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# Capacity and Implementation for Judicial Reforms in Morocco: “Painting a Building that is Collapsing”

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*SIT Study Abroad*

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***Capacity and Implementation for Judicial Reforms in  
Morocco:  
“Painting a Building that is Collapsing”***

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**Abstract:**

Currently in Morocco the country awaits the legitimate implementation of the 2011 assurances of rights and freedoms, an undertaking that would require a great amount of resources, state capacity, and political will. As Morocco changes and policies evolve the nation is balancing tradition with modernity. In terms of the judiciary, reform programs have been heavily funded by the west with the aim of modernizing and amending the entire legal system in Morocco. This means that influence and leadership in reforms has come in part from sources outside of Morocco. Looking at reforms over the last ten years and especially with the 2011 constitution it is clear that set out changes have not been fully realized and I hope to examine the challenges of designing, implementing, and seeing outcomes of judicial reform in Morocco through interviews with those close to the work being done.

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## **Introduction:**

Alongside the great changes occurring across the Middle East Morocco has been cited as an exception of stability. The political situation in Moroccan has not escaped volatility as the 2011 Constitution purposes a myriad of changes to political structure. Reforms within the new constitution suggest a separation of powers that would require participation from multiple institutions and branches of power. Cooperation of that kind in a country that is separated on matters of leadership and power cannot come without a great amount of state capacity.

Moroccan institutions and organizations work to promote judicial integrity, establish legal clinics, and strengthen the national anti-corruption regime. With these attempts at reform in place alongside the new constitution what seems to be left is the capacity at which the state can legitimately accept and implement these reforms. Through interviews with the leadership at an American based reform association in Rabat and lawyers in Morocco I hope to gain better perspective of the actuality and effectiveness of such reform programs. I ultimately hope to use the case judicial reform as way of understanding the state capacity of Morocco and the connection between constitution and country.

As an introduction to these issues I will overview theory about the connection between community and constitution, as well as the Moroccan context, and development of judicial autonomy in the country. I will include a section outlining my methods and struggle with research ethics in the context of being an undergraduate in a country after having only lived here three months. The interviews I have conducted will add to the breadth of work done on Morocco and its transitions during this important time.

## **Constitutional Theory and Importance:**

Upon gaining independence in 1956 Morocco inherited the civil law system of its former colonizer France. Unlike common-law systems, civil law jurisdictions do not look to precedence. Originating in Western Europe Civil law's core principles are arranged into a referable structure, which serves as the primary source of law. This is important to recognize when discussing the importance of a constitution in country that's system is based heavily on criminal and penal codes and that does not view the constitution in the same way. Moreover, the constitution of Morocco is dependent on many "organic laws" which allow for the realization of rights and legislation outlined in the constitution but such laws have not yet been written (Benslimane p.2). Therefore a distinction between civil and common law systems is that the common law framework comes from judge-made law which gives precedential authority to prior court decisions based on the notion that treating cases and individuals differently would be unfair.

In the United States the Constitution acts as the law of the land, our nation's Rule of Recognition. In Philosophy of Law the Rule of Recognition is the notion that in every legal system there is a rule that defines how rules are made. H.L.A Heart's theory is contested but I feel that this notion of a strong foundation is relevant when observing Morocco and the United States. Brilliant founders created the United States Constitution and it stands as a commitment to democracy and freedom. Within this grand document are assurances of protection against the will of the majority and a system of checks and balance. Through the process of Constitutional amendments the people of the United States of America are able to strengthen or change the law of the land through representative legislation. The courts then aim to serve as the neutral enforcer of the steadfast values that are foundational to

our government and notion of rights and liberties. Originalism, the notion of following the constitution strictly, protects the rights and values that act as the foundation of the United States. By appealing for a stricter following of the Constitution it is suggested that rights will remain equal and fair even when the courts are confronted with ambiguous cases that ignite particular morals and value related reactions. Moreover, honoring the constitution rightfully endows the constitution with power and further ensures rights and freedoms. In Morocco if the new constitution is not followed as it was announced it would undermine the entire document rendering it useless.

Morocco's new constitution is laced with promises and principles aimed at projecting a more hospitable Morocco for all. The 2011 Constitution has been viewed by some as merely an appeasement for the 20<sup>th</sup> of February Movement and the fever of the democratic or Arab spring. As a constitutional monarchy the 2011 document is to act as the guidelines for the parliament that acts as head of state. With the new constitution comes the need for political will and state capacity to enact the document into fruition.

Along with an examination of the importance of the constitution I also hope to understand the state capacity and political will of Morocco. In discussing reforms it is important to investigate how hospitable nations are to accept and implement such changes and this is a matter of state capacity. In order for any system of reform to be effective states must be able to "implement and comply with international obligations" and further this legislation must translate to domestic "behavioral change" (Weinthal 58). It is domestic institutions and establishments that monitor and encourage such behavior change, and in Morocco these institutions do not have an overwhelming amount of resources or access to information that would make them most effective. There must be some concern or

movement domestically to make internationally agreed upon legislation effective. This would mean a societal investment in the fairness and quality of the judiciary. Governmental agency and domestic capacity are extremely important and their absence from judicial issues can be attributed to concerns of state security or other more highly prioritized matters, or the dynamic of political and monarchical actors.

An example of a similar issue of program implementation in the Middle East is the attempt at environmental reform in Israel. Erica Weinthal argues that Israeli policy-makers and general public simply cared more about security issues than environmental troubles making that state inhospitable to any kind of legislation that to them did not seem as valuable (Weinthal 51). An echo of this behavior can be seen in Morocco in the matters of the Western Sahara and Algeria, where the state expends more time and resources on this issue than on other additional topics (Economist Intelligence Unit 2012). For Brazil a hurdle to legislative cooperation was a deep wound from colonialism; historical tensions cannot be swept away upon the rise of other concerns (Lahsen 157). These issues could potentially present themselves in the case of Morocco's relationship with France.

Furthermore, judicial reforms can seem somewhat intangible to less developed nations due to the cost involved. Lahsen points out that financial limitations turn into research, technology, and monitoring limitations leaving less developed nations without the same standards of more developed nations. The matter of priorities does not only apply to developing nations. In the case of the reforms related to the ozone, France was comparatively out of action. The Industry Ministry had "an innate bias toward the interest of" important French producers of CFCs (Haas 1992 217). If a nation and its people care more about other matters than those in question in reforms there is not as much pressure



to enact modifications and little success if attempted. The following section will examine Morocco relationship to its constitution and other elements of state capacity that have been particularly dynamic in the last ten years.

## **The Moroccan Context:**

Morocco is a country with an extremely unique and diverse history and cultural makeup. Located only twenty miles south of Spain, Morocco has strong ties to Europe, not only through location but through the colonial ties of France as well. This history with countries to the north have made it so that France is strongly invested in Morocco and supplies large amounts of aid and development support. Such ties not only explain the strong financial connections between the countries but have also left footprints on the language, as Spanish is spoken widely in the north and French is taught in schools and used widely as a language in which to conduct political and academic matters. Outside of Arabic, and Spanish, and French other important cultures in Morocco are that of Berber (Amazigh), sub-Saharan, and Jewish peoples. The new Constitution acknowledges this great amount of diversity by recognizing the Amazigh Language and the promising the freedom of religion. The actualization of recognizing the Aamigh language has been a large undertaking done by the commission of the king. The Institut Royal de la Culture Amazighe stands as an example as a of major financial efforts aimed at bolstering the cause of the Amazighe people but in fact has garnered critique for being a more superficial attempt from the Monarchy (Bouasla, Tibari Lecture). That kind of critique is reoccurring in Morocco, as corruption of government and politics is a main issue among many in the diverse state.

Corruption is an issue that affects not only the constitutional monarchy of Morocco but also the courts and judicial system. This was one of the issues addressed by the 20<sup>th</sup> of February Movement. In the winter of 2010 violent and nonviolent protests came to be know as the Arab Spring. Middle eastern Countries began to see uprisings and great change. In Morocco the movement manifested itself most prominently in the 20<sup>th</sup> of

February Movement. Morocco was seen and referred to as an exception when in 2011 a new constitution promised to reform and enact for democratic polices. Another issue addressed by the movement is education.

One of the issues that plagues Morocco most greatly is illiteracy and issues of education. This problem is largest and has been addressed mostly in the case of women as well as in rural communities. Education and literacy among women has been improving as women gain more access to education and professional skills through national and foreign efforts. In morocco 60% of women are illiterate which acts as a constraint to development and civic understanding among citizens (Bouasla, Tibari Lecture). Through building more schools, especially in rural areas, education has been improving in recent years. This has come at a great cost due to the fact that villages are scattered so building a school means also building a dorm to host students. Alongside financial cost has come the cost of combating tradition. Allowing women to go to school means that they are unable to contribute through child labor or the family business. The World Bank has enacted a scheme in southern Morocco that gives incentives for keeping children in school (Bouasla, Tibari Lecture). This pattern of development coming up against tradition is a reoccurring one in Morocco.

Another issue of tradition that affects women most is the effect of Islam on women's rights. Women have only very recently been incorporated into the public sector. Beginning approximately in the 1960's, related the Iranian Revolution and women gaining entry into the political sphere, it has been argued that the inclusion happened too quickly and it is not yet normalized (**Sexuality and Islam Lecture**). Thanks to the work of National government organizations and foreign and domestic programs women have been making

strides in gaining equality and being apart of defining their place in society. Some movements have used Islam as a source of empowerment in their efforts but for others traditional Islam stands largely in contrast. An outdated penal code and presence of religion in government makes equality for women incredible difficult and influences their place in the judiciary and involvement with the courts significantly.

These main issues in Morocco have been developing over many years.

Mohammed V served as Morocco's first king when the country was established as a French protectorate in 1912. Hassan II, his son, began his reign in 1961. This time has become know as The Years of Lead and are recognized as a time of turmoil due to the multitude of human rights violations and problematic programming initiated by Hassan II. In 1999 Mohammad VI, the current king, began his rule. In 2011 the king commissioned a new constitution in the midst of the Arab Spring. The 20<sup>th</sup> of February Movement came about in the circumstance of "highly discredited and politically weak Moroccan political parties and labor unions" (Madani et. Al p.6). 150,000–200,000 Moroccans in 53 cities and towns throughout the nation "marched in a call for greater democracy and change...this movement was joined by a range of political groups, comprising a mishmash of different ideological positions united only by their opposition to authoritarian rule in all its manifestations" (Madani et. Al p.6). The rhetoric of the constitution that was enacted in the July following the 20<sup>th</sup> of February Movement was aimed at appeasing the needs of the movement.

Currently in Morocco the country awaits the legitimate implementation of the 2011 assurances of rights and freedoms, an undertaking that would require a great amount of resources, state capacity, and political will. As Morocco changes and policies evolve the

nation is balancing tradition with modernity. In terms of the judiciary, reform programs have been heavily funded by the west with the aim of modernizing and amending the entire legal system in Morocco. This means that influence and leadership in reforms has come in part from sources outside of Morocco. Looking at reforms over the last ten years and especially with the 2011 constitution it is clear that set out changes have not been fully realized and I hope to examine the challenges of designing, implementing, and seeing outcomes of judicial reform in Morocco.

## **Methods and Challenges:**

My research was done under the advisement of Driss Maghraoui. I utilized the Bates College Online Resource Catalog as well as lectures and resources from the Center for Cross Cultural Learning. Although a great amount of research exists related to state capacity, revolution, judicial reforms, and Morocco I choose to focus primarily on interviews as to take full advantage of my being here. I conducted three interviews. One interview with Reda Oulamine a Moroccan lawyer and national government organization leader working towards judicial and legal reforms in Morocco working in Casablanca. I had the opportunity to interview two employees of a prominent foreign funded organization working to reform the rule of law in Morocco; one of them Moroccan and one of them American. I attempted to keep my questions broad and inviting to other discussion. The questions following were not included in every interview and there are some questions that not included in this list:

- *How are you involved with the judiciary in Morocco?*
- *How did you get involved in that position?*
- *Have you been apart of any reform efforts before or after the 2011 Constitution?*
- *What have been the outcomes of past or current reforms?*
- *What do you think lead to those outcomes specifically?*
- *What other kinds of programs have you observed as effecting judicial reforms in Morocco?*
- *Are there obstacles to reform? If so what are they and how do they affect progress?*
- *What are you thoughts on the 2011 judicial reforms?*
- *Do you think Morocco can have the judicial system described in the constitution?*
- *What do you see as the next moves related to the judiciary in Morocco?*

In conducting undergraduate research there are many complications. Issues particularly pertinent to Morocco and my research were that of language, time constraint, and my own personal inexperience. All of my interviews were conducted in English. One of my interviewees spoke English as his first language and my other two were Moroccan's who were fluent in English. Language and understanding of different culture dissimilarities between the United States and Morocco strongly affect the legitimacy of the research I did and the interviews I conducted. Researchers and anthropologist who relay cultural information in their work are required to "translate [their] lived experience among the [their subject in question] to the language of symbolic consumption of alterity...[making] available abridged images...that will be vicariously lived by the industry of... activism" as well as research are related reforms (Ramos 1994: 167). These outsider accounts of societies become the popular belief regarding cultures without regard to complete accuracies and complexities that are so present in Morocco. In this translation research becomes "the product of Western discourses...these images often say more about Westerners than about [the subject in question] and tend toward simplistic notions that do not encompass the complex realities of most...peoples' lives" (Conklin 1997: 713). This kind of relaying became hurried and extensive with the rise of the democratic spring as a multitude of news sources and researches tried to capture the changes.

In attempts to produce news and research the whole story has to be made easier to report. Even with the best intentions researchers present misleading ideas that jeopardize the progression of people's goals. The structure of western understanding leads "[the] dominate culture's stereotypes of [the] subordinate culture [to be] inaccurate attempts to liberate [them] from oppression" (Ranco, 2007: 35). When balancing existing stereotypes

and the people in the relationship can be “deeply problematic [as it] distorts culture” (32).

This makes it difficult to gain a full understanding through the othering and misrepresentation. This kind of selective and bias scholarship shapes the understanding of researched societies and issues and sets goals on a trajectory of distortion.

In aims at curbing this behavior anthropologists have made attempts to better their research methods. In *Decolonizing Methodologies, Research and Indigenous Peoples* Linda Tuhiwai Smith presents strategies to make the research of Indigenous communities, in particular the Maori, more “culturally sensitive” by suggesting things like learning the Maori language, making efforts to “seek support and consent” of the Maori, and the strategy of “making space” by “[bringing] more Maori researchers and voices into their own organization” (Tuhiwai-Smith, 1999: 177). These kinds of strategies are incredibly time and resource reliant making them naturally the less efficient. Even in the realm of scholarly research and high profile anthropology the economy takes hold. There are clear consequences of misleading representation perpetuated by researchers and changing the embedded methodology to take a more respectful and inclusive trajectory is riddled with difficulties and seeming impossibilities.

These translations can have serious consequences in terms of global understanding of developing countries and peoples’ understanding of themselves on the global stage. It can be described as “a kind of ethnographic hall of mirrors” where groups see what kind of representation garners global attention and then recycle those manipulated ideals back to other activists and institutions perpetuating misleading perceptions (Brosius 1997: 63). Researchers and news sources have to make their cause “beautiful or profound” in order to mobilize an audience and garner funding, but in doing so distorts information, by imposing



meaning it in some ways “expunges” other important facets of the culture (64-66). The time and resources it would take to produce an account of the judicial reforms in Morocco and the effects of the 2011 constitution certainly go beyond my three-week experience and potentially such detailed and ethical studies or monitoring of issues such as the one examined in this paper are impossible without exorbitant amounts of funding and academic backing.

## **Judicial Developments and the future of current reforms:**

In August of 2011 King Mohammad VI outlined six key objectives of the judicial reforms many of which had been goals of foreign and national organizations currently and in years before. The king set forth the goals as stronger guarantees of judicial independence, modernization of the regulatory framework, a reorganization of the judiciary's structure and staffing, improvements in efficiency, better enforcement of rules against corruption, and better implementation of existing reforms. In that same speech he said that he intended to form an advisory body to the Council of the Judiciary (Africa Monitor 2009). A main point of change related to the judiciary that is a contested part of the constitution is the monarchy unrelinquishing its "quasi-absolute power" over the judiciary in order to ensure judicial independence (SIHRG p.10). In the 1996 constitution Article 82 establish the Judiciary as "independent of the legislative and executive branches" (SIHRG p.10). Furthermore, the constitution stipulates that judges are irremovable. Both of these changes are aimed at empowering judges to make their own independent decisions. Judges have taken advantage of these steps toward empowerment and autonomy through forming a new organization called "Club des Juges du Maroc", this new group was warmly welcomed by those in Morocco working on human rights and civil justice issues (SIHRG p.10). As the new constitution establishes the Supreme Judiciary Council separate from other branches of government there is hope that legal process in Morocco will become less riddled with corruption and more efficient.

Although it is clear that autonomy is the goal for the Moroccan Judiciary as a way of insuring justice the constitution still allows for much power to be wielded by the king. In 2011 the king's title is no longer "sacred" but "inviolable", the words are literally synonyms

but the change in rhetoric is “to others the first chink in the king's semi-divine status” (Traub p.46). Mohammad VI “keeps his title as commander of the faithful” and “continues to chair the Council of Ulema, which controls fatwas and oversees the content of sermons at Friday prayers...a provision that many secular liberals view as a crucial safeguard against Islamic fundamentalism” (Traub p.46). In terms of the judiciary he chairs the Supreme Council as well as a new National Security Council, and the Council of Ministers, which serves to approve all legislation (Traub p.46). This omnipresence of the king along with the need for “organic laws” as a means to enact such changes have garnered critique about the realistic timing and implementation of the constitution, judicial reforms included. It is hard to track actuality of change and progress when the changes after the new constitution are not immediate and obvious (Africa Monitor 2011). Reforming the judiciary is a multilevel issue. Structural changes are being tackled nationally and from funding abroad whilst political willingness remains a challenge. As standards, rules, and laws develop and are implemented real change is expected to come with time. In Norman Greene’s recent assessment *Rule of Law in Morocco: A Journey Toward a Better Judiciary Through the Implementation of the 2011 Constitutional Reforms* he comments on the difficulties in putting reforms into practice midst lacking political will in Morocco.

But rules (even constitutional ones) are also subject to the observation that they are only "top-down" reforms when more is needed or just insufficient "constitutional engineering" (in essence, "word games"). Therefore, even when rules are in place (such as the constitutional reforms in Morocco), the question of implementing the rules or enforcement— moving from “paper rules” to actual change – remains (462).

Although judicial reform in Morocco is, and continues to be, a daunting task there exist many attempts from foreign actors to influence change. In my following sections I will examine the actuality and success of foreign reform tactics, the feasibility of change in

Morocco, and the hurdle of education, civic and otherwise. These findings are based off of three interviews conducted with a Moroccan lawyer and civil society activist Reda Olamine, a Moroccan acting as the deputy director at an American based and funded reform association (MR), and his American colleague and country director of the association (AR). In using interviews I hope to contribute to the field of legal intervention and state capacity as well as the work of Norman Greene and his specific assessment of Morocco.

## **Foreign Reform**

Over the last ten years Morocco has known a dozen different associations vying for judicial change in Morocco. When asked if having a myriad of groups working in Morocco was helpful MR responded, “Yes and no, yes because the ministry of justice has been able to have many different experiences and insight and no, because there have been many overlapping projects.” An example of this overlap occurred when The World Bank and EU both created online databases for the judiciary, ultimately creating two separate databases due to total lack of coordination between implementers. Of course, this lack of coordination is not unique to Morocco or judicial reform work but a problem that plagues development work generally.

Reda Olamine worked as a hired consultant with the United States Association of International Development in 2004 and described the American consultants who came to assess and execute the reform recommendations as “actually a good and bad thing I think, I think it’s perfect, it’s a mix”, when referring to the work between foreign and local experts. The two governments decide on these different reform projects and then the task gets passed down to those who execute it. He further described legal reform and economic reforms as “usually [not going] beyond 2 years for a given project” and that within that time the group comes up with draft laws and then those laws are enacted. In this kind of reform there exist a multitude of ethical dilemmas. The nature of assessment and execution happening within a two year time period, most times shorter, places the impossible burden of understanding and successful cooperation on the team of gathered experts. The nature of the majority of reform work has stemmed from foreign investors and institutions with established relationships in Morocco. In most cases groups like the American Bar

Association, United States Agency for International Development, the European Union, and French Legal Associations make efforts to include Moroccan experts and legal professionals. Epistemic communities of transnational knowledge experts are cursed with inherent power discrepancies and thus inconsistencies in fairness of opinion and outcome. Participants of an epistemic community come from differing nations but share the like believes and hopes that “all governments should actively cooperate and intervene domestically” toward similar goals, in this case the integrity and reform of the Moroccan Judiciary (Haas 1989 385). There are many different ideas about judicial ethics and human rights and values. Morocco is a culturally Muslim country where the major advising actors come from nations that do not have an overwhelming religions majority. Another facet to understanding is that of scholarship and expertise.

In the West scholarship is riddled with power dynamics based on funding, politics, and technocracy. The nature of which allows for certain people to be more powerful than others in publishing and in turn legitimacy. These factors influence cooperation and can produce plans and changes that might be more favored by the most powerful actors. In epistemic communities nations of many different stages of development work together to curb issues that effect many aspects or economics and legal matters all of their borders. Myanna Lahsen investigated this type of relationship in the case of environmental issues in Brazil; in her research she found “superficial appearances of agreement” (Lahsen 160). Due to intimidation by more powerful and wealthy actors less developed countries do not feel free to share their real concerns and opinions (160). Through persuasion, intentional or otherwise, major actors of the commission or community bend and change goals and processes to fit the most powerful actors, turning the epistemic community into a group

working toward the goals of one instead of all. Due to intimidation by more powerful and wealthy actors less developed countries do not feel free to share their real concerns and opinions (160). Ergo a cycle is created in where experts with equal experience from less powerful countries are not heard and in turn cannot gain respect in the epistemic community. Lahsen further argues that this issue is aggravated in the case of IPCC where national and international visibility can lead to “lucrative consulting assignments with both national and international governmental and non-governmental entities” (159). Prestige in the legal expertise and research community is traditionally built on peer recognition and accreditation through accurate and original work but industry involvement creates different ways in which to gain status. Stephen Bocking points out that this skew in information is due to industries’ support of a great deal of research (33). This relationship makes it so that industries are able to “buy clout” and can use that pull to persuade others and gain the peer approval that is so important (37). This kind of cooperation might be a factor in the progress of actual implementation and change in judicial reforms in Morocco.

Matters of international recognition effect affairs outside of clout and expertise, by stretching to funding for development and reform projects in general sustainability and effectiveness are dependent on the pocket of outside investors. Funding for matters of judicial reform are “limited and unpredictable” making it vital for development projects to “coordinate and integrate themes...strategically” as to ensure “long-term development to provide security for foreign and domestic investment, property and contract rights, international trade, and other vehicles for advancing social and economic growth” (USAID p.45). The temperamental nature of funding was made ever more clear in talking with the American based reform association. The AR described their scope of work as including

technical legal assistance, legal education, judicial development, and civil society development all being undertaken by the invitation of country partners, in this case Morocco. He described the work that has happened since their time in Morocco as a progression of programs suggesting an evolution and notion of advancement. When asked if the programs were progressive in that they built on one another or picked up where others have left off as a matter of ensuring advancement AR corrected the word “progression” to “mix”. He admitted that the content of programs is largely based on funding and less of the context of previous or existing programs.

When discussing the subject of funding with the more activist minded Reda Olamine he related the volatile nature of financial investment with lack of professional investment. When asked whether or not programs coming from outside Morocco can be effective when reforming corruption he replied “on a scale from 0 to 10: 2”. He went on to say that Morocco is a friend to rich countries, referring to relationships with France and Spain based historic and financial interdependence and United States interest. He claimed that donors like to “pour money” into Morocco and “whether it works or not...who cares?” To accentuate this point he shared an anecdote from when he was consulting on another series of legal reforms based out of a United States firm. An American working there confided in him “the White House wants Morocco to have this freaking money so they’re going to get it anyway”. His lively comments illustrate not only the challenges in program development discussed by the American reform association but also the distrust he has development in foreign attempts at change. When asked about seeing real change or success of reform programs, foreign or otherwise, he responded with a strong “no” but added that, “I want to say its better than nothing...Doing legal reform like that is cosmetic...



its painting a building that is collapsing...you don't need to paint it from outside you need to redo the whole thing".

"The whole thing"... it is difficult to conceptualize exactly what he means. In the last ten years Morocco has seen many propositions of change that attempt to reinforce this "building that is collapsing" but the facet of change that all interviewed parties and referenced articles mention as lacking is political willingness. What stands between reforms of any kind and actual change is the hospitable nature of the state. The American based reform association claims that one of their successful ventures in legal reform in Morocco is the Judicial Code of Ethics for judges, lawyers, and clerks. This endeavor cooperated local consultants and judicial organizations in Morocco and was accepted and adopted after going through multiple drafts. The AR explained that having a code of judicial ethics contributes to rule of law by decreasing corruption and maintaining an ethical perception of the judiciary for the public. The AR elaborate by saying, "this is new to the Moroccans and they really have embraced it", the MR interrupted saying "they were against it" when the project was exposed. The MR explained that one cannot expect the stakeholders and the Moroccans to have the same position on ethics as the American association and went on to explain that initially there was a "the clash...we are a Muslim country and the judge has to act on compliance of Islamic principles". The Moroccan judges involved as first did not see the benefit of a code that would in anyway prevent him from recalling his duties as a Muslim. He admitted that in translating this reform into actuation took a strategic approach, by choosing specifically who were invited to be these Moroccan experts. The AR took hold of the conversation ensuring that judicial independence and the code of ethics were connected and that the code empowers judges to act without

corruption “that’s the way it’s supposed to work, ” he said. “That’s the way we sold it,” added the MR. This instance demonstrated the complexities involved in implementation and feasibility of reforms from foreign and domestic associations and those established in the constitution. The next section examines the aspects of Morocco’s present situation that influence the realization of change.

## **Feasibility**

In Norman Greene's recent paper on the topic of judicial reform in Morocco and the 2011 constitution he describes that sophisticated rule of law analysts "raise the question whether programs for improving the rule of law are effective if political will to change is lacking; the local environment is misunderstood; and resources are inadequate" (458). As an unsophisticated rule of law analyst it is clear to me that programs are running up against a wall of political willingness and that even when programs are initialized they remain in a political space that renders them powerless. It is suggested that with the new constitution come reform efforts that are a "key indicator of political will (especially when taken together with recent or ongoing protests); and the efforts are internally generated, not externally sponsored" (Greene 459). That being said the redundant nature of reform efforts and slow take to change raises the question about the 2011 constitution is an indicator of political will or pacification.

Corruption stands as a main hurdle in translating reform to reality. In a 2004 United States Association of International Development called "Reform of the Judiciary", of which Reda Olamine was a consultant, the goals were to modernize the courts and better define intellectual property law corporate law. He claimed that although this bout of reform brought about draft laws the change has not been seen or effective due to corruption. He gave the example that a new bankruptcy law had been defined, as "from now on you cannot file blah blah blah...But the whole process- the corruption, the lack of means, the everything makes it still an impossible process to be fair and good and effective". Corruption negatively affects the judiciary in all aspects, not only in pure effectiveness of justice but in public perceptions as well. Morocco is a nation where it is "widely held...that corruption is

tolerated, that a political and security elite act with impunity, and that strong actions are taken against those who would challenge power as evidenced by the recent arrest and imprisonment of members of the press”(USAID p.5). Further evidence of corruption comes in the ever presence of ‘telephone justice’, the ability for members of the executive to call in favorable outcomes in Moroccan courts. Civilizing the judicial system is “[a matter] of establishing good governance or rule...the issue of separateness is easy. If the judiciary just does the bidding of the legislative branch or the executive branch, why have it?” (Greene p.462). Therefore, the level of corruption being conducted in Morocco partly renders the judiciary useless. Moreover, the mismanagement of poor people only detracts from confidence in the justice system. Reda explained that rich Moroccan’s are for the most part well attended to in courts due to the fact that they “make noise” and might have the ability to publicize any misconduct.

Disguising judicial corruption in Morocco is the practice of expert “window dressing” Reda explains. “Morocco is very good at giving a good image to the West”. He went on to say that the right person at the front of an agency to prevent corruption helps bolster reputation but that by law you don’t give said agency any powers, it can write a report, its recommendations are disregarded. When asked whether all kinds of recent legal reforms have remained toothless in the political sphere or if there has yet to be the right combination of people, time, and place he responded: “[Reform attempts] are not taken to the next level, if you want to do real change it has to come from the top... and the top does not want to be touched...[the top will reform so long as] it doesn’t bother [their] interests and the interests of all of [their] friends”. I then inquired about the new constitutional principles that set “the top” away from the judiciary as a matter of judicial independence.

When asked if the constitution's call for judicial autonomy was possible he replied that "We can do it there are ways, but there is not the will...the judiciary is powerful political tool to punish your enemies politically". He promised that the executive would not let go of that power for fear that the judges might go against the regime if they have nothing to lose. Reda continued to share his opinions about the 2011 constitution calling it merely another coat of "paint". The constitution contains serious principles that he believes in but he wonders what first must happen before judges will apply the constitutional principle and not the current law. He commented that there exist contradictions between the constitution and the criminal law and referred to the criminal law as a "freedom killer". The transition between constitutional aspirations and reality is not a seamless one. But the mere recognition of such principles as objectives has generated hope for potential success.

When discussing both foreign reforms and the new constitution the MR defines progress in morocco as the setting of new standards. He admitted that standards have not yet been met because of corruption. "Morocco is being asked to achieve some objectives", he explains but confesses "[the country] can't, [the country] couldn't because of lack of resources both financial and human and lack of political willingness". Reda also cites the lack of political will as the main barrier but does not feel that it is out of reach explaining that, "I'm not asking for the impossible...the task is huge but I want concrete signs that you mean business." If one assumes that the principles outlined in the constitution can be realized then it becomes a waiting game as to seeing the "concrete signs" Reda longs for. At the American based reform association they remind me that turning the constitution into actual law will take time. The MR describes the process as "taking time, its taking too much

time...some of the structures are not ready yet". The MR attributes the historical circumstances to the current state of political capacity.

The legacy of the French is harshly realized in the system and anticipation of the organic laws that are supposed to define the structures that will implement that constitutional change. The MR admits that this is "frustrating at all levels...everybody is waiting". He goes on to say that to launch a constitution, without the proper channels by which to fulfill change, acted as a trick to seem as a reform minded country. And that given the political movement of the time the July announcement allowed for the nation to produce the notion of change but is not taking its time to realize it. He explains that "the constitution was only a pain killer." He explained to his colleague, the AR, and me that in the 1990's it was "a dense time in politics" under the power of the late king. He went on to describe that the new constitution did not come up with something new; that the changes were all part of the major recommendations being called for in the 1990's. He also uses the word cosmetic to describe the grandeur and importance of the 2011 constitution. Reda made similar comments suggesting that the announcement of the constitution was more pacification than commitment of political willingness. When asked what would be the agent to transition the principles in the constitution into law? He responded, "Massive demand from civil society", he went on to ask, "Where did the constitution come from? It came from the 20<sup>th</sup> February" adding, "of which I was a proud number". He believes that to make the cosmetic changes into real change more must be done than wait as suggested by the MR and AR. Reda explained that, "To get the change we want to it can only come from another protest, another massive protest something that will scare the regime... and even them I'm not sure", he adds that he "would not want to be in the shoes the government." The

anticipation of change is not a calm one in Morocco. In articles and interviews there is no person who believes that the constitution is completely hollow or the next greatest thing since tagine.

A midst the waiting for governmental changes there are slivers of hope for judicial reform. The AR spoke up after his colleague finished explaining the constitution as cosmetic and looked to me and explained that, "As a newcomer here, I see that there is plenty of intention...civil society is excited about it". He went on to cite the royal commission to talk about how to actually implement constitution change and is proud to say that this process has flowed out of the constitution. I asked whether he thinks when the report is chosen does he think it will be cosmetic and he responded optimistically, "I think some good will come of it". Reda shared his optimism for change in terms of young judges demanding change and hopes that judicial reform will be partially a generational change. If society holds the Moroccan government accountable for a fair and effective judiciary than change will have to come.

Within civil law systems constitutions are not held as sacred as they might be in the United States. I have to check myself in understanding the importance of the constitution in the United States versus Morocco. I asked both gentlemen at the American based reform association if it is reasonable to see the constitution in Morocco as eventually effecting change and being a nationally know and respected document. The AR said yes that is reasonable while the MR holds that "this constitution is because of the political atmosphere that preceded its announcement". They both agree that the document can act "as an opening window for change". Within political willingness lingers the omnipresence of the king. Mohammed VI himself agreed in a speech that the constitution stands as a beginning:

As perfect as it may be, a constitution is never an end in itself, but rather a means for the establishment of democratic institutions. The latter require reforms and political overhauling in which all stakeholders should take part, so as to achieve our shared ambition, namely to promote development and enable all our citizens to lead a dignified life (Greene p.509)

Statements like this are criticized as being tools of rhetoric more than anything. When asked the same question about potential respect for the Moroccan constitution Reda responded that the king will always act as the Rule of Recognition and decider of laws in the way that the United States treats its constitution. He went on to explain that regardless of efforts to dissipate the power of the king over last few years, he still believes the king's power is as strong as ever.

A possible tool in the enhancing of reform feasibility is the power of international expectation and reputation. As Morocco develops economically and politically it becomes more interpedently and involved with the global community. On the global scale it is key to uphold the respect of other nations and legal stability is of an utmost importance for "if you do not have a fair and impartial judicial system, who will protect you in difficult times? (Greene p. 511). This notion was exemplified in discussions with American based reform association when they affirmed aiding Morocco in the ratification of international covenants, decrees, and codes against corruption as a successful undertaking. The MR explained the importance of compliance in terms of funding stating, "Don't forget Morocco has to comply with some of the international convenient in order to preserve a certain position visa vie the international donors it has to comply". Now that Morocco has articulated the change the world waits to see the fulfillment of the constitutional reforms that "are a significant national statement in favor of a good judicial system for Morocco"



(Greene p.508). However, the government “needs to follow through on its promises in all their aspects, among other things, through establishing impartiality, eliminating corruption, and increasing access to justice, including addressing court delay” (508).

Enshallah (God Willing), these pressures will encourage the speed at which organic laws are enacted and in turn the realization of judicial reform and justice in Morocco. In hoping for change and advancement of justice it is impossible to ignore the uniqueness of Morocco.

I believe it is culturally insensitive to say that tradition stands between present day Morocco and a Morocco with a reformed judiciary. However, it is difficult to separate the traditions of a Muslim country from the effectiveness and fairness of justice. Political willingness aside, a factor of feasibility in judicial reform is the readiness of judges to apply a law that does not comply with more standard traditions of Islam. An example of this snag is the implementation of the contentious family law “because it is largely dependent on the judiciary's willingness to enforce it, and many judges rooted in conservative attitudes did not agree with its intent”, further it contrasts judicial ethics with “whether such judges should be asserting their patriarchal preferences in opposition to the law”(Greene p.481). It is unclear whether or not judges will support all judicial reforms fully, while gaining their autonomy they are also expected to be act fairly and if a judge “is typically unwilling to apply a nation's existing rules and makes her own, whenever she does so she is acting not like a judge but a legislature or perhaps something else” (Greene p.482). Reda Olamine described an instance of contrast between tradition and justice. He shared the story of a case that his organization had worked on when a wealthier woman who had been a victim of domestic abuse filed for divorce. He shared that after the judge allowed the husband and abuser to share his story in length the judge was short with the women. The judge asked

her questions about her alcohol consumption and about what she did when she traveled without her husband. It will be impossible for Moroccans to find justice when the system is embedded with an infectious amount of traditional prejudice. The reconciliation of Islam and an autonomous judiciary as well as the realization of judicial reforms is only achievable with changes made to the educational system in Morocco. Both primary and civic educations have not created a population in complete understanding of the importance of a fair and reformed judiciary and legal system.

## Education

Throughout the course of my research education unveiled itself as the most important and difficult to undertake hurdle to the success of judicial reforms. It is clear that the enacted constitution cannot become real without great amounts of political will that make implementation “a priority (including a budgetary priority), combining enforcement, education, and more”(Greene p.508). The MR explained that, “some of the objectives [in the constitution and reform programs] are not rational in terms of [feasibility]... you could not ask for change in a society without focusing on it’s education”. Political will cannot come without a demand from society but currently with such high rates of illiteracy a huge number of citizens do not know their rights. The American based reform association described that poor and uneducated people will pay law enforcement and sustain massive amounts of abuse, physical and otherwise, because they have no idea what their rights are and how to interact with a justice system. MR said that it is difficult when “dealing with [a] traditional mentality” that effects peoples perception of justice and civic education. He went on to make clear that “you cannot expect an entire society to change within a certain amount of [educational] change”. He shared his hope in recent changes commenting that, “The seed has been planted, let’s wait for the tree to grow”. Education issues do not go unnoticed by the Moroccan people.

The Unemployed Degree Holders’ movement stands as an example of the Moroccan education not equipping people for the job market as well as the Moroccan government’s inability to cope with the consequences of its educational system. Reda Olamine shared that when the movement first began he thought the protestors were crazy, “Morocco is not your mama why should they hire you?” He then went on to claim that, “the biggest crime of

Hassan II...even above human rights violations” was “[creating] deliberately, willfully [creating] a system that gives [Moroccans] worthless degrees and makes them stupid”. He admits that if educational changes happened now there could be real change in the next few decades but shared his belief that “this government and the royal palace could not care less about education”. And because of the government’s lack of educational reform the constitution is far from being realized. The government has shown the capacity to make major improvements in some facets of development. Transportation advancements have developed in the past decade. Reda recalled that he has seen more economic change than educational change. He admitted that he loves the new trains, they are comfortable and a great way to travel. But he would rather have seen the money invested in education. He explains he would rather go without the new trains and highways than see uneducated people riding the new transportation. He likewise shared his theories that change like that of trains and highways occurs in order to maintain a stable appearance cosmetically. He went on further to suggest even that the elite advantage from a poor education system and fear the potential of becoming equal and for that reason education will not come into focus of reform. Beyond the connection between literacy and civil literacy, the education and support of those involved in the judicial and legal system is also lacking.

The educational system that leads people in Morocco to the field of justice does not currently support students in apt ways. Reda shared that Moroccan education does not breed good and fair judges. Beyond the ability to be good and fair the technical task of judicial reform involves improving the education of the civil servants, clerks, and employees of the courts. Every part of the process must be trained and sustained in a more effective way. This would mean giving them the resources to handle the overload of work

and backlog of cases that afflicts Morocco. On top of more training more value needs to be added to the jobs to incentivize the dedication. This would mean giving better salaries and better working conditions. Norman Greene recommends a similar line of action in using better compensation as a “safeguard against judicial corruption...although it is unclear whether judges who are underpaid are more corrupt than adequately paid ones... low pay may provide an incentive to do the wrong thing {e.g., to supplement one's income through bribes)” (495). It is not to say that an increase in pay will eliminate corruption but that empowering the judicial positions financially might also empower them morally. The courts are at a loss for resources. The courts bring in a lot of money to the Moroccan government, any time an amount is claimed in the courts there is a 1% tax, and that money does not go to the courts but goes to the ministry of finance and it is used for the general budget. Red Olamine believes that if this money were to go to the courts in terms of salary and training it could be much more beneficial. Adding value to the careers in the justice system would also affect the way the public views the judiciary.

If the Moroccan public respects the justice system they will be more invested in its quality and improvements. This means celebrating judges whom honor fairness and holding accountable judges who do not, the dismissal of judges or any government job in Morocco is rare, but must exist if the public is to feel protected. Norman Green understands public confidence as being “vital to a well-functioning judiciary, so regardless of whether actual bias exists, the appearance can be sufficient to remove a judge from a particular case” (p.477). It is a cyclical relationship between the correction of corruption and public perception. Without societal demand reform is not enacted but until reforms take place society will dismiss the Moroccan judiciary as ineffective. The 2011 constitution and

foreign reform associations work to “[maximize] independence [which requires] insuring that judges' careers do not depend on their making decisions favoring a particular group of persons with the power to enhance their careers” (Greene p.477). The Moroccan judiciary needs to work on behalf of the people and their freedoms and values. This kind of accountability and fate in the judicial system would create an overall judicially stability. This in turn would allow for more social stability and state stability and an insurance of state security. These connotations need to be understood and acted upon by the Moroccan government, the first step being the prioritization of education.

## **Personal Reflection**

I greatly enjoyed conducting the interviews that formed the majority of these findings. I was not initially convinced that I, as an ill-equipped undergraduate researcher far from fluent in Darija, could conduct research that felt ethical and productive. However, when I was able to find Moroccan judicial and legal experts in Morocco who spoke English I was empowered to take advantage of this opportunity while keeping bias and language discrepancies in mind. I found that these interviews that I was so hesitant to conduct became the high points of my research. Having these discussions not only added to my understanding of Morocco but also added to my interest in law and development work.

My Bates College education has taught me to question any kind of international development work, looking at the intentions and western constructions of progress that might not be apt any given countries needs. My interviews with the spirited Reda Olamine felt like a confirmation of these notions while at the same time giving me great actual insight to how experts from developing countries respond to the long arm of United States based reform programs. My academia affected beliefs felt once more affirmed by my interactions at the American based reform association. I had met with the American working at this institution once before and even the atmosphere of his office felt different than Morocco but I could not put my finger on what exactly. At our next meeting and time of the interview I had come straight from couscous and exchanged laughs about Moroccan mothers persistent feeding with the Moroccan deputy director of the association. The American suggested it was strange to be eating couscous for lunch. I shared that I found it traditional, at least in my short experience in the medina, to eat a couscous lunch on Friday. It was that discrepancy that made me feel as though he was not equipped to be handling

major reforms in Morocco. That is a harsh judgment, of that I am sure, but I felt that after anytime in Morocco one would have been invited to or eaten a Friday couscous. His familiarity with Morocco was questioned again by the incongruity of facts and feelings in the interview I conducted with him and his Moroccan colleague. The interview was fruitful but I also left feeling an immense awareness of the actuality of reform. After spending three months in Morocco I hardly feel informed enough to give correct directions in the medina. But when reforms are conducted from foreign sources associations spend less time than I in an even more complex and confusing medina, the medina of Moroccan politics, government, tradition, and societal make up. These reformers than not only give directions but influence the future of further reforms and possibilities for the given nation.

I do not think a complete and accurate understanding of the Moroccan judiciary could be completed without the use of experts in all languages spoken in Morocco as well as extensive access to monarchical and government information, and even then I am not sure. I am thankful for this experience for showing me the importance of acknowledging complexities in culture, even when those aspects of culture are not fully understood. I also have gained the position that in order to conduct research or come to any conclusion on a community or culture you must take part their in their real life practice. If you are going to be the director of a foreign association assisting Morocco in legal and judicial reforms you have got to know when Moroccans eat couscous.



## Conclusions

My research aims to expose and explore the complexities and cyclical nature of judicial reforms in the Morocco. Morocco is not only a nation that is different but contains a density of entirely unique cultures and histories that shape the present situation in Morocco. There are two ways to understand the potential for reforms in Morocco. If one accepts the 2011 constitution as a legitimate state commitment than it is a matter of implementation and the speed and authority at which that will occur. On the other hand, if one views the 2011 constitution as a mere “pain killer” or coat of “paint” then therein lies an entirely different need for reform. Neither my interviewees nor my research stood clearly on one side or the other of this matter. It might still be too soon to tell.

Moroccans and foreign judicial actors await the next moves on the part of the government. It is clear that regardless of judicial reforms there is still much to be done on matters of education and the relocating of prioritization to the justice system. The work that is done by foreign actors is infected with the inequality in power dynamics as well as the great demand of resources that are required to understand the any given culture. Morocco does not serve as the most hospitable state for foreign reforms as the institutions that are the aim of reform are at times disguised as being more organized than they are in reality. The future of judicial reform and implementation is dependent on the improvement of education in Morocco. It is unclear what will spur the needed changes in education but if the 2011 constitution does not satisfy the people whose protests influenced its announcements it is probable that the Moroccan government will be pressed again for change.

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