

Reforming Family Law

As the only area of law that is still commonly termed “Islamic law,” family law is one of the most sensitive and controversial legal areas in all Muslim-majority countries. Morocco and Jordan both issued new family codes in the 2000s, but there are a number of differences in the ways these two states engaged in reform. These include how the reform was carried out, the content of the new family codes, and the way the new laws are applied. Based on extensive fieldwork and rich in sources, this book examines why these two ostensibly similar semi-authoritarian regimes varied so significantly in their engagement with family law. Dörthe Engelcke demonstrates that the structure of the legal systems, shaped by colonial policies, had an effect on how reform processes were carried out, as well as the content and the application of family law.

DÖRTHE ENGELCKE is a senior research fellow at the Max Planck Institute for Comparative and International Private Law. She received her PhD from St Antony’s College, University of Oxford, in 2015 and was the co-winner of the 2016 BRISMES Leigh Douglas Memorial Prize for the best PhD dissertation on a Middle Eastern topic awarded by a British university. Engelcke has held fellowships at the Islamic Legal Studies Program at Harvard Law School and the Lichtenberg-Kolleg, the Göttingen Institute of Advanced Study.

Cambridge Middle East Studies

Editorial Board

Charles Tripp (general editor)
Julia Clancy-Smith
F. Gregory Gause
Yezid Sayigh
Avi Shlaim
Judith E. Tucker

Cambridge Middle East Studies has been established to publish books on the nineteenth- to twenty-first-century Middle East and North Africa. The series offers new and original interpretations of aspects of Middle Eastern societies and their histories. To achieve disciplinary diversity, books are solicited from authors writing in a wide range of fields including history, sociology, anthropology, political science, and political economy. The emphasis is on producing books affording an original approach along theoretical and empirical lines. The series is intended for students and academics, but the more accessible and wide-ranging studies will also appeal to the interested general reader.

Other titles in the series can be found after the index.

Reforming Family Law

*Social and Political Change in Jordan
and Morocco*

Dörthe Engelcke

Max-Planck-Institut für ausländisches und internationales Privatrecht



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108496612
DOI: 10.1017/9781108634342

© Dörthe Engelcke 2019

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2019

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Engelcke, Dörthe, 1983– author.

Title: Reforming family law : social and political change in Jordan and Morocco / Dörthe Engelcke, Max-Planck-Institut für ausländisches und internationales Privatrecht, Germany.

Description: Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press, 2019. | Series: Cambridge Middle East studies | Based on author's thesis (doctoral - University of Oxford, 2014) issued under title: Processes of family law reform : legal and societal change and continuity in Morocco and Jordan.

Identifiers: LCCN 2018041847 | ISBN 9781108496612 (hardback) | ISBN 9781108721752 (paperback)

Subjects: LCSH: Domestic relations–Morocco. | Domestic relations–Jordan. | Law reform–Morocco. | Law reform–Jordan. | BISAC: POLITICAL SCIENCE / Government / International.

Classification: LCC KMC156 .E54 2019 | DDC 346.569501/5–dc23

LC record available at <https://lccn.loc.gov/2018041847>

ISBN 978-1-108-49661-2 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

To my mother Ilse

Cambridge University Press
978-1-108-49661-2 — Reforming Family Law
Dörthe Engelcke
Frontmatter
[More Information](#)

Contents

<i>List of Figures</i>	page viii
<i>List of Tables</i>	ix
<i>Acknowledgments</i>	x
<i>Note on Transliteration</i>	xiii
<i>List of Acronyms</i>	xiv
1 Introduction	1
2 Colonial Legal Legacies and State-Building	29
3 The Contemporary Legal Systems	66
4 The Impact of International Law	87
5 The Process of Family Law Reform in Jordan	113
6 The Process of Family Law Reform in Morocco	133
7 Contested Issues of Jordanian Family Law	156
8 Contested Issues of Moroccan Family Law	180
9 The Implementation of the 2004 Law: The Prevalence of Multiple Normativities	199
10 Conclusion	225
<i>Bibliography</i>	241
<i>Index</i>	262

Figures

10.1 The Family Law Reform Social Space in Jordan	<i>page</i> 229
10.2 The Family Law Reform Social Space in Morocco	230

Tables

3.1 Admission Figures of the Jordanian Judicial Institute	<i>page 74</i>
3.2 Admission Figures of the Moroccan Institut Supérieur de la Magistrature	78
7.1 Number of Marriages Involving a Minor Girl in Jordan	159
7.2 Total Number of Inheritance and <i>Takhāruj</i> Cases in Jordan	176
9.1 Figures of Marriage of Minors in Morocco	200
9.2 Figures of Polygamous Marriages in Morocco	200
9.3 Figures of Women in Morocco Who Married without a Guardian	201
9.4 Figures of Belated Registrations of Marriage in Morocco	205

Acknowledgments

This book stands at the end of a long journey that included some considerable detours. Detours enhance one's knowledge of a place, and this project was no exception to this rule. Writing these acknowledgments allows me to revisit these places and, more importantly, the people who made these places what they are and to thank all of them for their generous support without which this book never would have seen the light of day.

The project began at the University of Oxford. The Middle East Centre and St Antony's College provided a great intellectual community. My supervisor Michael J. Willis was a wonderful mentor. His endless knowledge of North African politics, his generosity, patience, and free spirit made it a privilege to work with him. Philip Robins, Nazila Ghanea, Dawn Chatty, and Cindy Skach commented on individual chapters. Avi Shlaim was kind enough to share transcripts of the interviews he conducted for his book *Lion of Jordan* (2007), which provided a unique insight into Jordanian politics. Mastan, at the time the heart of the Middle East Centre library, was always helpful with finding even the most obscure sources. I would also like to thank the Hadid family, who provided me with a generous grant. I also thank the Oriental Institute as well as St Antony's College for their financial sponsorship.

This project evolved in several stages. In 2014–2015 I held a fellowship at the Islamic Legal Studies Program at Harvard Law School (ILSP). ILSP provided an ideal intellectual environment, which allowed me to pursue my research without disruption. In particular I wish to thank Kristen A. Stilt for her mentorship and for giving generously of her time. I would also like to thank Rashid Alvi, Intisar al-Rabb, Meagan Froemming, and Ceallaigh Reddy for making my stay at ILSP so productive. In the wider Harvard community I wish to thank Malika Zeghal, Barber Johansen, and Leila Ahmed for the valuable feedback and comments they provided on numerous occasions.

This book was finalized during a fellowship at the Lichtenberg-Kolleg, the Institute for Advanced Studies, at the University of Göttingen from

2015 to 2017. During my time at the Kolleg, I very much benefited from being part of the research group “Human Rights, Constitutional Politics and Religious Diversity.” I learned a great deal from all members of the group. In particular I wish to thank Matthias König, Mirjam Künkler, Sinem Adar, Iris Sportel, and Júlia Mink. Irene Schneider was a great academic mentor throughout the time of the fellowship and provided valuable feedback on my work. Thanks are also due to Martin van Gelderen, Kora Baumbach, Dominik Hünninger, Inge-Lore Paschke, and Jan-Wilke Brandt who all helped make my stay in Göttingen very enjoyable.

Over the years many friends and colleagues provided invaluable feedback and gave generously of their time. I wish to thank, in no particular order, Benjamin Geer, Rania Maktabi, Yüksel Sezgin, Ferdinand Eibl, Katja Žvan Elliott, Baudouin Dupret, Doris Gray, and Imane Chaara. Nathan J. Brown provided helpful comments on numerous essays – always at an impressive speed – and brought back sweet memories from the United States in the form of Reese’s. Iris Agmon notably improved my understanding of the Ottoman legal system; I am grateful for her patience as well as sharing unpublished work with me. I would have probably never ventured on this path in the first place had it not been for Lynn Welchman whose course I read at SOAS and who sparked my interest in the interaction of law and society. Lynn also provided invaluable comments as one of my DPhil examiners. At Cambridge University Press, I would like to thank Maria Marsh, who has been extremely prompt and helpful throughout the process. I also thank the two anonymous reviewers for their constructive and helpful comments, which greatly improved the manuscript.

In Germany thanks are due to the German Institute of Global and Area Studies (GIGA) for hosting me as a visiting fellow in the summer of 2012. I am particularly grateful to Thomas Richter, André Bank, Henner Fürtig, Annette Ranko, Elizabeth I. Monier, Viola Lukas, and Anna Sunik for their input and support during that time and for making my stay at the GIGA so fruitful. I would also like to thank Thomas Demmelhuber, who provided helpful comments on one of the first project outlines.

Some parts of the book were previously published in the form of articles. I thank the publishers for allowing me to use them here. These include “Law-making in Jordan: Family Law Reform and the Supreme Justice Department,” *Islamic Law and Society* 25, no. 3 (2018), 274–309 and “Interpreting the 2004 Moroccan Family Law: Street-Level Bureaucrats, Women’s Groups, and the Preservation of Multiple Normativities,” *Law & Social Inquiry* 43, no. 4 (2018), 1514–1541.

xii Acknowledgments

Countless people in Morocco and Jordan have given generously of their time and helped me enhance my understanding of family law and the political and social contexts in which they operate. Not all of them can be named here, but I am much obliged and indebted to them all. Listening to some of the very early interview recordings recently made me impressed with how patiently people handled my naïve and ignorant questions. It is thanks to them that my thoughts matured over the years.

In Morocco I particularly wish to thank Malika Ennaje and the Moroccan British Society for facilitating my fieldwork stays. Malika Benradi has been patiently answering my questions about law in Morocco over the years. The Moroccan Ministry of Justice was very helpful in facilitating visits to the courts and my continuous discussions with some of the officials, most of them judges themselves, helped me understand the motivations of reform and its challenges.

In Jordan, I am particularly thankful to the Supreme Justice Department (SJD), the shari'a court administration. Several shari'a judges at the SJD were extremely helpful with answering questions and meeting numerous times. In particular I would like to thank Ashraf Omari and Mansour Tawalbe. I also wish to thank Manar Rachwani and Rania Sarayreh for their friendship and help at various stages of my research in Jordan. Also, many thanks to Ralf and Flora for hosting me in Jordan.

On a more personal note I am more than fortunate to have my husband Mark in my life, who I love dearly. It is fair to say that without his love and support this book would have never been completed. He has been a pillar of stability over the past ten years and a source of joy and intellectual exchange. He patiently read every single chapter and the whole manuscript so that over the years he inadvertently risked becoming an expert of Islamic family law himself. I thank Sabrina for helping with the design of the cover image and for many years of friendship. I am grateful to my mother, a feminist by practice, who, despite not having received a higher education herself, made sure I received one. Growing up in a German agrarian family, she had her fair share of hardship. She taught me never to give up and that when life gives you lemons, you make lemonade. This book is dedicated to her.

These acknowledgements were written and the last edits were made at the Max Planck Institute for Comparative and International Private Law in Hamburg, which has become a wonderful new professional home. I wish to thank Nadjma Yassari, Lena-Maria Möller, Tess Chemnitzer, Dominik Krell, and Shéhérazade Elyazidi for welcoming me to the *madhhab hamburghī*.

Note on Transliteration

I follow the transliteration system of the *International Journal of Middle East Studies* (IJMES) because it is the most commonly used across disciplines. Some terms have become standardized in French, but I decided to transcribe them as well using the IJMES system to avoid confusion and multiple spellings of the same words: so it is *qā'id* and not *qaid*. For proper names I use the official or most commonly used spelling in either country. This explains some variation in spelling: it is 'ulama' but Conseil Supérieur des Oulémas. In line with the IJMES guidelines I do not transcribe names of people and places. In an effort to increase clarity I have transcribed titles of books and other content originally produced in Arabic. All transcribed Arabic words are italicized except if they have become standard in English, such as Qur'an and shari'a.

Acronyms

ADFM	Association Démocratique des Femmes du Maroc
AMDF	Association Marocaine des Droits des Femmes
AWO	Arab Women's Organization
CCDH	Conseil Consultatif des Droits de l'Homme
CEDAW	Convention for the Elimination of All Forms of Discrimination against Women
CJLHR	Committee for Justice, Legislation, and Human Rights
CSO	Conseil Supérieur des Oulémas
FFD	Front des Forces Démocratiques
FTA	Free Trade Agreement
GFJW	General Federation of Jordanian Women
GSU	Gauche Socialiste Unifiée
IAF	Islamic Action Front
IMF	International Monetary Fund
ISM	Institut Supérieur de la Magistrature
JBM	Justice and Benevolence Movement (JBM)
JIJ	Judicial Institute of Jordan
JLFR	Jordanian Law of Family Rights
JNCW	Jordan National Commission for Women
JNFW	Jordanian National Forum for Women
JWU	Jordanian Women's Union
LDDF	Ligue Démocratique des Droits de la Femme
MAP	Maghreb Arab Press
MP	Mouvement Populaire
MSWFSD	Ministry of Solidarity, Women, Family, and Social Development
MUR	Movement for Unity and Reform
NCFA	National Council for Family Affairs
OLFR	Ottoman Law of Family Rights
OMDH	Organization Marocain des Droits de l'Homme
ORCF	Organization for the Renewal of the Female Consciousness

List of Acronyms

xv

PANAFID	Plan of Action for the Integration of Women into Development
PJD	Party of Justice and Development
PPS	Parti du Progrès et du Socialisme
RCHR	Royal Commission for Human Rights
RNI	Rassemblement National des Indépendants
SIGI	Sisterhood is Global Institute
SJD	Supreme Justice Department
UAF	Union de L'Action Féminine
UC	Union Constitutionnelle
UNDP	United Nations Development Programme
UNFM	Union Nationale des Femmes Marocaines
UNFP	United Nations Population Fund
UNICEF	United Nations Children Fund
USFP	Union Socialiste des Forces Populaires

Cambridge University Press
978-1-108-49661-2 — Reforming Family Law
Dörthe Engelcke
Frontmatter
[More Information](#)
