kenneth M. Cuno, \textit{The Pasha’s peasants: land, society, and economy in Lower Egypt, 1740-1858} (Cambridge, 1992).
that *waqf* were often administered in a highly efficient manner.\textsuperscript{2} Claims about the low level of *waqf* productivity were no doubt promoted by state and colonial officials who strove to take control of *waqf* assets, thereby demolishing one of the main strongholds of traditional elites and religious establishments.

As for the 1949 Civil Code, Sanhūrī’s life project and the main topic of Chapter 6, the information and analyses found in scholarly studies by Bechor, Hill and Shalakany are indispensable.\textsuperscript{3}

Two small corrections: On p. 2 the author states that the mixed courts operated in Egypt until the late 1950s when, in fact, they operated until the late 1940s; and the “interpretation clause” (article 1) of the 1949 Civil Code refers to the *principles* of the *shariʿa* rather than to the *shariʿa* itself (p. 115).

The book is largely devoted to rules of law and articles in legal codes. We read almost nothing about the agents of the legal system, the litigants, or the application of these laws in the courts.\textsuperscript{4} The author makes little attempt to connect the legal materials to broader social and cultural issues. We read briefly about Nubār Pasha, Qdārī Pasha, Sanhūrī and others, but little is said about the connection between their cultural and social perceptions and their legal work. In sum: *Islamic Law and Civil Code* conveniently brings together in one place all material related to the development of landed property law in Egypt between 1800 and 1950. For this reason, the book may be of use to those interested in the subject, especially if they are not familiar with the relevant institutions and legal terms. However, scholars will want to take advantage of recent research on *waqf*, land law and property in Egypt.

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\textsuperscript{4} For a recent study of the court system in modern Egypt, see Nathan J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge, 1997).