

State-Mediated Islamic Normativity: The Role of the Supreme Council of ‘Ulama in Morocco

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ABSTRACT

This article examines how Islamic normativity is produced and mediated through state institutions in contemporary Morocco, focusing on the Supreme Council of ‘Ulamā’ (SCU). While scholarship on Islamic law under the modern nation-state has primarily examined the positivization of *fiqh*, less attention has been given to Islamic norms authorized by state institutions that remain partly or entirely outside positive law. Using qualitative documentary and doctrinal analysis of constitutional provisions, royal dahirs, legislation, official fatwas, regulatory instruments, and institutional documents, the article develops a threefold typology of state-mediated Islamic normativity. First, Islamic Positive Law is illustrated by the SCU’s involvement in family-law reform through state-mediated *ijtihād*, whereby religious reasoning contributes to legally binding rules. Second, State-Institutionalized Islamic Infra-Law is exemplified by official fatwas on *zakāt*, which carry institutional religious authority without direct legal enforceability. Third, State-Institutionalized Voluntary Islamic Normativity is illustrated by participatory finance, where voluntary adherence to a *sharī‘a*-compliant framework generates legally structured consequences once adopted. These configurations reveal that state involvement does not simply absorb Islamic norms into a unified legal order or eliminate normative plurality. Instead, it redistributes Islamic normativity across varying degrees of legal force, institutional authority, and voluntariness. The article conceptualizes this arrangement as state-mediated interlegality, arguing that interlegality emerges not only through encounters between relatively autonomous normative orders but also through differentiated forms of norm production and authorization within state institutions. This perspective extends socio-legal debates on Islamic law by identifying institutional differentiation, rather than positivization alone, as a central mechanism of contemporary normative transformation.

KEYWORDS: State-Mediated Islamic Normativity; Supreme Council of ‘Ulama; *Ijtihād*; Interlegality; Morocco; Islamic Law

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Introduction

The emergence of modern nation-states and legal positivism transformed Islamic normativity through the incorporation of *fiqh* into legislation and the constitutional recognition of *sharīʿa* or Islam.¹ Islamic law, historically possessing considerable juridical autonomy,² consequently became integrated into positivist legal structures, displacing its traditional epistemological foundations.³ This transformation extended from the nineteenth-century *Mecelle*,⁴ and Ottoman Family Law of 1917,⁵ to Egypt's 1948 Civil Code,⁶ Morocco's 2004 *Moudawana*,⁷ and its 2011 Code of Real Rights.⁸ These reforms reshaped family, civil, and property law,⁹ while also extending, unevenly, into criminal law,¹⁰ including Morocco.¹¹ Positivization simultaneously diversified the actors producing Islamic normativity. Beyond the *fuqahāʾ*, legislators, judges, civil society representatives, interdisciplinary experts, and state institutions increasingly participate in *ijtihād*.¹² Muslim states increasingly incorporate religious institutions into governmental structures to regulate Islamic normativity, as illustrated by al-Azhar's 1961 reorganization and the institutional role of *Dār al-Iftāʾ al-Miṣriyya* in Egypt.¹³ These developments reveal that positivization transforms not only Islamic legal rules but also the institutional authority and interpretive mechanisms governing their production.

Although Islamic law's positivization began under the Protectorate, its integration into Morocco's modern state accelerated after independence in 1956, alongside French-derived legal institutions.¹⁴ Islamic scholars, notably 'Allāl al-

¹ Nahas M. Mahieddin, "L'évolution Du Droit de La Famille En Algérie: Nouveautés et Modifications Apportées Par La Loi Du 4 Mai 2005 Au Code Algérien de La Famille Du 9 Juin 1984," *L'Année Du Maghreb* II (2007): 97–137.

² Baudouin Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices* (Cambridge: Cambridge University Press, 2021), 4–5.

³ Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 443–73.

⁴ Murteza Bedir, "Fikih to Law: Secularization Through Curriculum," *Islamic Law and Society* 11, no. 3 (2004): 378–401.

⁵ *Droit de La Famille: Introduction, Supplément à La Revue de Turquie* (Constantinople: Imprimerie Ahmed Ihsan et Cie, 1918).

⁶ Guy Bechor, *The Sanhūrī Code and the Emergence of Modern Arab Civil Law (1932–1949)*, Studies in Islamic Law and Society 29 (Leiden: Brill, 2007).

⁷ Mohamed Mouaqit, "Modernisation de l'État, Modernisation de La Société, Réforme de La Moudawwana," *L'Année Du Maghreb* II (2007): 11–21.

⁸ Hajar Fanadi, "Al-Marjīʿiyya al-Tashrīʿiyya Li-Mudawwanat al-Ḥuqūq al-ʿAyniyya Bi-l-Maghrib Bayna al-Taʾsīl al-Fiqhī Wa-l-Iḥāla al-Qānūniyya: Dirāsa Fī Ishkāliyyat al-Amn al-ʿAqārī Wa-l-Qaḍāʾī," *Al-Maʿrifat Journal for Studies and Research*, no. 39 (2026): 95–116.

⁹ Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices*.

¹⁰ Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*, Themes in Islamic Law 2 (Cambridge: Cambridge University Press, 2005).

¹¹ Yannis Mahil, "Contemporary Mechanisms to Reform Islamic Criminal Law: Between Legal Doctrine and Positive Law—The Case of Morocco," *Journal of Islamic Law* 6, no. 1 (2025): 308–329.

¹² Yannis Mahil, *Ijtihād Collectif: L'évolution Du Droit Musulman* (Paris: Al Bouraq, 2024), 88–97.

¹³ Ahmed Mahmoud Khalifa, "Al-Azhar: Religious Education as a Symbolic Asset," in *An Atlas of Contemporary Egypt*, ed. Hala Bayoumi and Karine Bennafla (Paris: CNRS Éditions, 2023), 124–25.

¹⁴ Léon Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden: Leiden University Press, 2010), 89–138.

Fāsī, advocated this integration for religious and identity-related reasons,¹⁵ an orientation supported by King Muḥammad V in 1957.¹⁶ The constitutionalization of the Commandery of the Faithful (*Amīr al-Mu'minīn*)¹⁷ established Morocco's distinctive politico-legal configuration,¹⁸ positioning the King as the central authority governing Islamic normativity.¹⁹ This authority operates through state-linked institutions, including the Ministry of Awqāf and Islamic Affairs and the Supreme Council of 'Ulamā' (SCU).²⁰ Established by royal dahir in 1981,²¹ the SCU was reorganized in 2004 amid broader religious restructuring²² and constitutionally recognized in 2011.²³ Its institutionalization reflects the statization of *ijtihād*, centralizing religious authority and reshaping Islamic legal interpretation through state institutions. Beyond issuing fatwas, the SCU contributes to family-law reform and the regulation of *sharī'a*-compliant participatory finance. These functions demonstrate how Islamic normativity operates through differentiated institutional mechanisms, combining religious authority, legal regulation, and state oversight. Morocco thus provides a distinctive setting for examining how state institutions produce and mediate Islamic normativity beyond conventional legal positivization.

Existing scholarship has examined the transformation of Islamic law under modern state, particularly the incorporation of *fiqh* into positive legal system.²⁴ Studies of Morocco have explored the relationship between *sharī'a*, monarchy, the Commandery of the Faithful, family-law reform, and bureaucratized religious authority.²⁵ These developments have been approached diachronically, emphasizing modernity and legal positivism as transformations in Islamic normative production, and synchronically, examining how *fiqh* becomes

¹⁵ 'Allāl Al-Fāsī, *Difā' 'an Al-Sharī'a* (Beirut: Dār al-Kitāb al-Lubnānī, 2010), 229–35.

¹⁶ Mohammed V, "Speech Delivered before the Members of the Commission for the Codification of Islamic Law," Speech, October 19, 1957, reproduced in "'Alā Sunnat al-Salaf al-Ṣāliḥ: Shadharāt Dhahabiyya Khālida," *Da'wat al-Ḥaqq*, no. 106.

¹⁷ Baudouin Dupret, Jean-Noël Ferrié, and Kenza Omary, "Maroc: Des Réformes Substantielles et Conservatrices," *Oasis* 15 (2012): 41–45.

¹⁸ Hassan II, *Le Génie de La Modération: Réflexions Sur Les Vérités de l'islam*, ed. Éric Laurent (Paris: Plon, 2000), 68.

¹⁹ Mohammed Mouaqit, "Marginalité de La Charia et Centralité de La Commanderie Des Croyants: Le Cas Paradoxal Du Maroc," in *La Charia Aujourd'hui: Usages de La Référence Au Droit Islamique*, ed. Baudouin Dupret (Paris: La Découverte, 2012), 141–51.

²⁰ Mohamed Tozy, "Des Oulémas Frondeurs à La Bureaucratie Du 'Croire': Les Péripéties d'une Restructuration Annoncée Du Champ Religieux Au Maroc," in *La Bureaucratiation Néolibérale*, ed. Béatrice Hibou (Paris: La Découverte, 2013), 129–54.

²¹ Dahir No. 1-80-270 of April 8, 1981, Concerning the Establishment of the Supreme Council and Regional Councils of 'Ulamā', Pub. L. Nos. 1-80-270, 3575 Bulletin officiel du Royaume du Maroc 231 (1981), 231–32.

²² Dahir No. 1-03-300 of April 22, 2004, Reorganizing the Councils of 'Ulamā', Pub. L. Nos. 1-03-300, 5210 Bulletin officiel du Royaume du Maroc 698 (2004), 698–701.

²³ Constitution of the Kingdom of Morocco, 5964 bis Bulletin officiel (2011), art. 41.

²⁴ Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964).

²⁵ See: Buskens, "Sharia and National Law in Morocco"; Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices*; Miyase Yavuz, "Allah (God), al-Watan (the Nation), al-Malik (the King), and the Role of *Ijtihād* in the Family Law Reforms of Morocco," *The Journal of the Middle East and Africa* 7, no. 2 (2016): 207–27; Ann Marie Wainscott, "Religious Regulation as Foreign Policy: Morocco's Islamic Diplomacy in West Africa," *Politics and Religion* 11, no. 1 (2018): 1–26; Meriem El Haitami, "Religious Diversity at the Contours of Moroccan Islam," *The Journal of North African Studies* 28, no. 5 (2023): 1265–81.

integrated into state law across specific historical and geographical contexts.²⁶ Recent scholarship on Islam's bureaucratization further demonstrates how state-linked religious institutions classify, authorize, and regulate religious meanings and practices without necessarily translating them into legislation.²⁷ Socio-legal scholarship challenges legal centralism through Griffiths' legal pluralism and Ehrlich's living law, emphasizing multiple normative orders beyond state law. Interlegality further explains how these orders intersect and shape legal consciousness and social practices.²⁸ Together, these literatures provide essential accounts of both the transformation of Islamic law under the modern state and the persistence of normative plurality beyond formal legislation.

Nevertheless, an important analytical gap remains between these bodies of scholarship. Although contemporary studies have examined the positivization of *fiqh*, Islamic legal doctrine, and the bureaucratic organization of religious authority, less attention has been paid to how different forms of Islamic normativity produced within the same state-recognized religious institution may occupy distinct positions in relation to positive law.²⁹ The conventional distinction between codified Islamic law and religious normativity therefore does not adequately account for forms of Islamic normativity that are produced through state institutions while remaining wholly or partially outside positive law. This is particularly visible in Morocco. A fatwa issued by the constitutionally recognized SCU, for example, does not possess the same legal force as legislation, yet neither can it be treated simply as an unofficial private religious opinion.³⁰ Similarly, participation in *sharī'a*-compliant finance remains a matter of individual choice, while the normative standards governing the institutions offering such services are formally regulated through state institutions.³¹ These configurations reveal distinct relationships between positive law, religious doctrine, institutional authority, and voluntary normative practice.

²⁶ Hallaq, *Sharī'a: Theory, Practice, Transformations*; Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices*.

²⁷ Dominik M. Müller, "Bureaucratic Islam Compared: Classificatory Power and State-Ified Religious Meaning-Making in Brunei and Singapore," *Journal of Law and Religion* 33, no. 2 (2018): 212–47; Ani Sarkissian and Ann Marie Wainscott, "Benign Bureaucracies? Religious Affairs Ministries as Institutions of Political Control," *Democratization* 31, no. 6 (2024): 1160–82.

²⁸ John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1–55; Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, trans. Walter L. Moll (Cambridge, MA: Harvard University Press, 1936); Simran Kalra, "'Double Vision' in the Interlegal: The Situated Pluri-legal Consciousness of British Muslim Women," *Journal of Law and Society* 51, no. S1 (2024): S136–S152.

²⁹ See: Omer Awass, "Fatwa, Discursivity, and the Art of Ethical Embedding," *Journal of the American Academy of Religion* 87, no. 3 (2019): 765–90; Jeremy Menchik, "The Politics of the Fatwa: Islamic Legal Authority in Modern Indonesia," *Indonesia* 114, no. 1 (2022): 75–97; Ali-Reza Bhojani and Morgan Clarke, "Religious Authority beyond Domination and Discipline: Epistemic Authority and Its Vernacular Uses in the Shi'i Diaspora," *Comparative Studies in Society and History* 65, no. 2 (2023): 272–95.

³⁰ Abdul Hayyaqddhan Ashufah et al., "Dilemmas of Fatwas Freedom in Morocco: Between Diversity of Religious Perspectives or National Stability," *Mazahibuna*, October 9, 2025, 228–43.

³¹ Participatory *Sharī'a* Finance Committee of the Supreme Council of 'Ulamā', *Opinion No. 3 on the Conditions and Procedures for Banks to Conduct Participatory Banking Activities and Operations*, Official institutional opinion (Rabat, Morocco: Moroccan Ministry of Awqāf and Islamic Affairs, 2017), <https://www.habous.gov.ma>.

This article conceptualizes intermediate normative spaces through legal pluralism and Jean Carbonnier's distinction between *droit* (law), *infra-droit* (infra-law), and *non-droit* (the absence or withdrawal of law), which recognizes normative phenomena beyond positive law.³² *Infra-droit* encompasses arrangements lacking formal legal coercion yet shaping social conduct and expectations, including religious norms.³³ However, Carbonnier's framework cannot be directly applied to classical Islamic law, which historically possessed autonomous juristic institutions and mechanisms of normative production. Its analytical relevance emerges through transformations introduced by the modern positivist state.³⁴ Accordingly, this article adapts *infra-droit* to examine Islamic norms grounded in *fiqh* and institutionally authorized by the state without necessarily acquiring legal enforceability. Legal pluralism thus identifies varying degrees of institutionalization, authority, enforceability, and voluntariness rather than merely competing autonomous legal systems.³⁵ Focusing on Morocco's Supreme Council of 'Ulamā', the study examines how Islamic normativity operates across differentiated institutional and legal levels.³⁶ The proposed typology distinguishes Islamic Positive Law, State-Institutionalized Islamic Infra-Law, and State-Institutionalized Voluntary Islamic Normativity, demonstrating how state-mediated interlegality emerges through differentiated Islamic normative production within state institutions, rather than solely between distinct legal orders.

Rather than *fiqh*'s transformation into state law as binary, this article examines how modern states regulate Islamic norms with varying degrees of legal authority. Developed through the Moroccan case, the proposed typology offers an analytical perspective on legal pluralism and the transformation of Islamic law under modern state structures. The article first examines the institutional foundations of the SCU as a form of state-mediated religious authority. It then analyzes three modes of Islamic normative production: Islamic Positive Law through family-law reform, State-Institutionalized Islamic Infra-Law through official fatwas, and State-Institutionalized Voluntary Islamic Normativity through participatory finance. The article concludes by synthesizing the key findings and highlighting their broader theoretical implications for understanding Islamic normativity within modern state institutions.

³² Jean Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*, 10th ed. (Paris: LGDJ, 2001); Jean Carbonnier, *Sociologie Juridique* (Paris: Presses Universitaires de France, 1978).

³³ Jean Carbonnier, "La religion, fondement du droit ?," *Archives de philosophie du droit* 38 (1993): 17–21; Jacques P. Vanderlinden, "Une lecture du système normatif de l'Église catholique par un pluraliste comparatiste aux personnalités multiples," *McGill Law Journal* 50, no. 4 (2005): 809–38.

³⁴ Hallaq, *Shari'a: Theory, Practice, Transformations*; Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices*.

³⁵ Boaventura De Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*, 3rd ed. (Cambridge: Cambridge University Press, 2020).

³⁶ Yavuz, "Allah (God), *al-Watan* (the Nation), *al-Malik* (the King), and the Role of *Ijtihād* in the Family Law Reforms of Morocco"; Ashufah et al., "Dilemmas of Fatwas Freedom in Morocco"; Simona Franzoni and Asma Ait Allali, "Corporate Governance of Islamic Banks: A Sustainable Model to Protect the Participatory Depositor?," *Journal of Banking Regulation* 25, no. 1 (2024): 42–48.

Methodology

This study adopts a qualitative documentary approach combining doctrinal legal analysis with a socio-legal and conceptual analysis of contemporary Islamic normativity.³⁷ It is designed as a single-country case study focusing on Morocco and, more specifically, on the institutional and normative activities of the SCU. The temporal scope extends from 1981, when the SCU was formally established by royal dahir, to 2026.³⁸ Morocco was selected because it offers a particularly revealing configuration in which Islamic normativity is mediated through a modern positivist state while religious authority remains constitutionally structured around the institution of the Commander of the Faithful.³⁹

The SCU was selected because its activities span legislative reform, official fatwa production, and the regulation of *shari'a*-compliant finance, thereby allowing comparison across distinct forms of state-mediated Islamic normativity.⁴⁰ The study examines the legal, institutional, and religious texts through which these forms of normativity are produced and articulated. It relies primarily on documentary sources selected for their relevance to the SCU's institutional status, normative authority, and activities. Primary materials include constitutional and legislative texts, royal dahirs, official SCU documents and fatwas, royal communications, and regulatory instruments relating to participatory finance. Secondary sources comprise scholarship on Islamic law, Moroccan legal and religious institutions, legal pluralism, sociology of law, Islamic finance, and contemporary Islamic legal thought. As summarized in Table 1, the corpus was assembled to clarify three dimensions central to the research question: the legal basis of the SCU's authority, the normative force of the outputs in which it participates, and their relationship to Moroccan positive law.

Table 1. Documentary and Their Analytical Functions

Data category	Main sources examined	Analytical function
Constitutional and institutional sources	1981 and 2004 dahirs; 2011 Constitution; subsequent legislation concerning the SCU	Establish the legal status, powers, institutional position, and constitutional authority of the SCU
Family-law and legislative materials	1993 and 2004 <i>Moudawana</i> reforms; documents and official	Examine the SCU's participation in the production and

³⁷ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83-119; Glenn A. Bowen, "Document Analysis as a Qualitative Research Method," *Qualitative Research Journal* 9, no. 2 (2009): 27-40.

³⁸ Dahir No. 1-80-270 of April 8, 1981, Concerning the Establishment of the Supreme Council and Regional Councils of 'Ulamā'.

³⁹ Constitution of the Kingdom of Morocco, promulgated by Dahir No. 1-11-91 of July 29, 2011, art. 41.

⁴⁰ See: Royal Cabinet of Morocco, "Royal Cabinet Communiqué," Moroccan Ministry of Justice, Rabat, Morocco: Moroccan Ministry of Justice, June 28, 2024, <https://justice.gov.ma>; Dahir n° 1-15-02 du 28 rabii I 1436 (20 janvier 2015) complétant le dahir n° 1-03-300 du 2 rabii I 1425 (22 avril 2004) portant réorganisation des conseils des Ouléma, 6333 Bulletin officiel du Royaume du Maroc 1098 (2015); Constitution of the Kingdom of Morocco.

	communications concerning the 2023–2024 Family Code reform	legitimization of Islamic Positive Law
Official religious sources	SCU fatwas and religious opinions, including the 2025 <i>zakāt al-māl</i> fatwa and the 2026 <i>zakāt al-fiṭr</i> opinion	Assess forms of Islamic normativity possessing institutional authority but lacking direct legal enforceability
Participatory-finance sources	Law No. 103-12; dahirs concerning participatory finance; Bank Al-Maghrib circulars and regulatory instruments	Analyze institutionalized <i>sharīʿa</i> compliance within a legally regulated but voluntarily chosen normative framework
Secondary academic literature	Scholarship on Islamic law, legal pluralism, legal positivism, sociology of law, Moroccan law, and Islamic finance	Provide the theoretical framework and contextualize the interpretation of primary sources

Source: author's compilation (2026).

The documents were analyzed through a combination of doctrinal interpretation and comparative normative analysis.⁴¹ First, each legal or institutional instrument was examined in relation to its author, legal basis, institutional hierarchy, and formally stated effects. Particular attention was paid to whether the norm or opinion possessed legally binding force, whether compliance could be enforced through state institutions, and whether adherence remained dependent on religious conviction or individual choice. Second, the documents were examined through a socio-legal analytical framework informed principally by theories of legal pluralism and Jean Carbonnier's distinction between law and infra-law.⁴² For each of the three principal fields studied—family-law reform, official fatwas, and participatory finance—the analysis considered the degree of state institutionalization, relationship to *fiqh*, legal enforceability, religious authority, and voluntariness of compliance. Comparison across these dimensions provided the analytical basis for distinguishing the three normative categories developed in the article.

This study employs documentary analysis and source triangulation, prioritizing authoritative primary materials to establish the legal and institutional status of Islamic norms.⁴³ Constitutional provisions, legislation, royal dahirs, SCU documents, and banking regulations provide the legal foundations, while secondary scholarship contextualizes their historical, sociological, and Islamic-legal significance. This approach addresses how Islamic normativity is institutionally produced, legally recognized, and enforced within Morocco's contemporary state structure. Rather than measuring public reception or actual compliance, the analysis examines three distinct normative configurations. Islamic Positive Law incorporates Islamic legal principles into binding state legislation. State-Institutionalized Islamic Infra-Law encompasses officially recognized

⁴¹ Hutchinson and Duncan, "Defining and Describing What We Do."

⁴² Carbonnier, *Sociologie Juridique*; Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*.

⁴³ Bowen, "Document Analysis as a Qualitative Research Method."

religious norms without direct legal enforceability. State-Institutionalized Voluntary Islamic Normativity operates through regulated arrangements voluntarily entered into but generating binding contractual obligations. These categories distinguish normative authority, legal force, and mechanisms of institutional activation. Together, they demonstrate how Islamic normative plurality persists within a centralized legal system through differentiated forms of state mediation and legal recognition.

Table 2. Comparative Typology of State-Mediated Islamic Normativity in Morocco

Analytical Dimension	Islamic Positive Law	State-Institutionalized Islamic Infra-Law	State-Institutionalized Voluntary Islamic Normativity
Primary illustration	Family law	Official fatwas (<i>zakāt</i>)	Participatory finance
Relationship to positive law	Incorporated into positive law	Outside positive law	Embedded in a positive-law regulatory framework without being generally imposed
Role of SCU	Consultative/ <i>ijtihād</i> -based participation	Production of official religious normativity	<i>sharīʿa</i> -compliance validation and supervision
Source of authority	State law and Islamic legitimacy	Islamic authority and constitutional/institutional recognition	Contractual choice, Islamic validation, and state regulation
Binding force	Legally binding	Religiously/morally normative but legally non-binding	Voluntary at entry; binding within the chosen legal arrangement
State enforcement	Direct	None as religious obligation	Indirect/conditional through banking and contract law
Individual choice	Generally not determinative	Compliance rests on religious adherence	Determines entry into the normative framework
Normative function	Transformation of <i>fiqh</i> into enforceable law	Preservation and institutionalization of Islamic obligations beyond state coercion	Enabling regulated <i>sharīʿa</i> -compliant conduct within the positive legal order
Example	<i>Moudawana</i>	<i>Zakāt al-fīṭr/zakāt al-māl</i>	<i>Murābaḥa</i> and other participatory products

Source: Author's compilation (2026).

As summarized in Table 2, the documentary analysis identifies three distinct configurations through which Islamic normativity is institutionally produced, legally recognized, and assigned different degrees of binding force within Morocco's legal order. These configurations demonstrate that the relationship between Islamic law and state law cannot be understood solely through the incorporation of *fiqh* into positive legislation. Rather, constitutional provisions, institutional mandates, and regulatory instruments establish differentiated mechanisms through which Islamic norms acquire legal, religious,

or contractual authority. On this analytical basis, the Moroccan case suggests that interlegality may arise not only through interactions between autonomous normative orders but also through their institutional articulation within the state itself. This configuration is conceptualized as state-mediated interlegality, whereby legal centralism accommodates normative plurality through distinct forms of institutional recognition, authorization, and regulation, without necessarily transforming every Islamic norm into binding state law.

Institutionalizing State-Mediated Religious Authority

The institutional development of the SCU should not be understood merely as a succession of administrative and constitutional reforms. Instead, the *Imārat al-Mu'minīn*, the 1981 and 2004 *dahirs*, and Article 41 of the 2011 Constitution collectively reveal a cumulative process through which the Moroccan state has institutionalized, centralized, and legally legitimized religious authority. The SCU constitutes a major expression of this process, with its religious authority rooted in the historical legitimacy of the Commandery of the Faithful and the recognition conferred through instruments of modern positive law.⁴⁴ Established in 1981 by royal dahir, the Council was incorporated into a legal framework that combined traditional monarchical prerogatives with modern institutional arrangements. A dahir, as a legal act issued by the King, constitutes a distinctive instrument of the Moroccan legal system. In matters of religious authority, it provides a mechanism through which the prerogatives associated with the constitutionally recognized *Imārat al-Mu'minīn* are translated into legal and institutional arrangements. Although rooted in a premodern tradition, the *dahir* has been fully incorporated into Morocco's modern positive legal order and is published in the *Bulletin officiel*.⁴⁵

The 1981 dahir established the SCU within an institutional framework linking Islamic authority to Moroccan national identity. Its preamble portrayed Islam as central to the "Moroccan personality" and Islamic legal tradition as a foundation of national unity.⁴⁶ Drawing legitimacy from Morocco's ruling dynasties, it emphasized preserving religious values through approaches compatible with contemporary developments.⁴⁷ This synthesis of continuity and modernization rested on the classical doctrine of *imāma*⁴⁸ and the constitutional authority of the

⁴⁴ Ann Marie Wainscott, *Bureaucratizing Islam: Morocco and the War on Terror*, 1st ed. (Cambridge University Press, 2017), 97-132.

⁴⁵ Paul Decroux, "Le Souverain Du Maroc, Législateur," *Revue de l'Occident Musulman et de La Méditerranée* 3, no. 1 (1967): 31-63.

⁴⁶ Dahir No. 1-80-270 of April 8, 1981, Concerning the Establishment of the Supreme Council and Regional Councils of 'Ulamā'.

⁴⁷ Dahir No. 1-80-270 of April 8, 1981.

⁴⁸ For a classical discussion of the doctrine of *imāma*, particularly the relationship between religious authority, political leadership, and the responsibility to safeguard religion and govern worldly affairs, see, Al-Māwardī, *Al-Aḥkām al-Sulṭāniyya Wa-l-Wilāyāt al-Dīniyya* (Cairo: Dār al-Ḥadīth, n.d.). The preamble to the Moroccan dahir of 1981 invokes the King's authority through the Supreme Imamate: "Nous fondant sur les pouvoirs que Dieu Très-Haut Nous a conférés en Nous confiant l'Imamat Suprême et que la constitution a rattachés en son article 19." See Morocco, Dahir No. 1-80-270 of April 8, 1981, Concerning the

modern state.⁴⁹ Accordingly, the Council was placed under the King's leadership as *Amīr al-Mu'minīn*, institutionalizing royal supervision over religious affairs.⁵⁰ From its establishment, the SCU therefore combined traditional Islamic legitimacy with the centralizing structures of modern state governance.⁵¹ The dahir further emphasized adherence to the Mālikī school as a unifying religious tradition, presenting the Council as an institution safeguarding Morocco's Islamic identity and national cohesion.⁵²

The 2004 dahir reorganized the SCU, expanded its functions, and strengthened its integration into state bureaucracy while combining positive law with traditional religious legitimacy. Its preamble acknowledged the Council's contribution to scholarly exchange through *ijtihād* and *istinbāt*,⁵³ but emphasized that inherited religious institutions required renewal rather than preservation alone.⁵⁴ Accordingly, the reform sought to modernize religious governance under continued royal authority, aligning institutional restructuring with broader societal transformation.⁵⁵ Beyond administrative reorganization, it reshaped the interpretive responsibilities of the *'ulamā'*, encouraging collective *ijtihād* on emerging issues guided by *maqāṣid al-sharī'a*, facilitation of religious practice, and moderation (*wasāṭiyya*).⁵⁶ These provisions demonstrate how institutional modernization and religious interpretation became interconnected within a state-regulated framework. By integrating scholarly authority, collective reasoning, and royal oversight, the reform established mechanisms for producing and regulating Islamic normativity through an officially recognized institution. Consequently, the SCU increasingly functioned as an institutional intermediary between Islamic legal tradition and the state's modernizing agenda, reflecting Morocco's broader transformation of religious governance.⁵⁷

The 2011 Moroccan Constitution further consolidated this institutional arrangement by granting the SCU explicit constitutional recognition. Article 41 establishes the Council, chaired by the King in his capacity as *Amīr al-Mu'minīn*, as the sole institution authorized to issue officially recognized fatwas, thereby

Establishment of the Supreme Council and Regional Councils of *'Ulamā'*, *Bulletin officiel du Royaume du Maroc*, no. 3575 (May 6, 1981), 231.

⁴⁹ "For these reasons, and by virtue of the powers that God Most High has entrusted to Us through the Supreme Imamate, which the Constitution has reaffirmed in its Article 19." See: Dahir No. 1-80-270 of April 8, 1981, Concerning the Establishment of the Supreme Council and Regional Councils of *'Ulamā'*.

⁵⁰ The first article of the *dahir* states that the SCU is "placed under the presidency of His Majesty the King of Morocco, Amīr al-Mu'minīn" See: Dahir No. 1-80-270 of April 8, 1981, Concerning the Establishment of the Supreme Council and Regional Councils of *'Ulamā'*.

⁵¹ See: Mouad Faitour, "Morocco's Distinctive Islam at a Crossroads: The State's Support for Sufism," *Religions* 15, no. 10 (2024): 1257; El Haitami, "Religious Diversity at the Contours of Moroccan Islam."

⁵² Dahir No. 1-80-270 of April 8, 1981, Concerning the Establishment of the Supreme Council and Regional Councils of *'Ulamā'*.

⁵³ Dahir No. 1-03-300 of April 22, 2004, Reorganizing the Councils of *'Ulamā'*.

⁵⁴ Dahir No. 1-03-300 of April 22, 2004.

⁵⁵ Dahir No. 1-03-300 of April 22, 2004.

⁵⁶ Dahir No. 1-03-300 of April 22, 2004.

⁵⁷ See: Mohammed El-Katiri, "The Institutionalisation of Religious Affairs: Religious Reform in Morocco," *The Journal of North African Studies* 18, no. 1 (2013): 53–69; Ann Marie Wainscott, *Bureaucratizing Islam*, 97–132.

constitutionally entrenching the centralization of religious authority within the state.⁵⁸ It also reiterates the Council's consultative responsibility to examine matters submitted by the King in the exercise of his duty to ensure respect for Islam. The provision establishes a normative orientation for its religious opinions by requiring that they be grounded in the principles, precepts, and "tolerant objectives" of Islam. Furthermore, it provides that the Council's organization and functions are determined by *dahir*, reaffirming its position within the King's religious prerogatives.⁵⁹ The constitutionalization of the SCU thus formalized the relationship between monarchical religious authority and the institutional production of official fatwas. It also reinforced the centralization of state-recognized *ijtihād*, without necessarily transforming the religious opinions issued by the Council into legislative norms.⁶⁰

Taken together, these developments reveal a cumulative process in the construction of state-mediated religious authority. The result cannot be reduced either to the survival of a premodern religious institution or to the straightforward absorption of religious authority into positive law. Rather, the Moroccan state has reconstructed religious authority by combining historical Islamic legitimacy, monarchical sovereignty, bureaucratic organization, and constitutional law. The SCU consequently represents an institutional configuration in which religious normativity is produced under state authority without necessarily acquiring the legal force of positive law.

Islamic Positive Law as State-Mediated *Ijtihād*

The notion of "Positive Islamic Law" or "Islamic Positive Law" has been used by several scholars in Islamic legal studies to designate legal norms derived wholly or predominantly from *fiqh* that have been incorporated into a modern state's positive legal system.⁶¹ The author employs the term here as an analytical category to investigate the Moroccan case, focusing in particular on the role played by the SCU in the production and development of Positive Islamic Law. In addition, the integration of Islamic law into the modern positivist legal order profoundly transformed the traditional structure of Islamic legal hermeneutics. Through this process, state institutions and other non-juristic actors became active participants in the production of norms derived from Islamic law. This evolution also

⁵⁸ "The Council is the only body empowered to issue officially approved religious opinions (fatwas), on the basis of the principles, precepts, and tolerant objectives of Islam." See: Constitution of the Kingdom of Morocco. 41.

⁵⁹ Constitution of the Kingdom of Morocco.

⁶⁰ See: Youssef Dennaoui, "Umkämpfte Religion: Formen und Transformationen religiöser Konkurrenz im Feld des Islam am Beispiel Marokkos," *Zeitschrift für Religion, Gesellschaft und Politik* 9, no. 1 (2024): 19–58; Ashufah et al., "Dilemmas of Fatwas Freedom in Morocco."

⁶¹ For instance, Baudouin Dupret employs the notions of "positive Islamic law" and "Islamic positive law" to describe legal norms derived from the Islamic tradition that have been incorporated into and applied through modern positive legal systems. See: Dupret, *Positive Law from the Muslim World: Jurisprudence, History, Practices*; See also: Marième N'Diaye, "La Réforme de La Moudawana: Une Révolution? Lire La Norme Islamique à l'aune de Sa Redéfinition Par l'État," *Studies in Religion/Sciences Religieuses* 45, no. 2 (2016): 146–65; Selman Zahid Özdemir, "Islamic Family Law in Morocco: Historical Developments and Reforms," *Ilahiyat Studies* 16, no. 1 (2025): 107–22.

encouraged the use of *talfiq*—the combination of opinions drawn from different legal schools—as well as new forms of state-sponsored *ijtihād* justified in the name of *maṣlaḥa*.⁶²

In contemporary Islamic legal reform, the ‘*ulamā*’ no longer monopolize interpretation but retain influence over legislation concerning Islamic law.⁶³ In Morocco, the SCU exercises consultative authority through royal referrals, assessing reforms through *ijtihād* without legislative or veto powers. During the 2024 *Moudawana* reform process, the King referred selected proposals to the Council for religious examination.⁶⁴ Although nonbinding, SCU opinions contribute religious legitimacy to legislation.⁶⁵ Unlike Egypt, where constitutionalized *sharī’a* principles may undergo *ex post* judicial review,⁶⁶ Morocco relies on *ex ante* consultation mediated through royal authority. This arrangement exemplifies state-mediated *ijtihād*, whereby SCU religious assessments inform positive law through royal, governmental, and legislative mediation. From an interlegality perspective, Islamic legal reasoning influences legislation while remaining institutionally distinct from legislative sovereignty, which rests with state authorities.

The SCU and State-Mediated *Ijtihād* in *Moudawana* Reforms

Although the SCU’s role remains formally consultative, the institutional form and significance of this consultative authority have evolved considerably. The successive reforms of the *Moudawana* in 1993, 2004, and 2024 reveal a gradual shift from the participation of individual ‘*ulamā*’ in state-led reform processes toward the formal institutionalization of the SCU as an official locus of state-mediated *ijtihād*. The chronological analysis that follows is therefore not intended merely to reconstruct the history of family-law reform, but to trace this evolution in the institutional mediation of Islamic normativity.⁶⁷

The 1993 Reform: Individual ‘*Ulama* and Limited Institutionalization

The Moroccan *Moudawana*, originally codified in 1957–58 within the emerging post-independence Moroccan state, underwent its first major reform in 1993.⁶⁸ Although the code remained largely grounded in classical Islamic law, the reform

⁶² Hallaq, *Sharī’a: Theory, Practice, Transformations*.

⁶³ See: Hallaq, 450–99; See also: Yavuz, “Allah (God), *al-Watan* (the Nation), *al-Malik* (the King), and the Role of *Ijtihād* in the Family Law Reforms of Morocco”; Wainscott, *Bureaucratizing Islam*; Meriem El Haitami, “Promises and Discontent: Rethinking Two Decades of Religious and Gender Reforms in Morocco,” *The Journal of North African Studies* 31, no. 5 (2026): 865–84.

⁶⁴ See: Royal Cabinet of Morocco, “بلاغ للديوان الملكي,” Ministère de la Justice (Royaume du Maroc), June 28, 2024, <https://justice.gov.ma>; Royal Cabinet of Morocco, “Communiqué du Cabinet Royal,” Ministère des Habous et des Affaires islamiques (Royaume du Maroc), December 23, 2024, <https://www.habous.gov.ma>.

⁶⁵ See: N’Diaye, “La Réforme de La Moudawana”; Dörthe Engelcke, “Interpreting the 2004 Moroccan Family Law: Street-Level Bureaucrats, Women’s Groups, and the Preservation of Multiple Normativities,” *Law & Social Inquiry* 43, no. 04 (2018): 1514–41.

⁶⁶ Intisar A. Rabb, “The Least Religious Branch? The New Islamic Constitutionalism after the Arab Spring,” *UCLA Journal of International Law and Foreign Affairs* 17 (2013): 75–132.

⁶⁷ See: N’Diaye, “La Réforme de La Moudawana”; Dörthe Engelcke, *Reforming Family Law: Social and Political Change in Jordan and Morocco*, 1st ed. (Cambridge University Press, 2019).

⁶⁸ Dahirs on Laws Nos. 1-93-345, 1-93-346, and 1-93-347 of 22 Rabī’ I 1414 (September 10, 1993), Pub. L. Nos. 1-93-345; 1-93-346; 1-93-347, 4231 Bulletin officiel 663 (1993), 663-66.

sought to introduce changes reflecting a more reformist orientation. King Hassan II established a royal commission to propose amendments reconciling modernization with fidelity to *fiqh*.⁶⁹ While the reform remained primarily within the Mālikī framework, it also reflected an increasing use of *talfīq* through the incorporation of opinions drawn from other legal schools. For example, women were granted the possibility of including a stipulation in the marriage contract prohibiting polygamy, allowing them to seek dissolution of the marriage in the event of its violation,⁷⁰ which derives from the Ḥanbalī *madhhab*.⁷¹ More generally, the reform relied on procedural and judicial mechanisms to regulate certain aspects of classical *fiqh* without fundamentally altering their underlying legal basis. In matters such as repudiation (*ṭalāq*), polygamy or matrimonial guardianship (*wilāya*), the role of the judge was strengthened in order to supervise and restrict their practical application.⁷²

The reform thus continued the process of *fiqh* positivization initiated in 1957 while reinforcing the logic of the modern positivist state. The proposed amendments were prepared by a royal consultative commission of ‘*ulamā*’ headed by the royal adviser ‘Abd al-Hādī Būṭalīb, who possessed training in both Islamic law and modern positive law. The commission included several scholars associated with Morocco’s official religious establishment.⁷³ Nevertheless, the SCU does not appear to have collectively directed or formally validated the reform. Although it already existed in 1993, its influence on the development of Islamic Positive Law has been exercised primarily through the participation of individual members in royal commissions rather than through institutional action undertaken by the Council itself.⁷⁴

The 2004 Reform: Institutional Religious Legitimization

In the context of the 2004 reform of the *Moudawana*, the role of the SCU appears to have been more significant than in 1993, although it had not yet become a fully structuring institutional actor. The royal commission established in 2001 to prepare the reform brought together a much broader range of participants than its 1993 counterpart, including representatives of civil society, women’s associations, academics, judges, jurists, and intellectuals.⁷⁵

⁶⁹ Özdemir, “Islamic Family Law in Morocco.”

⁷⁰ Dahir on Law No. 1-93-347 of 22 Rabi’ I 1414 (September 10, 1993) Amending and Supplementing Certain Articles of the Code of Personal Status (*Moudawana*), Pub. L. Nos. 1-93-347, 4231 Bulletin officiel 664 (1993), 664.

⁷¹ Muwaffaq al-Dīn Ibn Qudāma, *Al-Mughnī*, 3rd ed., ed. ‘Abd Allāh Al-Turkī and ‘Abd al-Fattāḥ Al-Ḥulw, 15 vols. (Riyadh: Dār ‘Ālam al-Kutub, 1997), 9:483.

⁷² Dahirs on Laws Nos. 1-93-345, 1-93-346, and 1-93-347 of 22 Rabi’ I 1414 (September 10, 1993).

⁷³ Aḥmad Al-Khamlishī, *Min Mudawwanat Al-Aḥwāl al-Shakhṣiyya Ilā Mudawwanat al-Usra*, vol. 1 (Al-Rabāt: Dār Nashr al-Ma’rifah, 2012), 27.

⁷⁴ Engelcke, *Reforming Family Law*; Yavuz, “Allah (God), al-Watan (the Nation), al-Malik (the King), and the Role of *Ijtihād* in the Family Law Reforms of Morocco.”

⁷⁵ See: Engelcke, *Reforming Family Law*; Stephanie Willman Bordat and Saida Kouzzi, “Women’s Rights in the Moroccan Family Code: Caught between Change and Continuity,” in *Family Law and Gender in the Middle East and North Africa*, 1st ed., ed. Adrien K. Wing and Hisham A. Kassim (Cambridge: Cambridge University Press, 2023), 59–77.

The Council's role was primarily one of religious and symbolic legitimization for a reform initiated under royal authority. The institutional significance of the SCU itself was strengthened as a source of religious legitimacy for the reform project promoted through the Commandery of the Faithful.⁷⁶ The Council's influence was also reflected in the participation of several of its members in the royal commission responsible for the reform. Among them were prominent figures of Morocco's official religious establishment, including Muṣṭafā Benḥamza, Ibrāhīm Benseddiq, and Shabīhna Ḥamdātī Mā' al-'Aynayn, presidents of the councils of 'ulamā' of Oujda, Tangier, and Kenitra respectively.⁷⁷ Their participation illustrates the Council's growing institutional involvement in the religious legitimization of family-law reform, despite its lack of direct legislative authority.⁷⁸

The 2024 Reform: Formalized Institutional Ijtihād

Unlike the 2004 reform, which preceded the SCU's institutional strengthening and constitutionalization, the 2024 reform involved a more formally institutionalized yet primarily consultative religious authority.⁷⁹ Following 139 reform proposals, the King requested further examination through "constructive *ijtihād*," reinforcing the SCU's advisory role.⁸⁰ The reform sought conformity with the spirit of *sharī'a* while accommodating Moroccan social particularities through moderation, consultation, and dialogue, reconciling Islamic objectives with internationally recognized human rights principles.⁸¹ The King explicitly acknowledged the SCU's contribution⁸² and included it alongside judicial, governmental, and human rights institutions in the reform process.⁸³ Subsequently, the SCU was asked to assess selected proposals against Islamic principles through "open and constructive *ijtihād*," subject to the prohibition against permitting *ḥarām* or prohibiting *ḥalāl*.⁸⁴

⁷⁶ See: Mariam Ben Zliha, "De La Discursivité Du Droit de La Famille Marocain Sous Mohamed VI : Une Orientation Politique Du Processus Des Réformes et Sa Représentation" (PhD dissertation, Université de Strasbourg, 2018), <https://theses.fr/2018STRAA010>.

⁷⁷ See: Sara Ibriz, "Moudawana: Ce Que Nous Dit La Composition de l'équipe Chargée Du Pilotage de La Réforme," *Médias24*, September 28, 2023, <https://medias24.com>.

⁷⁸ See: Yavuz, "Allah (God), al-Watan (the Nation), al-Malik (the King), and the Role of *Ijtihād* in the Family Law Reforms of Morocco"; Miyase Yavuz Altıntaş, "A Mediator Between Sharia and State Law: Aḥmad al-Khamlishī's Legal Thinking and Contribution to Reforms," *Cumhuriyet İlahiyat Dergisi* 27, no. 3 (2023): 809–25.

⁷⁹ Ibriz, "Moudawana: Ce Que Nous Dit La Composition de l'équipe Chargée Du Pilotage de La Réforme."

⁸⁰ Abdessalam Jaldi and Nouzha Chekrouni, *La Réforme Du Code de La Famille à l'aune Des Recommandations de l'Instance Chargée de La Révision de La Moudawana: Innovations, Limites et Perspectives*, Policy Paper PP-06/25 (Rabat: Policy Center for the New South, 2025), 9; Ian VanderMeulen, *The Opposition Effect: Islamism and Women's Rights in the Midst of Morocco's Family Code Reform* (Waltham, MA: Crown Center for Middle East Studies, Brandeis University, 2024), <https://www.brandeis.edu>; El Haitami, "Promises and Discontent."

⁸¹ Instance chargée de la révision du Code de la famille, "Missions de l'Instance," Moudawana.Ma, accessed May 24, 2026, <https://moudawana.ma>.

⁸² Mohammed VI, "Lettre Royale Adressée Au Chef Du Gouvernement," Royal letter to Chef du gouvernement, September 26, 2023.

⁸³ Instance chargée de la révision du Code de la famille, "Membres de l'Instance," Moudawana.Ma, accessed May 24, 2026, <https://moudawana.ma>.

⁸⁴ Royal Cabinet, "Communiqué Du Cabinet Royal Concernant La Saisine Du Conseil Supérieur Des Oulémas Au Sujet de La Réforme Du Code de La Famille," June 28, 2024.

Invoking Article 41 of the Constitution, the royal communiqué formally entrusted the SCU with issuing a fatwa on these proposals.⁸⁵ This arrangement illustrates state-mediated *ijtihād*, whereby the SCU provides authoritative religious assessments without exercising final legislative authority.⁸⁶ Consequently, Islamic Positive Law emerges through institutional coordination between religious expertise, royal authority, and legislative processes rather than autonomous juristic decision-making.

Participating in the consultations and deliberations for the reform, the SCU opposed several recommendations that it considered incompatible with the *sharīʿa*. Most notably, it rejected the proposal to make genetic testing mandatory for the establishment of filiation, arguing that such a measure would undermine principles of Islamic family law regarded as fundamental to Moroccan society.⁸⁷ The Council also opposed recommendations calling for modifications to the rules of inheritance derived from the Qurʾān.⁸⁸ By contrast, it approved the majority of the seventeen questions submitted for its consideration. Its opinion was subsequently transmitted to the King, who retains ultimate decision-making authority and who, according to Ahmed Toufiq, exercises this authority in light of the *maṣlaḥa* and the higher objectives of Islam.⁸⁹ The 2024 reform process therefore reveals a further strengthening of the SCU's institutional role in the production of Islamic Positive Law. Entrusted by the King with exercising *ijtihād* and issuing a fatwa on proposed reforms, the Council could endorse or reject recommendations on Islamic legal grounds. Its role nevertheless is consultative. Binding legislative authority remained vested in the institutions of the state, while the monarchy defined the broader framework of the reform.

State-Institutionalized Islamic Infra-Law

To understand how Islamic law continues to evolve and operate within the framework of the modern positivist nation-state, it is necessary to examine the various spaces and levels in which contemporary fiqh is embedded. Although the modern state has profoundly transformed the nature of Islamic law, including its hermeneutical mechanisms, autonomy, and legal pluralism,⁹⁰ Islamic normativity cannot be reduced either to those elements of fiqh incorporated into positive law or to Islamic legal doctrine understood solely as a juristic tradition existing outside the state legal order.⁹¹ As outlined above, legal pluralism and Carbonnier's

⁸⁵ Royal Cabinet.

⁸⁶ See: Ashufah et al., "Dilemmas of Fatwas Freedom in Morocco"; El Haitami, "Promises and Discontent."

⁸⁷ Jaldi and Chekrouni, *La Réforme Du Code de La Famille à l'aune Des Recommandations de l'Instance Chargée de La Révision de La Moudawana: Innovations, Limites et Perspectives*.

⁸⁸ Jaldi and Chekrouni.

⁸⁹ He is the Minister of Awqāf and Islamic Affairs in Morocco, Agence Maghreb Arabe Presse (MAP), "Toufiq Expose l'avis Du Conseil Supérieur Des Oulémas Sur La Révision Du Code de La Famille," *SNRT News*, December 24, 2024.

⁹⁰ Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 18-73.

⁹¹ Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*; Vanderlinden, "Une lecture du système normatif de l'Église catholique par un pluraliste comparatiste aux personnalités multiples."

sociology of law provide a useful framework for analyzing the place of Islamic law within the modern positivist state, particularly in the Moroccan case. Although the modern state has sought to unify and centralize law through processes of positivization, in accordance with a logic of legal centralism,⁹² Islamic law continues to operate and develop through various forms of unofficial, semi-official, and socially embedded normativity.⁹³ A particularly revealing paradox deserves attention. The modern conception of law is largely monist: law is conceived as homogeneous and unitary because it is identified with the state. From this perspective, the legal system appears as a monolithic structure that leaves little room for legal pluralism. Classical Islamic law, by contrast, was inherently pluralistic and relatively autonomous, giving rise to a normative order in which the state played only a secondary role in the production of legal norms.⁹⁴

Carbonnier's framework accommodates normative pluralism within modern legal systems,⁹⁵ including religious normativity,⁹⁶ and offers insights into contemporary Muslim legal orders.⁹⁷ He distinguishes positive state law, infra-law, and non-law. Infra-law regulates conduct without possessing legal coercive force,⁹⁸ sometimes encompassing religious norms,⁹⁹ whereas non-law denotes spaces beyond these normative orders.¹⁰⁰ For Carbonnier, morality relies on conscience rather than state sanctions,¹⁰¹ while social conduct is shaped by overlapping normative networks.¹⁰² Accordingly, fatwas may generate religious obligations without becoming enforceable law.¹⁰³ This study adapts his framework to Morocco's Supreme Council of 'Ulamā'. Unlike spontaneous infra-law outside state institutions, SCU fatwas receive institutional recognition and constitutional legitimacy without acquiring positive-law status.¹⁰⁴ Moreover, Islamic law represents a comprehensive juristic tradition, not merely localized social custom. Its infra-legal position reflects the modern state's selective positivization and displacement of fiqh. Carbonnier's distinction between formal and sociological abrogation explains how displaced norms persist in social practice and consciousness.¹⁰⁵ Thus, State-Institutionalized Islamic Infra-Law identifies religious norms operating beyond legislation yet sustained through state-mediated authority, institutional legitimacy, and continuing social influence. This concept

⁹² Griffiths, "What Is Legal Pluralism?"

⁹³ Carbonnier, *Sociologie Juridique*; Carbonnier, "La religion, fondement du droit ?"

⁹⁴ Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. 18-36.

⁹⁵ Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*.

⁹⁶ Carbonnier, 20.

⁹⁷ Carbonnier, *Sociologie Juridique*; Carbonnier, "La religion, fondement du droit ?", 17-21.

⁹⁸ Carbonnier, *Sociologie Juridique*.

⁹⁹ Carbonnier.

¹⁰⁰ Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*; Vanderlinden, "Une lecture du système normatif de l'Église catholique par un pluraliste comparatiste aux personnalités multiples."

¹⁰¹ Jean Carbonnier, *Droit et Passion Du Droit* (Paris: Flammarion, 1996), 115.

¹⁰² Carbonnier, 115.

¹⁰³ Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*.

¹⁰⁴ See also: Wainscott, *Bureaucratizing Islam*; Ashufah et al., "Dilemmas of Fatwas Freedom in Morocco"; Constitution of the Kingdom of Morocco.

¹⁰⁵ Carbonnier, *Sociologie Juridique*. 54-57, 67-68.

captures the tension between the state's legal monopoly and enduring Islamic obligations shaping conduct without judicial enforcement.

Official Fatwa as State-Mediated Normativity beyond Positive Law

Beyond participating in state-sponsored *ijtihād* and Islamic Positive Law, the SCU produces official fatwas that lack binding legal force and remain outside Moroccan positive law. Their observance depends on individual religious conviction, yet their institutional status and Islam's social significance enable them to shape lived Islamic normativity.¹⁰⁶ These fatwas exemplify State-Institutionalized Islamic Infra-Law, occupying an intermediate position between enforceable state law and private religious opinion. Their authority derives from religious legitimacy, institutional recognition, and shared Islamic values rather than legal coercion. The SCU's constitutional and legal standing further reinforces this distinctive normative position.¹⁰⁷ Historically, fatwas constituted nonbinding juristic opinions formulated through the *ijtihād* of qualified muftīs, which believers could accept or disregard.¹⁰⁸ Nevertheless, their normative influence depended on established juristic authority and recognition within scholarly communities.¹⁰⁹ Moroccan legal history similarly demonstrates how fatwas enabled jurists to address evolving social and ethical questions through established Islamic legal reasoning.¹¹⁰ Accordingly, contemporary SCU fatwas preserve traditional religious authority while acquiring institutional legitimacy through the modern state, influencing social conduct without becoming legally enforceable obligations or formal legislation.

The SCU preserves the traditional understanding of the fatwa as a non-binding religious opinion while embedding it within the modern state, so that its authority derives from both religious scholarship and institutional recognition.¹¹¹ As Carbonnier observed, the absence of legal sanctions does not imply the absence of normativity, nor even the absence of forms of social sanction.¹¹² The “sanction” or “external coercion” associated with such norms operates through other mediations, including social pressure and what Carbonnier termed “the disapproval of society as a whole.”¹¹³ Recent scholarship on *iftā'* similarly conceptualizes fatwas as mechanisms through which religious judgments situate individual conduct within broader ethical and social relations.¹¹⁴ Similarly,

¹⁰⁶ Wainscott, *Bureaucratizing Islam*; El Haitami, “Religious Diversity at the Contours of Moroccan Islam.”

¹⁰⁷ Constitution of the Kingdom of Morocco; Ashufah et al., “Dilemmas of Fatwas Freedom in Morocco.”

¹⁰⁸ Aḥmad b. 'Abd al-Ḥalīm Ibn Taymiyya, *Al-Mustadrak 'alā Majmū' Fatāwā Shaykh al-Islām*, ed. Muḥammad b. 'Abd al-Raḥmān Ibn Qāsim, 5 vols. (1997), 2:263.

¹⁰⁹ Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 236–41.

¹¹⁰ Etty Terem, “Muslim Men, European Hats: A *Fatwā* on Cultural Appropriation in a Global Age,” *The Journal of North African Studies* 28, no. 3 (2023): 563–88.

¹¹¹ Esma Çetin, “دور المجلس العلمي الأعلى بالمغرب في ضبط الفتاوى ومواجهة مشكلات الحياة المعاصرة” [The Role of the Supreme Scientific Council in Morocco in Monitoring Fatwas and Facing the Problems of Contemporary Life], *İslami İlimler Dergisi* 16, no. 2 (2021): 224–197.

¹¹² Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*.

¹¹³ Carbonnier.

¹¹⁴ Awass, “Fatwa, Discursivity, and the Art of Ethical Embedding.”

although SCU fatwas lack the coercive force of state law, they may carry religious and social authority, with adherence shaped by religious obligation and shared Islamic values within Moroccan society.¹¹⁵ This institutional authority, however, should not be equated with uniform religious adherence, as Morocco's religious field remains characterized by competing interpretations and sources of religious authority.¹¹⁶

SCU Fatwas on Zakāt: State-Institutionalized Islamic Infra-Law

To illustrate this category, we may examine the SCU's fatwas concerning *zakāt al-fiṭr* and *zakāt al-māl*. During Ramaḍān 2026, the SCU issued a fatwa concerning *zakāt al-fiṭr*. After reaffirming its obligatory character under the *sharī'a* and encouraging Moroccan Muslims to fulfill this obligation, the Council officially fixed its monetary equivalent at 25 dirhams.¹¹⁷ The Council also clarified that individuals could voluntarily contribute more than the prescribed amount.¹¹⁸ Moroccan positive law remains silent on this matter, leaving adherence to individual conscience and religious conviction. Yet the fatwa draws authority from the SCU's institutional status, functioning as an official religious recommendation and a clear example of State-Institutionalized Islamic Infra-Law.

Similarly, on 6 October 2025, the Supreme Council of 'Ulamā', acting at the request of the King, submitted a fatwa concerning the payment of *zakāt al-māl* in Morocco.¹¹⁹ Following royal authorization on 22 October, the text was made publicly available on 24 October 2025. Under classical Islamic law, *zakāt al-māl* constitutes both a religious and legal obligation.¹²⁰ In Morocco, however, as in many contemporary Muslim-majority countries, *zakāt* is no longer collected by the state as a compulsory tax. It remains a religious obligation under the *sharī'a*, while its fulfillment is left to the conscience of individual believers.¹²¹ Research on citizens' conceptions of *zakāt* further indicates that religious obligations may retain their normative force beyond state taxation and legal enforcement, even where governments seek to encourage or institutionalize their collection.¹²² Unlike

¹¹⁵ On religiosity, the social embeddedness of Islam, and religious practice in Morocco, see: Mohammed El Ayadi, Hassan Rachik, and Mohamed Tozy, *L'Islam Au Quotidien: Enquête Sur Les Valeurs et Les Pratiques Religieuses Au Maroc* (Casablanca: La Croisée des chemins, 2013); Abdelghani Mandib, *Al-Dīn Wa-l-Mujtama': Dirāsa Sūsiyūlūjiyya Li-l-Tadāyyun Bi-l-Maghrib* (Casablanca: Afrique Orient, 2006).

¹¹⁶ Dennaoui, "Umkämpfte Religion."

¹¹⁷ Supreme Council of 'Ulamā' (Morocco), "Ra'y Al-Majlis al-'Ilmī al-A'lā Fī Sha'n Zakāt al-Fiṭr Wa-Miqdārihā Kaylan Wa-Naqdan Li-'Ām 1447H (2026 CE)," Official religious opinion/ communiqué, Ministry of Endowments and Islamic Affairs.

¹¹⁸ Moroccan Government, "Le montant de Zakat Al Fitir pour l'année 1447/2026 fixé à 25 DH," Maroc.ma, March 13, 2026, <https://www.maroc.ma>.

¹¹⁹ Supreme Council of 'Ulamā' (Morocco), *Fatwā Al-Majlis al-'Ilmī al-A'lā Fī Mawḍū' al-Zakāt*, Fatwa (Rabat: General Secretariat of the Supreme Council of 'Ulamā', 2025).

¹²⁰ Mathias Rohe, *Islamic Law in Past and Present*, trans. Gwendolin Goldbloom (Leiden and Boston: Brill, 2014), 209-10.

¹²¹ Mohamed Hamza Ghaouri et al., "Behavioural Intention of Zakat Participants Towards the Zakat Fund in Morocco," *ISRA International Journal of Islamic Finance* 15, no. 1 (2023): 31-48.

¹²² Max Gallien, Umair Javed, and Vanessa van den Boogaard, *Between God, the People, and the State: Citizen Conceptions of Zakat*, Working Paper no. 167, ICTD Working Paper (Brighton: Institute of Development Studies, 2023); Rajae Rouijel and Abdenbi El Marzouki, "The Perception of Moroccan about a Potential

state-imposed taxes, whose non-payment may trigger legal sanctions, *zakāt* remains a religious obligation under the *sharī'a*, a distinction explicitly emphasized in the SCU's fatwa:

"It is also necessary, by way of introduction, to clarify the difference between taxation and *zakāt*. Taxes are collected by the state in return for the various services it provides to the population, whereas *zakāt* is levied upon the wealth of those liable for it according to its religious rules and is distributed to the categories specified in the Qur'ān. *Zakāt* is paid by the believer in response to God's command."¹²³

This fatwa distinguishes obligations arising *fiqhan* (Islamic law) from those enforceable *qānūnan* (positive law), reflecting the partial secularization of *zakāt*. Whereas classical *fiqh* treated *zakāt* as both religiously obligatory (*diyānatan*) and judicially enforceable (*qaḍā'an*),¹²⁴ contemporary Morocco retains its religious obligation without state coercion. Through the SCU, the state nevertheless promotes its observance, exemplifying State-Institutionalized Islamic Infra-Law rather than positive legislation or private religious doctrine. The SCU grounds its reasoning in Mālikī jurisprudence while incorporating *qiyās*, *maqāṣid al-sharī'a*, and open *ijtihād* to address contemporary socioeconomic transformations.¹²⁵ Scholarship on early Mālikī *zakāt* doctrines further demonstrates how Imām Mālik's opinions underwent interpretation and systematization within the school.¹²⁶ This historical continuity illustrates how inherited juristic reasoning informs contemporary religious authority without necessarily acquiring enforceable legal status within Morocco's modern state framework.

The fatwa's authority reflects its issuance by a constitutionally recognized state institution, while its preamble explicitly identifies the head of state's request as the basis for its production. As such, it is neither a norm of positive law nor simply a fatwa issued by an independent scholar or a private religious institution. The text emphasizes the obligatory character of *zakāt*, presenting it as a "major obligation" and one of the "essential foundations" of Islam.¹²⁷ In a predominantly Muslim society such as Morocco, where the obligation of *zakāt* remains deeply embedded in social practices and collective representations, such a pronouncement is capable of exerting significant normative influence despite the absence of any legally binding force.¹²⁸ The result is a form of institutionalized

Zakat Institution: An Exploratory Study," *The International Revue of Entrepreneurial Finance* 2, no. 1 (2019): 80–95.

¹²³ Supreme Council of 'Ulamā' (Morocco), *Fatwā Al-Majlis al- 'Ilmī al-A 'lā Fī Mawḍū ' al-Zakāt*, Fatwa (Rabat: General Secretariat of the Supreme Council of 'Ulamā', 2025), 3.

¹²⁴ Al-Māwardī, *Al-Aḥkām al-Sulṭāniyya Wa-l-Wilāyāt al-Dīniyya*, 179–99.

¹²⁵ Supreme Council of 'Ulamā' (Morocco), *Fatwā Al-Majlis al- 'Ilmī al-A 'lā Fī Mawḍū ' al-Zakāt*, 3.

¹²⁶ Muhammed Çitak, "Les Premières Opinions de l'Imam Mālik sur la Zakāt et le Processus de leur Transformation en Règle Juridique au sein de l'École Malikite," *Marmara Üniversitesi İlahiyat Fakültesi Dergisi* 70, no. 70 (2026): 49–73.

¹²⁷ Supreme Council of 'Ulamā' (Morocco), *Fatwā Al-Majlis al- 'Ilmī al-A 'lā Fī Mawḍū ' al-Zakāt*, 4.

¹²⁸ On the social embeddedness and practice of zakat in Morocco, see Max Gallien, Umair Javed, and Vanessa van den Boogaard, "Zakat, Non-State Welfare Provision and Redistribution in Times of Crisis: Evidence from the Covid-19 Pandemic," *Studies in Comparative International Development* 61, no. 1 (2026): 34–60; Harit Satt et al., "Zakat Compliance Behavior: Case of Small and Medium Enterprises," *Journal of Islamic Marketing* 16, no. 11 (2025): 3293–319.

religious normativity which, while remaining outside the sphere of positive law, combines religious authority, social morality, and state-backed legitimacy.

Carbonnier's concept of *opinio necessitatis* explains how norms may remain obligatory despite their exclusion from positive law.¹²⁹ This partly parallels the SCU's *zakāt* fatwas, whose normative authority persists through religious conviction despite lacking legal enforceability.¹³⁰ Public religiosity may further encourage *zakāt* observance independently of state coercion.¹³¹ Research on charitable giving in Morocco similarly identifies religious commitment and subjective norms as influences on voluntary donations, although findings concerning *ṣadaqa* cannot establish compliance with SCU *zakāt* fatwas.¹³² Institutional mediation adds another dimension: after the SCU prepared and submitted its *zakāt* fatwa, the King reviewed its contents and authorized publication.¹³³ This process illustrates how religious obligations may retain normative significance beyond positive law while acquiring institutional recognition through royal authority, without becoming legally enforceable state obligations.

The process is particularly revealing. The fatwa is prepared by the SCU at the King's request and authorized by the monarch for publication. Although situated outside the coercive framework of positive law, it is thus produced through the joint intervention of the state's highest authority and an official religious institution. Unlike the infra-law described by Carbonnier, which derives primarily from social practices, custom, and spontaneous phenomena operating at the margins of the state, the fatwas of the SCU belong to an institutionalized form of infra-law that is supervised by public authorities. From an interlegality perspective, the SCU thus illustrates a form of State-Institutionalized Islamic Infra-Law that operates outside legal enforcement while deriving authority from state mediation. This mediation strengthens its institutional authority without transforming religious obligation into enforceable law.

State-Institutionalized Voluntary Islamic Normativity

Islamic finance, termed participatory finance in Morocco¹³⁴ and Türkiye,¹³⁵ operates within conventional financial systems while retaining distinctive

¹²⁹ Jean Carbonnier, *Sociologie Juridique*, 68.

¹³⁰ Max Gallien, Umair Javed, and Vanessa van den Boogaard, "Zakat, Non-State Welfare Provision and Redistribution in Times of Crisis: Evidence from the Covid-19 Pandemic,"; Harit Satt et al., "Zakat Compliance Behavior: Case of Small and Medium Enterprises,"

¹³¹ Yusuf Haji-Othman et al., "The Influence of Attitude, Subjective Norm, and Islamic Religiosity on Compliance Behavior of Income Zakat Among Educators," *International Journal of Academic Research in Business and Social Sciences* 7, no. 11 (2017): 1110–16.

¹³² Youssef Chetoui et al., "Antecedents of Giving Charitable Donations (Sadaqah) during the COVID-19 Pandemic: Does Islamic Religiosity Matter?," *Journal of Islamic Marketing* 14, no. 5 (2023): 1169–87.

¹³³ Supreme Council of 'Ulamā' (Morocco), "Amīr Al-Mu'minīn Yaṭṭali' 'alā Naṣṣ Fatwā al-Majlis al-'Ilmī al-A'lā Ḥawla al-Zakāt Wa-Ya'dhan Bi-Waḍ'ihā Rahna Ishārat al-'Umūm (Balāgh Li-l-Majlis)," Official religious opinion / communiqué, Ministry of Endowments and Islamic Affairs, October 22, 2025.

¹³⁴ Marouane Tabet, "Le Ministre Des Habous Récuse l'usage Exclusif Du Terme 'Islamique' Par Les Banques Participatives," *H24Info*, July 3, 2025, <https://h24info.ma>.

¹³⁵ Cem Korkut and Önder Özgür, *Is There a Link Between Profit Share Rate of Participation Banks and Interest Rate? The Case of Turkey*, Working paper no. 81642, MPRA Paper (Munich: Munich Personal RePEc

normative foundations.¹³⁶ Rooted in Islamic contract law and *fiqh al-mu'āmalāt*,¹³⁷ it exemplifies what this study conceptualizes as State-Institutionalized Voluntary Islamic Normativity: a state-regulated framework enabling voluntary adherence to *sharī'a*-compliant financial arrangements. Unlike State-Institutionalized Islamic Infra-Law, whose religious authority exists independently of contractual participation, this configuration becomes operative through individual choice within legally structured arrangements. It also differs from Islamic Positive Law because its norms are not universally binding. Through its Shari'a Committee for Participatory Finance, the SCU authorizes compliance standards governing financial products and transactions. Participation remains optional, but contractual obligations become legally binding once individuals enter these arrangements. This distinction concerns normative activation rather than enforceability alone. Contract law consequently facilitates normative diversification beyond legal centralism,¹³⁸ allowing Islamic principles to acquire legal effects without becoming general obligations. Participatory finance thus integrates religious authority, contractual autonomy, and state regulation within a differentiated normative framework. Rather than opposing state law and Islamic normativity, this arrangement demonstrates how voluntary participation mediates their interaction while preserving institutional oversight and enforceable contractual commitments.

After numerous attempts to introduce Islamic finance in Morocco since the 1980s, participatory finance only began to develop on a significant scale from 2015 onward.¹³⁹ Banking Law No. 103-12, adopted by Parliament in 2014, established the legal framework governing participatory finance in Morocco¹⁴⁰ and designated the Supreme Council of 'Ulamā' as the central authority responsible for supervising the *sharī'a* compliance of participatory financial products.¹⁴¹ To this end, a specialized *sharī'a* Committee attached to the SCU was entrusted with issuing opinions on the conformity of participatory financial products and operations with Islamic law. The law regulates both participatory finance and the conventional financial sector, integrating the former into the broader Moroccan banking system while subjecting it to a distinct mechanism of *sharī'a* governance. This arrangement reflects the institutionalization of religious authority.

Archive, 2017), <https://mpira.ub.uni-muenchen.de>; Şakir Görmüş et al., eds., *The Development and Practice of Participation Banking in Türkiye*, 1st ed. (Istanbul: Participation Banks Association of Türkiye (TKBB), 2024), https://en.tkbb.org.tr/upload/1731418106_568a0d19b27580cb96ef.pdf.

¹³⁶ Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2006).

¹³⁷ Neyla Comair-Obeid, *Les Contrats En Droit Musulman Des Affaires* (Paris: Economica, 1995).

¹³⁸ Jean Carbonnier, *Flexible Droit: Pour Une Sociologie Du Droit sans Rigueur*, 313.

¹³⁹ Lina Soudi and Adil Cherkaoui, "Morocco Experience in Islamic Finance between the Failure of the Past and the Promising Future," *International Journal of Finance and Accounting* 4, no. 3 (2015): 153–62.

¹⁴⁰ Mohamed Wali Alami and Mohamed Chemlal, "The Development of Islamic Finance in Morocco: A Comparative Study between Islamic and Conventional Banking," *Revue Marocaine de Recherche En Management et Marketing* 17, no. 2 (2025).

¹⁴¹ Law No. 103-12 Relating to Credit Institutions and Similar Bodies, Promulgated by Dahir No. 1.14.193 of December 24, 2014, Pub. L. Nos. 103–12, 6328 Bulletin Officiel (2014).

Institutional Mechanisms of Shari'a Compliance

In 2015, Dahir No. 1.15.02 complemented the institutional reform initiated by Dahir No. 1.03.300 of 2004 by establishing, within the SCU, the *Shari'a Committee for Participatory Finance (al-Lajna al-Shar'iyya li-l-Māliyya al-Tashārukiyya)*.¹⁴² This reform extended the Council's jurisdiction to the field of participatory finance by entrusting this specialized committee with the task of issuing opinions on the compliance of participatory financial products, contracts, and operations with both the provisions and the objectives of the *shari'a*. Article 3 further specifies that the Committee is responsible for ensuring that the commercial, financial, and investment activities and transactions undertaken by the relevant institutions conform to the *shari'a*. Article 10 bis establishes this specialized body responsible for ensuring the compliance of participatory finance activities with Islamic law. Among its functions, the Committee is responsible for issuing opinions on the conformity of participatory finance products and their associated contract templates with *shari'a*. The Committee is also empowered to review the compliance with *shari'a* of circulars issued by the *Wālī* of Bank al-Maghrib, Morocco's central bank, concerning participatory finance products and operations, as well as *takaful* insurance activities and *ṣukūk* issuances.

Article 10 bis establishes the Shari'a Committee for Participatory Finance, comprising SCU members recognized for their expertise in Islamic jurisprudence and *iftā'*, appointed by the Secretary General. The Committee may consult specialists in law, banking, insurance, and capital markets, reflecting its integration of religious and financial expertise. Membership is incompatible with positions in supervised financial institutions to safeguard independence. Bank Al-Maghrib, ACAPS, and AMMC may request compliance opinions within their respective jurisdictions, which the Committee issues unanimously in the SCU's name.¹⁴³ A 2016 Bank Al-Maghrib circular requires participatory banks to establish internal compliance functions responsible for monitoring adherence to SCU opinions.¹⁴⁴ These units supervise implementation but cannot independently issue *shari'a*-compliance opinions, preserving the SCU's interpretive authority. Although they may contribute to developing financial products and contractual documentation, SCU approval remains necessary before commercialization. This arrangement separates normative authorization from operational implementation: the SCU determines applicable Islamic standards, while financial institutions ensure compliance through internal monitoring mechanisms. Consequently, participatory finance operates through coordinated interactions among religious scholars, financial experts, regulators, and banks, illustrating how state-

¹⁴² Dahir No. 1-15.02 of January 20, 2015, Supplementing Dahir No. 1-03-300 Reorganizing the Majālis al-Ilmiyya, Pub. L. Nos. 1-15.02, 6333 Bulletin Officiel 1098 (2015).

¹⁴³ Dahir No. 1-15.02 of January 20, 2015, 1098-99.

¹⁴⁴ See: Circulaire N° 16/W/16 Du 18 Juillet 2016 Relative Aux Conditions et Aux Modalités de Fonctionnement de La Fonction de Conformité Aux Avis Du Conseil Supérieur Des Oulémas, Pub. L. No. 16/W/16 (2016).

institutionalized Islamic normativity acquires practical regulatory effects through positive law without losing its distinct religious authority.

Bank Al-Maghrib's circulars indirectly transform SCU opinions into institutional obligations without imposing *fiqh* directly upon citizens. Participatory financial institutions must establish compliance mechanisms, enabling religious norms to acquire legal effects through banking regulations. A 2017 circular further requires financial products to conform to SCU *sharī'a* opinions before commercialization.¹⁴⁵ It translates classical Islamic contracts, particularly *murābaḥa*, into regulatory provisions governing participatory finance. Article 4 establishes the transfer of asset ownership upon contract conclusion, while Article 5 prohibits deferred-payment *murābaḥa* transactions involving gold, silver, or currencies.¹⁴⁶ Derived from *fiqh al-mu'āmalāt* and validated through SCU oversight, these requirements become binding regulatory standards rather than general religious obligations. This represents partial positivization of Islamic jurisprudence through central bank circulars rather than parliamentary legislation. Consequently, the interaction between the SCU, Bank Al-Maghrib, and financial institutions demonstrates how Islamic normativity acquires enforceable effects through state-mediated financial regulation while preserving its distinctive religious foundations and voluntary contractual character.

This institutional architecture places the *sharī'a* Committee at the intersection of Islamic legal expertise and state financial regulation, reinforcing the official and state-mediated character of its normative authority. The *sharī'a*-compliance review of participatory finance products is itself regulated by positive law, which grants a central role to the SCU. The state thus explicitly authorizes the SCU to produce institutionalized forms of *ijtihād* and Islamic normativity in the domain of modern participatory finance. The *dahir* repeatedly specifies that the Committee's opinions must be based on both the rules (*aḥkām*) and the objectives (*maqāṣid*) of the *sharī'a*. By entrusting the SCU with the task of assessing compliance with both dimensions, the law incorporates the purposes of Islamic law into the institutional process of validating participatory financial products, thereby allowing a degree of interpretive flexibility that may extend beyond a strictly textual approach.

Voluntary Entry and Binding Normativity

The resulting normativity constitutes a distinct category from both Islamic Positive Law and State-Institutionalized Islamic Infra-Law. It is institutionally produced, legally recognized, and integrated into the regulatory framework governing participatory finance, yet it remains optional insofar as participation in this sector depends on the choices of financial institutions and their clients. The normativity

¹⁴⁵ Circulaire N° 16/W/16 Du 18 Juillet 2016; Manshūr Yata'allaq Bi-l-Mawāṣafāt al-Taḥniyya Li-Muntajāt al-Murābaḥa Wa-l-Ijāra Wa-l-Mushāraka Wa-l-Muḍāraba Wa-l-Salam, Wa-Kadhā Kayfiyyāt Taqdīmihā Ilā al-Zabnā', Pub. L. No. 1/W/17 (2017).

¹⁴⁶ Manshūr Yata'allaq Bi-l-Mawāṣafāt al-Taḥniyya Li-Muntajāt al-Murābaḥa Wa-l-Ijāra Wa-l-Mushāraka Wa-l-Muḍāraba Wa-l-Salam, Wa-Kadhā Kayfiyyāt Taqdīmihā Ilā al-Zabnā', 1-5

is optional at the point of entry but binding once voluntarily accepted. For instance, a *murābaḥa* concluded between a participatory bank and its client falls, from a legal standpoint, within Moroccan banking and contract law and therefore forms part of positive law. Its marketing and implementation, however, remain subject to prior *sharīʿa*-compliance review by the SCU's Committee. Unlike the fatwas examined in the previous section, the *sharīʿa* opinions issued in the field of participatory finance are embedded within a legally binding regulatory framework. While the opinions themselves do not constitute positive law, Moroccan banking regulations require participatory financial institutions to organize their activities in conformity with them, thereby giving rise to legal effects.

This provides a clear example of what we term State-Institutionalized Voluntary Islamic Normativity. Adherence to this form of Islamic normativity results from the voluntary choice of the parties, particularly the client, while the content of the contract and the financial product itself are structured by official mechanisms of religious validation recognized by the state. This form of normativity is neither imposed upon society as a whole nor left entirely to private religious conviction. Rather, it is made available through state-created legal structures and becomes operative when individuals voluntarily enter arrangements that combine contractual autonomy, state regulation, and Islamic normative validation. In this sense, the SCU produces a form of Islamic normativity that conditions access to specific contractual conditions recognized by positive law. This category illustrates how Islamic normativity continues to operate within the framework of the modern positivist state without being fully absorbed into positive law. Rather than eliminating legal pluralism, the Moroccan state channels and institutionalizes it through regulated spaces of voluntary adherence.

Conclusion

This article demonstrates that the relationship between Islamic law and the modern state cannot be reduced to positivization or secularization. Through the Supreme Council of 'Ulamā', the state participates in the production, regulation, and legitimization of Islamic normativity across different degrees of legal force. The Council's involvement in family-law reform illustrates Islamic Positive Law through state-mediated *ijtihād*; its official fatwas exemplify State-Institutionalized Islamic Infra-Law, characterized by institutional religious authority without direct legal enforceability; and its role in participatory finance reveals State-Institutionalized Voluntary Islamic Normativity, in which entry into a *sharīʿa*-compliant normative framework is voluntary but subsequently produces legal effects. This typology provides a framework for analyzing Islamic normativity beyond the conventional distinction between state law and non-state religious doctrine. More importantly, the coexistence of these categories shows that legal pluralism may persist within state structures themselves. The modern positivist state does not necessarily eliminate Islamic normative plurality but may reorganize it through different forms of institutionalization, legal recognition, and voluntary

participation. This internal differentiation constitutes what this article conceptualizes as state-mediated interlegality: interlegality produced not only through interactions between state and non-state normative orders, but also within the institutional structures of the state itself.

Although rooted in Morocco's distinctive institutional configuration, this framework provides a basis for comparative inquiry into how contemporary states institutionalize, regulate, and mediate Islamic normativity. The study is limited by its documentary approach and its focus on three domains of the SCU's institutional activities. It therefore does not examine how these normative arrangements are received, interpreted, or followed in everyday practice. Future research could address these dimensions through socio-legal fieldwork involving religious scholars, legal practitioners, financial institutions, and individuals engaging with these normative arrangements. Comparative research examining religious institutions in other Muslim-majority states could further assess the applicability and limits of the proposed typology, particularly whether state-mediated interlegality emerges under different configurations of religious authority and positive law.

Data Availability: This study did not produce or collect any original datasets. Its findings are derived from an examination of publicly accessible legal documents, including statutory provisions, constitutional court rulings, judicial decisions, and relevant academic publications. All materials consulted are appropriately referenced in the article.

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