

SIT Graduate Institute/SIT Study Abroad

SIT Digital Collections

Independent Study Project (ISP) Collection

SIT Study Abroad

Spring 2020

From the Ulama to the Legislature: Hermeneutics & Morocco's Family Code

Rachel Olick-Gibson
SIT Study Abroad

Follow this and additional works at: https://digitalcollections.sit.edu/isp_collection



Part of the African Studies Commons, Gender and Sexuality Commons, Human Rights Law Commons, Islamic Studies Commons, Law and Gender Commons, Politics and Social Change Commons, Religion Law Commons, Social Policy Commons, and the Women's Studies Commons

Recommended Citation

Olick-Gibson, Rachel, "From the Ulama to the Legislature: Hermeneutics & Morocco's Family Code" (2020). *Independent Study Project (ISP) Collection*. 3362.
https://digitalcollections.sit.edu/isp_collection/3362

This Unpublished Paper is brought to you for free and open access by the SIT Study Abroad at SIT Digital Collections. It has been accepted for inclusion in Independent Study Project (ISP) Collection by an authorized administrator of SIT Digital Collections. For more information, please contact digitalcollections@sit.edu.

From the Ulama to the Legislature: Hermeneutics & Morocco's Family Code

Rachel Olick-Gibson

Academic Director: Belghazi, Taieb
Advisor: Bordat, Stephanie

Washington University in St. Louis

Africa, Morocco, Rabat

Submitted in partial fulfillment of the requirements for MOR: Multiculturalism and Human Rights, SIT Study Abroad, Spring 2020

Table of Contents

Abstract.....	3
Acknowledgements	4
Introduction	5
Historical Overview	7
Literature Review	9
Methodology.....	13
Creation of the Moudawana	14
Implementation.....	25
Islamic Feminism as the Way Forward.....	34
Conclusion	43
Limitations of the Study.....	43
Recommendations for Further Study.....	44
References	45

Abstract

This study examines the role that Islamic law has played thus far in reforming the Moroccan Family Code, also known as the Moudawana. When King Mohammed VI reformed this law in 2004, Morocco received immediate international praise for its liberal strides towards gender equality. Through this study I investigated the hermeneutical tools and methods of ijtiḥād employed both by the drafters of the Moudawana and by activists leading up to the 2004 reforms. I then investigate impediments to the implementation of this Code in providing substantive legal rights to Moroccan women and the role that interpretation of Islamic law plays in these barriers. I will also situate this in larger debates concerning the role of CSOs in authoritarian regimes, the international regime's conception of universal human rights and state control of religion. Finally, this study examines the strengths and challenges facing the Islamic feminist movement and assesses the potential for this movement to produce further reforms to the Moudawana and increase gender equality in Moroccan society.

Keywords: Islam, Moudawana, shari'a, ijtiḥād, feminism, CSO, Morocco, democratization

Acknowledgements

First, I would like to thank all of the participants in my study who were so flexible and willing to speak with me over online platforms amidst a global pandemic. I am so grateful for the depth of knowledge and insight you brought to our conversations. In particular, I thank amina wadud for agreeing to meet with me and equipping me with the tools to address the issues covered in this study and beyond. Our interview will inform my intellectual development and perspective for years to come. I thank the SIT: Multiculturalism and Human Rights Program and the Center for Cross-Cultural Learning for providing a welcoming and engaging learning environment and connecting me with resources and experts in the field. Thank you to Stephanie Bordat for supporting my research and providing with the legal tools to approach this topic. I am so grateful for your willingness commit so much time to helping me develop my ideas. Last but certainly not least I would like to thank Taieb for your humor, your relentless kindness, your profound insight, and your dedication to all of your students. I feel truly lucky to be one of them.

Introduction

On March 12, 2000, mass demonstrations took place in both Rabat and Casablanca in reaction to Morocco's National Plan for the Integration of Women in Development (Zoglin 2009). In Rabat, 300,000 people demonstrated in support of the plan, while in Casablanca, over one million protested in opposition (Hursh 2012). The Rabat demonstrators consisted of both secular and religious women's rights groups, international human rights organizations, unions, and government ministers. Meanwhile, the Party for Justice and Development (PJD) mobilized conservative Islamist groups and traditionalists to protest the plan in Casablanca (Zoglin 2009). Many conservative women participated in the Casablanca march as well (Maddy-Weitzman 2005). Islamists viewed the plan as a Western attempt to secularize Moroccan society, arguing that it was fundamentally incompatible with the values of Islam. However, women's rights groups argued that the plan adhered to ideals of equality and justice laid out by the Qur'an. These opposing sides cited different interpretations of and verses from the Qur'an in order to justify their arguments that the plan was either in line with or antithetical to Islam (Zoglin 2009). These groups' attempt to base their political advocacy in Islamic law or shari'a is representative of the way in which the debate surrounding women's rights in Morocco is grounded in hermeneutics.

King Mohammed VI responded to the public dispute by creating a Royal Commission to re-examine Morocco's Personal Status Code or Family Code, the only piece of Moroccan legislation based on shari'a. The King directed the Commission to review the code based on Islamic legal reasoning known as *ijtihad* and the principles of universal human rights (Zoglin 2009). Parliament adopted the new Family Code, also known as the *Moudawana*, in January of 2004. The reforms to the code increased women's equality in matters of marriage, divorce, child custody, and several other aspects of family life.

In this study, I will examine the role interpretation that Islamic law has played thus far in reforming the Family Code and to what extent these reforms have fundamentally expanded women's rights in Morocco. I will then analyze the methods of *ijtihad* promoted by Islamic feminists as a mechanism by which activists can further address the challenges Moroccan women still face in family law proceedings. I selected this topic based on a 'conflict' consistently presented in my coursework on international relations and Islamic studies. My past professors argued that liberal ideals such as democratization and gender equality can only be achieved through secularization, and, therefore, are fundamentally incompatible with and antithetical to Islam. In the context of this framework, democratization efforts or women's rights movements were considered to be solely the product of the neocolonial imposition of Western values on Muslim societies. Through this study, I wanted to learn both how religious law could translate into the laws of Morocco as a nation-state and investigate the ways in which Moroccan Muslim women seek to establish their legal rights not in spite of but based on the values of Islam.

In this study, I interviewed experts, Moroccan politicians and government officials, and Islamic feminists and activists. I based my work in grounded theory, a theory generated solely from the data I collected in this study.

Part I of this study provides a history of the Moroccan women's rights movement. Part II includes a literature review of the recent publications that analyze this topic. Part III explains the methodology employed in my study. Part IV presents the findings of my research concerning the role of *shari'a* in the creation of the new Family Code. Part V assesses the successes and challenges involved in the implementation of this code. Finally, in Part VI, I will propose that the reinterpretation of Islamic law through a feminist lens as practiced by contemporary Islamic

feminists offers a way of expanding women's rights through a homegrown movement, grounded in religion. In this final section, I will assess the strengths and limitations of the Islamic feminist movement.

Part I: Historical Overview

Islamic law played a critical role in the Moroccan struggle for independence (Hursh 2012). Islam served as one of the strongest forces for anti-colonial resistance across the Middle East North Africa region. In response to French colonial occupation, the Moroccan independence movement emphasized Morocco's Islamic character. As the only piece of legislation based on Islamic law, the Family Code became the most important symbol of Morocco's identity as a Muslim nation.

King Mohammad V instituted Morocco's first Family Code by royal decree in 1957, the year of Moroccan independence (Zoglin 2009). The King based the code on the Maliki school of Islamic jurisprudence (Maddy-Weitzman 2005). Under this code, women could not consent to marriage without the permission of an appointed *wali* or tutor, who had legal authority over her decisions. Women were also unable to initiate divorce proceedings (Zoglin 2009). A man not only had the sole right to divorce his wife, but was also not required to receive judicial approval for the divorce. During the rise of Islamism during the 1980s and 90s, Moroccan women's rights organizations began to ground their arguments in new readings of the Qur'an and hadith in order to advocate for reforms to the Family Code. In 1992, l'Union de l'Action Féminine (UAF) launched the One Million Signatures campaign, a petition advocating for changes to the Family Code. The called for several reforms, including the establishment of equal status of spouses, a woman's right to initiate divorce proceedings, and the abolition of martial guardianship and

polygamy (Eddouada 2010). The text of this petition stated that it was based on international human rights agreements and *maqasid al-shari'a*, meaning the spirit of the canonical texts of Islam. In particular, the UAF emphasized Morocco's ratification of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Despite backlash from the conservative ulama and the Islamist parties, the petition sparked public debate on the issue. In response to this pressure, King Hassan II established a commission, composed solely of male judges and religious leaders, to reevaluate the Family Code. In 1993, the King issued a royal decree that instituted a few modest changes to the code. These changes placed some restrictions on the power of the *wali* and required a husband to notify his first wife before he married a second wife. Although these reforms were limited, they demonstrated that the code was not a sacred, fixed piece of legislation but rather one that had the potential to be reformed.

When King Mohammed VI assumed the throne in 1999, he promised to increase gender equality in Moroccan society. In March of that year, the Prime Minister announced the National Plan for the Integration of Women in Development. This plan included changes to healthcare and education systems and political and economic reforms as well as changes to the 1993 Family Code (Zoglin 2009). The public reacted to the proposed reforms with the aforementioned demonstrations in Rabat and Casablanca. The fact that the World Bank sponsored the plan led Islamists to argue that the reforms represented a neo-colonial attempt to secularize Moroccan society. Thousands of women protested with the Islamists in Casablanca. Nadia Yassine, head of the feminist branch of the Islamist Party of Justice and Benevolence stated that the demonstrators' organizers did not object to increased legal rights for women, but rather to the language of universal human rights in which the reforms were presented (Eddouada 2010). Islamist parties such as the PJD criticize Morocco's adherence to international human and

women's rights treaties, arguing that the idea of equality between the sexes is fundamentally incompatible with Islam. Islamist women reject the idea of absolute gender equality as they believe that Islam designates particular roles and rights to each gender. For example, according to Islamist women, Islam assigns women the role of motherhood. Thus, these groups focus on the rights of the mother such as maternity leave, but object to reforms that do not directly aid women in this specific role.

The King's Royal Commission consisted of religious scholars, sociologists, judges, and doctors. The King appointed three women to the Royal Commission, for the first time allowing women to formally partake in the reform debate. The Royal Commission conducted its work in three phases (Zoglin 2009). First, it heard presentations from representatives of different sectors of civil society. Next, it reviewed the family laws of other Muslim-majority countries. Finally, the Royal Commission debated the underlying framework for the laws. Some members argued that the new code should be informed by international human rights treaties, while others emphasized the need to ground the new code in shari'a. At the conclusion of these debates, the Royal Commission passed its recommendations to the King. Rather than issue the reforms via royal decree as the previous kings had done, King Mohammed VI presented the reforms to Parliament in October of 2003. After extensive debate and over 100 amendments, the Parliament adopted the Moudawana.

Part II: Literature Review

Previous publications covering the 2004 Moudawana reforms analyze both the contents of the reforms and the manner in which they were produced. Some publications debate whether or not the way in which the government created these reforms indicates a step towards

democratization in Morocco. Other publications analyze whether or not King Mohammed VI has created these reforms solely to gain favor with Western nations, without the intent of producing substantive change. These works situate the 2004 Moudawana reforms in the context of larger debates about the political phenomenon unfolding in the Middle East North Africa region today. I will provide a brief summary of these works in this section.

International actors, particularly in the West, applauded the Moudawana reforms for both their progressive contents and for the seemingly open public debate surrounding the issue at the time. The media and political analysts commended the fact that the Moroccan government allowed for mass demonstrations on both sides of the political spectrum and the fact that Civil Society Organizations (CSOs) managed to set the political agenda as their activism ultimately led to substantial reforms. However, authors Marina Ottaway and Meredith Riley (2006) argue that the unilateral institution of reforms by the palace indicates that just as the monarchy has the power to implement reforms, it has the power to remove them. These authors highlight the fact that, despite the liberal nature of the reforms and the responsiveness of the King to the public's demands, Morocco still lacks a political mechanism that ensures the people have a say in the legislation that governs them. Although CSO activism and the enormous turnout at both the Rabat and Casablanca protests set the agenda for the regime to reexamine the Family Code, the King had the ultimate say on the direction reforms would take. Furthermore, Francesco Cavatorta and Emanuela Dalmaso (2009) propose that CSO activism can actually reinforce authoritarian practices rather than leading to democratization. Dominant democratic theory argues that an active civil society directly correlates to increased democratization. However, these authors propose that CSOs operating under authoritarian regimes ultimately reinforce the strength of these regimes. Authoritarian regimes place constraints on CSOs such that they cannot

openly criticize the regime but rather are forced to work with it in order to achieve their policy objectives. The fact that the regime and its associates are the only members of society capable of delivering substantive policy changes, particularly in the field of family law, forces CSOs to cultivate relationships with the regime rather than with elected representatives, resulting in the development of patronage networks. Amaney Jamal seconds this assertion, arguing that CSOs under authoritarian regimes develop clientelism (Hursh 2012). Cavatorta, Dalmaso, and Jamal all apply this framework to the process by which the King instituted reforms to the Moudawana in their publications. In the 1990s, when the UAF launched its One Million Signatures campaign, the organization aimed its efforts directly at the prime minister and members of parliament. The organization sought to link their efforts for increased gender equality to broader political reform and democratization. Cavatorta and Dalmaso argue that the limited reforms made to the 1993 Family Code signaled to CSOs that the UAF's strategy had been ineffective; the only way to bring about substantive change was by appealing to the regime itself. Therefore, in the early 2000s, women's rights organizations worked directly with the monarchy rather than with Parliament. The authors propose that these organizations not only came to recognize the limits of Parliament's power but also the fact that the majority of Moroccans, to whom elected representatives are accountable, did not support the proposed reforms. Therefore, the women's rights movement appealed directly to the King as he had the power to institute liberal yet unpopular reforms. Jamal argues that Moroccan civil society "supports [the] overall conclusion that not all associations are beneficial to democracy" (Hursh 2012). She continues to state that the King has co-opted these organizations in order to advance his own political objectives. The CSOs successfully forced international pressure on the regime to implement these reforms, but

the nature of the relationship between CSOs and the regime in Moroccan society forces CSOs to adopt pro-regime policies.

Cavatorta and Dalmaso (2009) also propose that the King instituted these reforms primarily in order to gain favor from the international community. The World Bank financed the National Plan for the Integration of Women in Development, and the King had already labeled economic development and women's rights as his top priorities. The authors propose that the King utilized the Moudawana reforms for international leverage as part of a broader plan for neo-liberal economic development. They argue that the King instituted the reforms in order to gain the economic and political benefits of presenting Morocco as a 'liberal country.' These authors cite the fact that the monarchy has displayed little interest in implementing the reforms on the ground. Souad Eddouada and Renata Pepicelli (2010) also propose that the monarchy reformed the Moudawana for both domestic and international political purposes. These authors formulate their argument through a comparative analysis of the Islamist movement and the feminist movement leading up to the reforms. Eddouada and Pepicelli argue that the state attempted to reconcile both movements by creating "Islamic state feminism." In this move, the state effectively co-opted both movements simultaneously.

These authors, alongside several others analyzing the subject, also draw a connection between the regime's reform of the Moudawana and the 2003 Casablanca terrorist attacks. Alongside the Moudawana reforms, the regime began to actively promote what it identified as a uniquely moderate form of Islam. Based on the concept of Moroccan exceptionalism, the regime promoted the idea that Moroccan Islam is more tolerant and accepting of women than Islam in other parts of the world and established religious institutions to spread this vision. Eddouada and other authors also suggest that the regime established this project in order to both address

domestic tensions and demonstrate to the international community that Moroccan Islam is fundamentally different from extremist versions of Islam that are prevalent in other parts of the world (Eddouada 2010). Serida Lucrezia Catalano (2011) also proposes that the regime was only able to gain the PJD's support for the Moudawana reforms because of the Casablanca attacks. Despite the fact that the Islamists unanimously rejected the National Plan for the Integration of Women in Development, the party switched course and supported the 2004 reforms. Catalano proposes that, although the PJD was not involved in the terrorist attacks, shifts in the electorate after the attacks ensured that the King would be able to institute his reforms without the political backlash of the Islamists.

Part III: Methodology

For this study, I wanted to understand the role hermeneutics has played in the creation and implementation of this law as well as in both past and current activism seeking to reform it. Therefore, I chose to interview participants from a variety of different sectors in order to understand the hermeneutics at play at multiple different levels. I primarily spoke with experts on the subject, government officials, politicians, and Islamic feminists, who are seeking to reinterpret the Qur'an through a feminist lens. Unfortunately, I was unable to interview any family court judges in Morocco. Therefore, the section of my study that analyzes ongoing challenges with the implementation of this code is comprised of previously published studies and interviews with experts on the subject. I set up meetings with my participants via email and then spoke to them on their preferred online platform (either Zoom, Cisco Webex, or WhatsApp). Technical difficulties with audio and internet connection presented challenges in these interviews, but my participants and I were generally able to complete our interviews via various

methods of online communication. All of my participants were low risk. I obtained oral consent from each participant to have their name printed in this study. I also obtained their oral consent to use the material from our interviews in my senior honors thesis. My questions varied by participant. When preparing for interviews with experts, I read their available publications online and tailored my questions to their particular expertise. Before interviewing government officials, I researched their levels of involvement with the development of the Moudawana. Finally, when speaking with Islamic feminists, I asked about the particular hermeneutical tools and methods of ijtiḥād they used in order to interpret the Sacred Texts.

Part IV: Creation of the Moudawana

The Royal Commission and King Mohammad VI created the Moudawana based on Islamic principles, the state's obligations to international human rights conventions, and the realities of family life in contemporary Moroccan society. The regime utilized ijtiḥād in order to apply the fundamental principles of shari'a to the Moroccan context and address the challenges Morocco faces as a modern nation-state.

Ijtiḥād is defined as "a process of reasoning and utmost effort to extract a rule from the subject matter of revelation while following the principles and procedures established in legal theory" (Yavuz, 2016, p. 207). Modern religious authorities have used ijtiḥād as a tool with which to increase the flexibility of Islamic law to respond to regional economic and socio-political contexts. Under classical Islamic law, only a mujtahid has the authority to practice ijtiḥād. However, modern reformists propose that the idea of collective ijtiḥād can be used to combine the legal structures of the modern nation-state with classical Islamic legal institutions. This conception of ijtiḥād calls into question who has the right to interpret shari'a in the modern

political context. Reformers propose that the integration of *ijtihad* with the principles of Islamic legal consensus (*ijma*) and consultation (*shura*) could produce a collective *ijtihad* (*ijtihad jama'i*) that allows Islamic law to operate in harmony with the laws of the nation-state. *Ijma* refers to the principle of consensus and agreement amongst Islamic scholars, which reformers propose be transferred from the mujtahids to an Islamic legislative assembly. Meanwhile, *shura* means consultation, in reference to the fact that the Qur'an encourages Muslims to determine their laws in consultation with those who will be affected by those laws. The most prevalent approach to this collective *ijtihad* in recent years has been *ijtihad* that attempts to embody *maqasid al-sharia*, meaning the main objectives or spirit of shari'a. Many Muslim-majority nation-states have engaged in *ijtihad* in order to formulate their family laws. Miyase Yavuz identifies the 2004 Moudawana reforms as "one of the latest remarkable modern exercises of *ijtihad*" (Yavuz, 2016, p. 208).

Both the Islamists and the feminists drew upon the concept of *ijtihad* in their advocacy for and against reforms to the Moudawana. The PJD claimed that the National Plan for the Integration of Women and Development, which proposed reforms to the Moudawana, was antithetical to Islamic law, claiming that only the ulama had the right to exercise the *ijtihad* that such reforms would require. Meanwhile, women's rights organizations claimed that every Muslim has the right to exercise *ijtihad* and encouraged *ijtihad* based on *maqasid al-sharia*. Some members of the ulama such as Ahmed el-Khamlichi, Mohammed el-Habti el-Mawahibi and Idris Hammadi also expressed support for the reforms (Yavuz 2016).

King Mohammed VI created the Royal Commission on April 17, 2001. He authorized the Commission to practice *ijtihad* in order to make "a substantial change to the Code of Personal Status which had to respect Islamic principles (*maqasid al-shari'a*) by also responding to the

exigencies of the time and to the worldwide application of some universal dispositions.” The King defined the scope of and limits for ijtiḥād by stating “I cannot allow what G-d has forbidden and forbid what G-d has authorized.” In this statement, King Mohammed VI articulates that ijtiḥād can only be exercised to interpret fiqh, which is Islamic jurisprudence or the human interpretation of shari’a based on the Qur’an and the Sunna. However, ijtiḥād cannot contradict what is explicitly stated in these texts.

I had the opportunity to speak with Nezha Chekrouni, who was one of the leading members of the Socialist Union of Popular Forces Party of Morocco (USFP) throughout the reform process. Ms. Chekrouni worked on the creation of the National Plan for the Integration of Women in Development and advocated for reforms to the Family Code leading up to both the 1993 and 2004 reforms. After the USFP came to power in 1998, Ms. Chekrouni served as the Delegate-Minister for Women’s Conditions, Family and Children’s Protection. In this role, Ms. Chekrouni worked extensively with the regime to create the 2004 reforms. She described herself at the time as “the person who carried the project at the government level” (N. Chekrouni, personal communication, May 6, 2020). Ms. Chekrouni described King Mohammed VI’s decision to create a Royal Commission as “the right way to create a dialogue between all of the factions in society” so that “everybody could participate.” She explained that “when facing tough questions, the leadership of His Majesty is needed to keep the country unified and keep stability in the country. He is above all parties and complaints.”

The Royal Commission included three women: Zhor el-Horr, Nouzha Guessous, and Rahma Bourquia (Yavuz 2016). The King’s inclusion of women in the Royal Commission served as a symbolic step as he invited women into the traditionally male-dominated field of hermeneutics. The King appointed Supreme Court Justice President Driss Dahhak as chair of the

Commission. However, in March of 2002, the Commission presented a divided report to the King, who subsequently replaced Driss Dahhak with Muhammad Boucetta, the former foreign minister. 59 of the 60 proposals presented to the Royal Commission by experts and CSOs referenced a religious backing in Islamic jurisprudence. The Royal Commission based the Moudawana reforms on the Maliki school of jurisprudence and generally exercised collective *ijtihad*, based on the principles of justice and equality for all Muslims, regardless of gender. Zhor el-Horr, one of the three females on the Commission, described the principles of *ijtihad* used by the Commission in the creation of the Moudawana reforms:

(a) the idea is that the door of *ijtihad* is open, (b) *ijtihad al-jamā'i* is exercised through including different expertise within the commission, (c) the principles of 'occasions of revelation' (*asbāb al-nuzūl*) and the main objectives of the sacred texts (*maqāṣid al-naṣṣ*), that is justice, fairness, and the dignity of humans without gender differentiation, are considered, and (d) the goal is to ensure dignity (*karāma*), equality (*musāwā*) and fairness (*inṣāf*).

Sadik Rddad, an expert in post-colonial studies and Assistant Professor of English at Sidi Mohamed Ben Abdellah University in Fez, explained to me that the methods of *ijtihad* employed in the formulation of the 2004 Family Code differed from those used in the creation of the 1957 code as a result of the religious universities the scholars graduated from (S. Rddad, personal communication, May 12, 2020). He explained that the ten men who drafted the 1957 law all graduated from the University of al-Qarawiyyin, which concentrates on Islamic religious and legal sciences. This university is based on Maliki law and known for its conservatism. Meanwhile, members of the Royal Commission who drafted the 2004 law attended a variety of religious universities. Furthermore, the Commission included not only religious scholars but also "men and women from a diversity of profiles and fields," including representatives of civil society and human rights activists. Professor Rddad articulated that the composition of this Royal Commission more accurately represented the interests of the whole of Moroccan society. He

proposed that this Commission was “more representative of the diversity of Moroccan society and, together, they conceived of an ijtiḥad based on the experiences of all these diverse groups.” Ms. Chekrouni, who presented before the Royal Commission as Delegate-Minister of Women’s Conditions, Family and Children’s Protection, also testified to the diversity of the presentations the Commission heard. She explained that “representatives from the Islamic field [and] from the law and psychology” fields presented before the Royal Commission in order to “question the situation from many dimensions” (N. Chekrouni, personal communication, May 6, 2020).

Professor Rddad also asserted that the context in which these reforms unfolded shaped the direction of the ijtiḥad practiced. He proposed that “new democratic institutions, but also the international regime” created a “context that changed the ijtiḥad.” The preamble of the Moudawana articulates its “use of ijtiḥad to deduce laws and precepts, while taking into consideration the spirit of our modern era and the imperatives of development, in accordance with the Kingdom’s commitment to internationally recognized human rights” (translation). Professor Rddad articulated that the preamble demonstrates the Moudawana’s attempt to strike a balance between shari’a and Morocco’s international human rights commitments. Professor Rddad proposes that this international context led to the incorporation of ideas of universal human rights, women’s rights, and children’s rights. Ms. Chekrouni also asserted this idea in our conversation. She stated that Morocco “signed the CEDAW¹; We are a part of the international community and we have commitments” (N. Chekrouni, personal communication, May 6, 2020). Ms. Chekrouni described the tension in creating the Moudawana reforms as centered around the

¹ The CEDAW is the Convention on the Elimination of all Forms of Discrimination Against Women. Morocco ratified the CEDAW in 1993, with reservations to articles 2, 9(2), 15(4), 16, and 29. This international treaty was adopted by the United Nations General Assembly in December 1979.

question of “how do we conciliate between international commitments and values and, at the same time, respect our background as Moroccans, as Muslims” and “take into account all of the political trends in the society.”

The Royal Commission reported its proposed changes to King Mohammed VI after thirty months of work. In his position as Commander of the Faithful, the King has the ultimate power to shape *ijtihad* and interpret Islamic law in the Moroccan context. When King Mohammed VI introduced the Moudawana to Parliament, he stated,

[These reforms] adopt the tolerant principles of Islam in advocating human dignity, and enhancing justice, equality and good amicable social relations, and with the cohesiveness of the Malekite School as well as *ijtihad*, which makes Islam valid for any time and place, to implement a modern Moudawana for the family, consistent with the spirit of our glorious religion.

In this statement, the King articulates the way *maqasid al-shari'a* as well as contemporary Moroccan realities shaped the *ijtihad* performed to create this law. He continued to explain that he “present[ed] the Family Code bill to the Parliament for the first time” so that Parliament could consider “its implications for civil law, noting that its religious legal provisions fall within the competence of the Commander of the Faithful” (translation). The King clearly articulates that he alone has the authority to determine the religious legality of the reforms and that Parliament should solely focus on how to translate his proposed changes into workable policy reforms. The Justice, Legislative, and Human Rights Commissions of Parliament amended the Moudawana before it was eventually passed.

The opening lines of the preamble of the Moudawana state that “doing justice to women, protecting children’s rights and preserving men’s dignity are a fundamental part of this project, which adheres to Islam’s tolerant ends and objectives, notably justice, equality, solidarity, *ijtihad*...” (translation). Professor Rddad explained that the Moudawana’s attempt to embody “Islam’s tolerant ends and objectives” represents a form of *ijtihad* that strives to realize *maqasid*

al-shari'a by bringing “divine justice” to all people. Professor Rddad explained that this “enlightened, open *ijtihad*” allowed for the production of the 2004 Moudawana reforms.

The 2004 Moudawana included several major changes to marriage, divorce, and child custody laws. The *ijtihad* utilized in these reforms was grounded in two primary approaches to jurisprudence: 1) selection of jurisprudential opinions from minority views within the Maliki school from previous jurists and from other schools of Islamic jurisprudence and 2) a holistic interpretation of the Qur'an and the Sunna based on *maqasid al-shari'a*. The *ijtihad* employed in the creation of the Moudawana attempts to create a law grounded in the Islamic legal tradition that also reflects the contemporary realities of Moroccan society and adheres to international standards. For the remainder of this section I will examine the major changes made to the 2004 Moudawana and articulate the justifications for such reforms in Islamic law when applicable.

In the field of marital law, the Moudawana reforms changed the legal age of marriage to 18 for both males and females, whereas the previous code stipulated that while a boy could be married at 18, a girl could be married at 15. However, Article 20 of the 2004 Moudawana states that “The Family Affairs Judge in charge of marriage may authorize the marriage of a girl or boy below the legal age of marriage... after having heard the parents of the minor who has not yet reached the age of capacity of his/her legal tutor, with the assistance of medical expertise or after having conducted a social enquiry” (cite translation). Therefore, a judge still has the power to authorize the marriage of a minor. The 2004 Moudawana also removes the requirement that a woman have the permission of a *wali* or marital tutor to enter into a marriage contract (cite translation). Article 24 of the Moudawana states that “marital tutelage is the woman's right, which she exercises upon reaching majority according to her choice and interests.” This change in the Moudawana draws upon the legal opinion of the Hanafi School of Islamic jurisprudence,

which does not oblige women to have a *wali*. Despite the fact that Moroccan Islam and the Moudawana are generally based on the Maliki school, which requires marital guardianship for women, the 2004 Moudawana reforms base their decision on the Hanafi School's legal opinion on this matter (Yavuz 2016). The removal of the requirement of a *wali* demonstrates the ways in which the 2004 Moudawana draws on the rulings of other schools in order to adjust to contemporary realities. The new Code also awards both the wife and husband joint responsibility over family matters (translation). While the previous code drew upon the principle of *qiwama*² to grant husbands sole authority in family matters and require that a wife obey her husband, the new Code grants both spouses equal responsibility based on verses throughout the Qur'an that reference equality and consultation (Yavuz 2016). The 2004 Moudawana also instituted changes to the marital contract. Although Islamic law has always allowed couples to draft marital contracts, the Moudawana reforms allow couples to agree in advance how marital assets will be divided in case of divorce. A woman may also stipulate in her marital contract that her husband may not take a second wife. Although Morocco's new Family Code has not utilized *ijtihad* to outright ban polygamy as Tunisia has, the new reforms do seek to limit the already rare occurrence of polygamy in Moroccan society. Women's rights organizations advocated for a ban on all polygamy, but they were unable to win this fight because the Qur'an explicitly addresses polygamy. Therefore, based on the King's stipulation that he could not "forbid what G-d has authorized," the Moudawana does not ban polygamy. However, the 2004 reforms do require a husband to both inform and receive consent from his first wife in order to marry an additional woman (Zoglin 2009). A man seeking to marry an additional wife must also receive judicial

² The principle of male authority over women based on historical interpretations of verse 4:34 of the Qur'an

approval. According to Article 41 of the Moudawana, the court will not authorize polygamy if “an exceptional and objective justification is not proven” (cite translation). Islamic law has also historically required a husband to devote equal time, attention, and resources to all of his wives. The Moudawana retains this feature of classical Islamic law in Article 40 which articulates that “[p]olygamy is forbidden when there is a risk of inequity between the wives.” The Moudawana requires family judges to ensure that the husband has the financial means to provide for all of his wives. Under the 2004 reforms, a judge is also required to confirm that the second wife is aware of the first wife before the judge finalizes the marriage. Professor Rddad explained to me that, in this law, the King “tries to translate the idea that polygamy is allowed but not encouraged and only allowed if [the husband] can be just and fair to all [of his wives]” (S. Rddad, personal communication, May 12, 2020). Professor Rddad argues that through these reforms the King adopts a “reading [of] the Qur’an from a perspective which is more enlightened” and attempts “to make polygamy almost impossible.”

The 2004 Moudawana institutes significant reforms in the sphere of divorce law. Under the previous Family Code, only husbands had the right to divorce their wives, and wives had no access to divorce. Furthermore, the previous code allowed a husband to divorce his wife orally and without judicial approval. Under the 2004 Moudawana, women have secured the right to initiate divorce proceedings. Both men and women are required to obtain judicial authorization in order to divorce their spouse. The reforms also introduce new grounds for divorce, including right to divorce “by mutual consent under judicial supervision” and divorce based on “irreconcilable differences.” The Moudawana now also requires courts to issue decisions on divorce cases within six months of the petitioner filing the request. Additionally, judges may not grant a divorce until the couples have attended mediation or reconciliation sessions. The

Moudawana requires reconciliation sessions in order to deter divorce based on the Hadith by the Prophet Mohammed stating that ‘The most hateful to G-d among all lawful things is divorce’ (cite translation). The Moudawana also increases the role of judges in determining how assets are divided when a couple divorces, based on the judge’s assessment of the relative contribution of each spouse to the household capital during the marriage (Zoglin 2009).

The 2004 Moudawana also introduces the concept of the best interests of the child to Moroccan family law and expands the rights of both women and children in paternity disputes. Under the previous Family Code, a mother automatically lost custody of her children if she moved or re-married (Zoglin 2009). However, although a mother may still lose her children for these reasons, the Moudawana now requires judges to make such decisions with the best interests of the child in mind. While judges were not previously involved in resolving child custody issues, the Moudawana now instructs judges to assess a potential guardian’s ability to create a positive living environment for the child. Under the Moudawana, the man remains the presumptive legal guardian of his children, regardless of which parent has custody of the children, unless otherwise stipulated by a judge. The Moudawana also, for the first time, introduces a mechanism to determine the paternity of a child born out of wedlock. Children born out of wedlock now automatically receive legal recognition and courts have the ability to use scientific testing to resolve disputes over paternity. Professor Rddad explained that the *ijtihad* utilized in this section of the law “protects children’s rights by incorporating international human rights conventions” (S. Rddad, personal communication, May 12, 2020). Morocco ratified the Convention on the Rights of the Child in June of 1993 (UN). These changes to custody and paternity laws demonstrate the ways in which the King and the Royal Commission utilized *ijtihad* to create a family law that embodies both universal human rights and the principles of

justice outline in the Qur'an. Professor Rddad argues that this newfound effort to protect the rights of children results from an understanding of *ijtihad* within the *maqasid al-shari'a*, embodying the Qur'anic aim of "ending injustice to any human being."

While the King instituted significant reforms in the fields of marriage, divorce, and child custody, to the disappointment of many women's rights organizations, he made few changes to inheritance laws. The Qur'an directly states that a girl will receive half of what her male counterpart receives in inheritance. As the Qur'an directly and specifically articulates this provision, the King stated that he could not change this law. However, the 2004 reforms did include one change to previous inheritance laws in obligatory bequests. The 2004 Moudawana required grandchildren on the daughter's side of the family to receive an obligatory amount from the grandparent's estate, whereas, under the previous code, only the grandchildren on the son's side could receive inheritance (Yavuz). This aspect of the previous code was "based on obsolete tribal custom," also known as *urf* and "not on any religious or legal grounds" (Hursh). *Urf* is an Islamic legal practice that permits the continued observance of local customs provided that those customs do not contradict *shari'a*. The decision to reform this law indicates a change in the Moroccan government's interpretation of Islamic law. The Islamic jurisprudence that went into the formulation of this law previously held that this local custom did not contradict *shari'a*. However, the fact that the Moudawana eliminated the observance of this *urf* indicates that the Moroccan government now views this practice as incompatible with *shari'a*.

The 2004 Moudawana also utilizes more imprecise and ambiguous language than previous codes, which allocates significantly more discretion to judges in deciding family court cases. The following section will discuss the implications of this vague language for the implementation of this law.

Part V: Implementation

The judiciary system has successfully implemented the provisions of the Moudawana in the spheres of marriage and grounds for divorce (Zoglin 2009). Courts have upheld laws requiring husbands to financially support their wives and approved a significant quantity of divorces based on the new grounds for divorce introduced by the Moudawana such as divorce due to irreconcilable differences. However, my interviews with various experts in the field highlighted three fundamental barriers to adequate implementation of the 2004 Moudawana: 1) women's persistent and widespread lack of awareness of their rights under the new reforms 2) the vague wording of the law which transferred significant discretionary power to judges and 3) women's lack of economic independence. These barriers have resulted in faulty application of the Moudawana in numerous fields within family law including underage marriages, domestic violence, and distribution of family assets. The findings of my interviews are generally consistent with the reports of numerous non-governmental organizations in Morocco. The Non-Governmental Organisations' UN Shadow Report concerning the Moroccan government's implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)³ highlights the following issues with the implementation of the Moudawana:

The Family Code which maintains polygamy, discrimination in inheritance and the legal guardianship of children as well as repudiation. As for the implementation of the new legislation, shortcomings are patent. These include the propensity of judges to systematically authorise the marriage of female minors and polygamy (though related legal provisions are subject to very restrictive conditions); difficulties facing women in all divorce proceedings (including new legal procedures that are supposed to facilitate women's access to divorce, particularly on grounds of marital discord and by mutual agreement); difficulty in the application of the right of divorced female custodians to stay in the matrimonial home, and the limited nature of provisions related to paternity acknowledgement.

³ Hereafter this report will be referenced as 'NGO Shadow Report'

In the following section, I will first cover the three crucial barriers to implementation of the Moudawana, followed by an assessment of how these barriers contribute to discrimination and violence against women in Moroccan family law.

Moroccan women, particularly in rural areas, are generally unaware of the new rights afforded to them by the 2004 reforms (Zoglin 2009). Many rural women do not know that they have the right to divorce, that there are new grounds for divorce, or how property is divided in the event of divorce. This lack of widespread information is primarily the result of female illiteracy and inadequate educational campaigns in rural areas on the part of the Moroccan government (CSO). According to the World Bank, Morocco's adult⁴ female literacy rate is 64.59% as of 2018 (World Bank). Meanwhile, the illiteracy rate of rural Moroccan women stands at 85% (Hursh 2012). This illiteracy combined with widespread poverty prevents women from exercising their rights under the law.

The second barrier to adequate implementation of the Moudawana that I identified in my research stems from the vague wording of the law that has resulted in increased judiciary discretion. As a result of political compromise, the drafters of the Moudawana left much of the code's wording intentionally vague. Ms. Chekrouni explained that in order "to make the change, we had to... leave it to the judge's discretion" (N. Chekrouni, personal communication, May 6, 2020). Manal Dao-Sabah, a Ph.D. candidate writing her dissertation on Islamism in Morocco, criticizes "the state for producing ambiguous and inconsistent laws" (M. Dao-Sabah, personal communication, May 6 2020). She explained to me that these inconsistencies have resulted in numerous problems at the level of implementation. The lack of clarity in the law's language leaves excessive room for judges to interpret the law according to their own beliefs and

⁴ defined as aged 15 and above

understandings of Islamic law. The increased judiciary discretion afforded by this law has resulted in an application of the Moudawana that is inconsistent with the drafter's intent. The last article of the Moudawana provides judges with guidelines on how to interpret the law for situations the law does not address or situations in which the law is unclear (Zoglin 2009). This section advises judges to refer to the Maliki school of jurisprudence and to the Islamic principles of justice and equality. Through judicial discretion, hermeneutics and individual interpretations of Islamic law by judges plays a role in how the Moudawana is implemented on the ground. In situations where the language of the Moudawana is ambiguous, conservative judges tend to rule in a manner far more restrictive of women's rights than progressive judges do. Both conservative and progressive judges cite various interpretations of Islamic law to back their rulings.

Additionally, in situations where the Moudawana clearly and explicitly addresses a situation, some judges may still base their decisions on different interpretations of Islamic law.⁵ Manal Dao-Sabah asserts that conservative application of the law stems from the fact that judges continue to "receive traditional training" and the fact that the "judiciary system is still a patriarchal space" (M. Dao-Sabah, personal communication, May 6 2020). Additionally, Manal Dao-Sabah proposes that textual inconsistencies between the 2011 Constitution and the Moudawana makes the intentions of the Moudawana unclear. Article 19⁶ of the Moroccan

⁵ For example, one court in Larache, a town in northern Morocco, continues to exclusively apply the 1957 Personal Status Code.

⁶ Article 19: The man and the woman enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this Title and in the other provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the constants [constantes] and of the laws of the Kingdom.

The State works for the realization of parity between men and women.

Constitution establishes legal equality between the sexes. However, Manal Dao-Sabah argues that inheritance law, which discriminates on the basis of gender, stands in direct contrast to Article 19's statement of legal equality between the sexes. She proposes that "to realize gender equality in Morocco both men and women need to be financially independent" and that "inheritance law is an economic violence against women." Manal Dao-Sabah argues that this textual contradiction also contributes to inconsistent application of the law by judges as the law's intent is unclear. The aforementioned NGO Shadow Report recommends that the Moroccan government "limit the discretionary power of judges within the Code," citing this power as one of the primary barriers to Morocco's full adherence to CEDAW.

Women's financial dependence on their husbands also poses a significant barrier to adequate implementation of the Moudawana. To discuss this issue, I interviewed Dr. Souad Eddouada, an expert on the Moroccan women's rights movement, who is widely published in her field. She explained that, despite new provisions in the Moudawana designed to provide women with increased agency and legal rights, women often do not exercise these rights as they are economically dependent on their husbands (S. Eddouada, personal communication, April 30, 2020). Dr. Eddouada proposes that the Moudawana "is an advanced law but we need the socioeconomic support for equality." Women's lack of economic independence often forces them to remain in polygamous or domestically abusive marriages. Dr. Eddouada told me that her friend who serves as a judge in a family court in Rabat is often forced to accept applications for polygamous marriages because the first wife begs the judge to accept because her husband has threatened to divorce her if she does not accept. These women will explain that if their husband

An Authority for parity and the struggle against all forms of discrimination is created, to this effect.

divorces them, they will lose all socioeconomic support. Dr. Eddouada explained that “despite the fact that the law constrains polygamy... the exception is becoming the rule,” as a result of both women’s economic dependence and judicial discretion. Manal Dao-Sabah articulated that “the judge has the freedom to decide on matters of polygamous marriages... based on their own convictions.” Therefore, many judges are approving nearly all polygamy cases presented to them, despite the fact that the law requires proof of “an exceptional and objective” justification.

This lack of financial independence forces women to agree not only to polygamous marriages but also to remain in abusive marriages. Women without the means to support themselves fear that a divorce will leave them destitute. Additionally, Dr. Eddouada informed me that “judges are not implementing the Code correctly” in cases of domestic abuse. Ms. Chekrouni also discussed the issue of faulty application of the Moudawana in the sphere of gender-based violence. She explained that “when a beaten woman goes to the police to report this, they consider this as a family problem or matter even though the Moudawana says that a man can be imprisoned for beating his wife, but culturally they consider this to be a family problem” (N. Chekrouni, personal communication, May 6, 2020). The 2015 Country Reports on Human Rights Practices in Morocco published by the U.S. Department of State articulated that, despite provisions within the Moudawana designed to prevent domestic abuse, violence against women has increased in recent years. The report states that in 2009⁷, 63% of women reported suffering an act of violence in the preceding year. Women’s rights advocacy groups estimate that “that husbands perpetrated eight of 10 cases of violence against women.”

Dr. Eddouada, Manal Dao-Sabah, and Ms. Chekrouni all highlighted the fact that Moudawana provisions intended to limit child marriages have largely failed. In 2006, judges

⁷ No survey has been conducted on this subject since 2009.

approved 89% of underage marriage applications, 97.5% of which involved the marriage of an underage girl (Shadow Report). Dr. Eddouada and Manal Dao-Sabah both cited judicial discretion as the primary cause of this phenomenon as judges continue to approve nearly all applications for marriages of underage girls, regardless of the justification given, based on their own beliefs about Islamic law. Ms. Chekrouni stated that underage marriage “is something that unfortunately continues to be a problem in our society because the legislature opened a window to make some exceptions and once you have exceptions you can no longer control the exceptions” (N. Chekrouni, personal communication, May 6, 2020). This description outlines the way in which any legal loopholes, particularly those couched in vague language, can be exploited by the judiciary to undermine the Moudawana reforms. For this reason, the NGO Shadow Report recommends that Morocco institute further reforms to the Moudawana that would prohibit polygamy and child marriage entirely.⁸

After learning that women’s lack of financial independence poses a major barrier to the implementation of the Moudawana, I attempted to investigate aspects of the Moudawana that address the division of economic assets. My participants often brought up these issues unprompted when asked about persisting problems with the Moudawana. The two major areas of the family law that came up were inheritance law and the division of family assets after divorce. Inheritance is an extremely controversial issue in Moroccan society. Although participants did

⁸ To evidence the psychological and physical risks posed by underage marriage, the NGO Shadow Report provides an example of such a case, reported by Pour les Droits des Femmes (IPDF): “The plaintiff was married at the age of 16 years. She was exposed since the first day of her marriage to moral violence by the family of her husband who ended up taking her back to her mother after six months of marriage. Currently, the victim is under medical surveillance. She suffers from psychological disorder which led to loss of voice as a result of violence.”

not bring up issues with the implementation of inheritance laws, they did raise issues with the law itself. I will address efforts to reform inheritance law in the following section.

As with many other areas of the Moudawana, judges have enormous discretionary power to determine the apportionment of property acquired during marriage in the event of divorce (Shadow Report). Article 49 of the Moudawana establishes that “each of the spouses has an estate separate from the other. However, the two spouses may, under the framework of the management of assets to be acquired during the marriage, agree on their investment and distribution” (translation). However, couples rarely formulate such a contract due to social pressure and cultural norms (Shadow Report). Article 49 continues to state that “in the absence of such an agreement, recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of family assets” (translation). This article provides judges with the power to decide what assets each partner will retain based on their assessment of the relative contributions of each to the acquisition of such property. When making such assessments, judges rarely place any capital value on women’s contributions of domestic labor and childcare. Therefore, women frequently receive a minute portion of marital assets in divorce proceedings. Ms. Chekrouni articulated her belief that this flaw in the implementation of the Moudawana stems from the vague terms of the article.

Despite the widespread availability of data evidencing faulty implementation of the Moudawana throughout Morocco, the government has taken few steps to address these issues. Even without conducting a serious rewrite of the entire code to make it more precise, the state could take several other steps to improve implementation, such as a judge training program or enforcement mechanisms to ensure that all courts adhere to the correct version of the code.

Several political analysts and experts, including Dr. Eddouada propose that King Mohammed VI created the Moudawana with the intent of projecting the image of Morocco as a liberal state, rather than in hopes of authentically increasing gender equality. These experts cite the state's negligence of these implementation issues as proof that the 2004 Moudawana reforms were essentially a performance. Dr. Eddouada argues that the State attempts to disseminate the idea that Moroccan Islam is fundamentally different from the practice of Islam in other Muslim-majority nations. The government contends that this unique version of Moroccan Islam is compatible with liberal Western-style democracy. Dr. Eddouada argues that "this is more of a performance than a reality" as the state "perceives itself as a liberal Muslim country that is open to women's rights" despite the fact that Moroccan citizens do not agree with this description. Dr. Eddouada explained that most Moroccans perceive the Moudawana as "a Westernized law imported from Christianity and created to destroy the culture and destroy the family unit." She believes that "in general, the people are much more conservative than what the state wants them to be."

In an effort to spread the state's vision of Moroccan Islamic exceptionalism throughout the nation, the state created the Mohammedan League of Religious Scholars (*al-Rabita Muhammadia of Ulema*). This organization promotes a progressive vision of maqasid al-shari'a in order to promote women's rights and combat extremism in the aftermath of the 2003 Casablanca attacks (Pektas 2019). After these terrorist attacks, the state embarked on a campaign to control religious practice and scholarship in Morocco. Alongside the creation of The Mohammedan League of Religious Scholars, King Mohammed VI developed more extensive religious institutions throughout the nation and bureaucratized existing institutions. The Mohammedan League or Religious Scholars serves as the intellectual head of the Moroccan

religious bureaucracy by providing scholarly support for the state's vision of Moroccan Islam. Dr. Eddouada described this organization as "part of a state project to add to the image [the state] want[s] to send to the world that Morocco is a country of liberal Islam and women's and human rights" (S. Eddouada, personal communication, April 30, 2020). In 2006, King Mohammed VI also created the murshidat program. Murshidat are women being trained by the state to serve as religious guides throughout Morocco, as part of the government's campaign to carve out a space for female religious authority in Islam (El-Haitami). Through these institutions, the state attempts to shape Moroccan religious and spiritual practice to conform to the state's vision of a tolerant and progressive Moroccan Islam. Dr. Eddouada described the Murshidat program "the reconstruction of the religious sphere." Although the state has received significant criticism for its unwillingness to enforce the Moudawana, I suggest that these programs attempt to shift Moroccan religious belief such that it aligns with the progressive conception of religion embodied in the Moudawana. Such a shift in the nation's beliefs may lay the foundation for adequate implementation of the existing code and for the execution of further progressive reforms to the Moudawana in the future.

However, these programs also represent the regime's attempt to control religion. Dr. Eddouada argues through these programs "religion became a tool for authoritarianism" (S. Eddouada, personal communication, April 30, 2020). Research on the murshidat indicates that the state provides these female spiritual guides with precise and strict instructions on the guidance they give. Dr. Eddouada also explained to me that the "Imams are controlled by the state" and "every issue is decided by the Ministry of Islamic Affairs."

I believe that this contradiction represents the fundamental tension of the women's rights movement in Morocco. Both the state's creation of the Moudawana and its bureaucratization of

religion have been executed through top-down unilateral reforms. While governments and analysts around the world praise the 2004 Moudawana for its liberal promotion of women's rights, these actors often ignore the fact that this progress was achieved through undemocratic means. Liberalism values the consent of the governed, individual rights, and equality before the law. However, the Moroccan regime has attempted to achieve equality before the law at the expense of both the consent of the governed and individual rights. Individual rights include freedom of religion, which I argue the state prevents by imposing its vision of 'correct' religious practice, a vision formulated by the regime, on its people. While I champion the increases in women's rights under the 2004 Moudawana, I propose that the emerging Islamic feminist movement in Morocco has the potential to lead to additional reforms in Moroccan family law, grounded in the feminist hermeneutics of qualified individuals who are independent of the state. The feminist hermeneutics practiced by Islamic feminists would provide religious justification for closing loopholes in the provisions of the current family code and instituting further reforms to increase women's legal rights. In the final section of this study, I will present the findings of my research on Islamic feminism and analyze the strengths and limitations of this movement.

Part VI: Islamic Feminism as the Way Forward

Despite the fact that the Moroccan state has attempted to "co-opt the language of Islamic feminism," as Dr. Eddouada described it, Islamic feminists have begun to form an independent, transnational movement (S. Eddouada, personal communication, April 30, 2020). Islamic feminism is a movement of female theologians attempting to re-read the Sacred Texts through a feminist lens. These women believe that while the Qur'an remains the sacred and divine word of G-d, Islamic jurisprudence or fiqh is a human production and thus subject to change (Rddad

2018). Female theologians attempt to determine how the Qur'an itself dictates gender relations, rather than how scholars have historically interpreted it. Through *ijtihad* these women attempt to place religious scholarship in the sociopolitical and historical context in which it was created. In our interview, Manal Dao-Sabah articulated that "certain religious texts are taken out of their context and out of their history" and that Islamic feminists use "linguistic tools to create feminist hermeneutics." Manal Dao-Sabah explained that these linguistic tools allow Islamic feminists to identify unclear passages of the Qur'an from which two readings can be drawn and then they can ask "why do you focus on the patriarchal reading of this instead of the egalitarian one?" Islamic feminists argue that contemporary Muslim societies use *shari'a* as "a sacred justification for any discrimination or inequality." These women propose that, contrary to Western interpretations, Islam does not create gender discrimination but rather that powerful males within Muslim societies manipulate Islam to support patriarchy. Islamic feminists propose that male theologians have created a hermeneutical tradition that ignores *maqasid al-shari'a*, which champions social justice and equality. In his paper concerning Islamic feminists whom he names as "Muslima theologians," Professor Rddad articulates that Western colonialism led to the rise of increasingly conservative Islamic legal scholarship as the Muslim world rallied around sacred institutions as a form of anti-colonial resistance. Therefore, in the aftermath of the colonial era, the concept of feminism and gender equality came to be associated with the imposition of Western values. Professor Rddad explains that this oppositional framework suggests that the only options for gender relations are the Islamic conservatism and Western secular feminism. Islamic feminists simultaneously reject Western secular feminism and combat patriarchy based on conservative, traditional interpretations of Islam. Commonly referred to as "third way feminism," Islamic feminists attempt to carve out a form of female empowerment grounded in the sacred texts of

Islam. Islamic feminism differs from Western conceptions of feminism because, rather than separating gender relations from religion, Islamic feminism redefines gender relations through religion itself. In our interview, Professor Rddad explained that, in Islam, gender relations are triangular as the “relationship between man and woman is negotiated through the Sacred Text.” Professor Rddad proposes that these women are “not trying to deconstruct Islam but rather to radically reconstruct the tradition from within.”

Building upon the foundational work of Fatima Mernissi, contemporary female theologians including Asma Barlas, Asma Lamrabet, and amina wadud⁹ employ a variety of hermeneutical tools to reinterpret the sacred texts of Islam. Fatima Mernissi, Asma Barlas, and amina wadud challenge patriarchal norms through feminist readings of the Qur’an. In her book *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur’an*, Asma Barlas articulates that “the conservatism of Muslim tradition, method, and memory” results from “a specific configuration of political and sexual power that privileged the state over civil society, men over women, conservatism over egalitarianism, and some religious texts and methodologies over others.” Barlas asserts that the Qur’an promotes equality but “since the Qur’an was revealed into an existing patriarchy and has been interpreted by adherents of patriarchies ever since, Muslim women have a stake in challenging its patriarchal exegesis” (AB book). Meanwhile, Asma Lamrabet, the foremost figure in the Moroccan Islamic feminist movement, rereads both the Qur’an and hadith, with a particular focus on al-Bukhari’s *Sahih* (Rddad 2018). Lamrabet advocates for a number of reforms to the *Moudawana*, including in the sphere of inheritance law. In particular, Lamrabet deconstructs the Qur’anic concept of “*qiwama*” based on both textual

⁹ Dr. wadud informed me over email correspondence that she does not capitalize the letters in her name

interpretations and the socio-economic realities of modern Moroccan society in order to advocate for a more egalitarian conception of marriage under the law. She also maintains that female coverings should not be obligatory and that states' imposition of the hijab violates the Qur'anic principle of "no compulsion in religion."

In order to gain more insight into the figures within the Islamic feminist movement, I interviewed amina wadud, one of the founders of Islamic feminism, about her methods of hermeneutical interpretation and her motivations for producing such work. When I asked her how she came to pursue this path she expressed that she had felt a "firsthand experience of the Qur'an as a guiding light and the disconnect between that experience and what [she] began to witness in terms of the lived realities of Muslim women" (a. wadud, personal communication, May 11 2020). When she moved to Malaysia, Dr. wadud encountered other Muslim women who expressed similar feelings of disconnect between a religious identity that they loved and their treatment within this identity group. Dr. wadud explained that through her encounter with these women she came to realize that the disconnect resulted from "an intervention between the sacred trajectory of the Qur'an and the establishment of that trajectory in history, communities, and the law." Dr. wadud came to realize that the patriarchal elements of Islam had been constructed through human rather than divine production of the law and sought identify the core messages of Islam through textual analysis. She informed me that methodology is critical for her work because "if we're all reading the same texts why are we not all coming to the conclusion?" Dr. wadud grounds her ijihad in textual analysis. "I stuck with strict textual analysis because there was so much evidence to support the location of a distinction" between the divine law and the human interpretation of it. Dr. wadud also emphasizes the role that lived experience plays in hermeneutics. She explained that "when you have only men that are participating in it, that

means that men's ways of experiencing intimacy with the law are taken into consideration but women are only going to be taken into consideration as much as the men want to bring them in." Through this emphasis on "exegesis on the basis of lived realities," Dr. wadud highlights the significance of the fact that Muslim women have entered the historically male-dominated field of hermeneutics. Therefore, Islamic feminism produces a new form of Islamic scholarship not only because its members attempt to reread the texts with a feminist lens but also because these women's experiences and lived realities will be translated into their readings.

Dr. wadud added that her work also includes "unpacking the unnecessary opposition of binaries." She explained that when feminism and Islam are presented in juxtaposition, she works to "achieve the equality and reciprocity of those two as opposed to making them into a hegemonic binary or opposition." In response to this statement, I asked her about the argument that universal human rights are inherently incompatible with Islam because while Western societies value individual rights, Muslim societies value collective rights. She immediately stated that this argument, which she identified as Muslim exceptionalism, "is used as a blinder to ignore issues that apply to people individually." Dr. wadud argues that "the idea that the West has perfected individuality and Muslims have perfected community" is false and that "this becomes an excuse not to engage." Through this assertion, Dr. wadud combats one of the most widespread arguments against reforms aimed at increasing women's rights in the Muslim world. She articulates that, although Muslim societies may value the community more than some Western ones do, "even in Islam, we have a notion of what it means to be human." However, she articulates that "there has never been a universal definition of who gets to be human." She argued that just as "black lives are not given the same value in American society," "the notion of human was not fairly distributed to all humans" in the historical practice of Islam, which at times

incorporated persistent societal structures from pre-Islamic Arabia such as slavery and gender inequality. Therefore, she proposes that “today we need to revisit the sources of the construction of what it means to be human in Islam and then we can get to the word rights.” Through their readings of the sacred texts, Dr. wadud and other Islamic feminists demonstrate the fact that Islam does include women in its definition of humanity. Islamic feminists advocate for equality in the law based on this definition of humanity.

Although Dr. wadud work focuses primarily Indonesia and Malaysia, she is part of a transnational Islamic feminist organization known as Musawah, the Arabic word for equality. This organization defines its work as “a global movement for equality and justice in the Muslim family” (Musawah website) Several of the experts I spoke to throughout my interviews identified Musawah as the most organized structures within the Islamic feminist movement. Musawah’s website describes their mission “to build and share knowledge that supports equality and justice in the Muslim family using a holistic approach that combines Islamic principles and jurisprudence, international human rights standards, national laws and constitutional guarantees of equality and non-discrimination and the lived realities of women and men.” As Musawah’s work as well as that of Dr. wadud focuses on Muslim family law, I spoke to Dr. wadud about the Moroccan Family Code. She explained that the methodologies used to re-interpret these texts can be applied to the family codes of many Muslim-majority countries. She acknowledged that, although the specific regional context influences the possibilities for reform, Islamic feminists can draw upon the Islamic sources and methodologies used by their counterparts in one country and apply it to another. For example, she proposes that the ijthihad exercised by Tunisian scholars to justify the country’s absolute ban on polygamy could be applied to other countries’ family

laws as well. However, Dr. wadud concedes that such reforms must come from within Morocco itself.

Musawah provides a platform on which advocates for family law reform in Muslim-majority countries can exchange these methodologies of scriptural interpretation. I attended a webinar hosted by Musawah during Ramadan in which three Islamic feminists came together to describe their work and answer questions about the movement. The panelists included Asma Lamrabet, Omaima Abou-Bakr, and Mulki Al-Sharmani. Mulki Al-Sharmani, an author and expert on reform of Muslim family law in Egypt, articulated that Musawah's mission is to "deconstruct patriarchal interpretations and reconstructing interpretation based on an egalitarian vision from within, based on the text" (webinar). All three panelists explained how their work involves rereading both passages of the Qur'an commonly used to discriminate against women due to patriarchal interpretations and what they described as the "forgotten verses" of the Qur'an. They argue that the male hermeneutic tradition ignored more egalitarian passages of the Qur'an that could not be used to reinforce patriarchal norms. Omaima, a board member of the International Advisory Group of Musawah, explained that "patriarchal assumptions of the ages governed the interpretations, governed the discourse, and was allowed to take over." She asserts that Islam must move "beyond the historical cultural construction of these verses where some verses have been ignored." Asma Lamrabet explained that "knowledge is power everywhere, especially in religion" and that "men for centuries had this sacred power, which is also political power." She explained that the "patriarchal system used this power," drawn from knowledge of the sacred texts, to oppress women.

I will now assess the strengths and limitations of this movement's ability to marshal reforms to the Moroccan Family Code in the future. My interviews with members of and experts

on the Islamic feminist movement revealed the ways in which transnational Islamic feminism can provide a religious basis for reforms to the Moudawana that would increase women's rights. Dr. wadud explained how the ijihad employed in the formation of Tunisia's polygamy ban could be applied to close the loopholes in the Moudawana that allow judges to approve nearly all polygamy cases. I propose that the practice and spread of feminist hermeneutics could allow the Moroccan government to reform the Moudawana to expand women's rights through Islam. However, through this research I also sought to determine whether or not Islamic feminism could address the economic dependency that forces women to surrender their rights under the existing legislation. I posed this question to Dr. Raja Rhouni, an expert in Moroccan Islamic feminism, whose scholarship focuses primarily on the work of Fatima Mernissi. Dr. Rhouni responded that she did not believe that feminist hermeneutics could address the issue of gendered economic inequality because this places the "burden of women's economic empowerment" on Islam, because Islam is not the source of women's financial dependency (R. Rhuoni, personal communication, May 2, 2020) . She articulated that "as long as the diagnosis [of the problem] is Islam then you assume that the solution should come from [Islam], when actually the problem is the entire economic system." The scholarship of other authors such as John Hursh supports Dr. Rhouni's assertion that women's financial dependency in Morocco does not stem solely from Islamic law. Hursh argues that the root cause of female oppression in Islamic states is the poverty caused by "globalization, structural adjustment programs and uneven modernization" (Hursh 2012). Ms. Chekrouni also identified unequal access to education between men and women as the primary barrier to Moroccan women's economic empowerment. However, other scholars and theologians I spoke with proposed that, although reforms to the Moudawana cannot entirely resolve issues of economic dependency, changes in inheritance and marital asset laws

could, at least partially, improve women's financial stability. Dr. wadud explained that Malaysian family law ascribes a monetary value to woman's contributions to maintaining the household. She proposes that a provision such as this one, grounded in Malaysian scholar's interpretation of Islamic law in this context, could be applied to laws concerning the division of marital assets in Morocco. Through this transnational strategy, the *ijtihad* exercised by Islamic feminists could address the problems posed by economic dependency as women would be less afraid to exercise their rights without fear of economic destitution. Professor Rddad also articulated the ways in which Asma Lamrabet seeks to address Moroccan inheritance laws through feminist hermeneutics. Lamrabet advocates that laws must take into account the temporal context in which they will be implemented. For example, Professor Rddad explained that, according to the Qur'an, if you catch a thief stealing from you, you can cut off one of their feet and one of their hands. However, during the second caliphate, in light of widespread poverty, the caliph did not enforce this law. In this example, the caliph, a companion of the Prophet, did not implement the law based on a literal interpretation of the Qur'an based on contextual realities. Similarly, Lamrabet argues that, when the Qur'an was revealed, men carried sole responsibility for a family's economy. Now, as a result of socio-economic transformations, both men and women participate in the job market. Therefore, Lamrabet advocates for the interpretation of Islamic law based on the economic realities of contemporary society. Ms. Chekrouni also asserted that because "women are acting and working exactly like men and providing for their families" inheritance laws can be changed to match this reality.

However, the experts I spoke with also outlined some of the challenges and limitations of the Islamic feminist movement. Dr. Eddouada articulated that, while Asma Lamrabet is popular within the Moroccan diaspora in Europe and Francophone Moroccans, she receives little

grassroots support. Professor Rddad also identified the Islamic feminist movement as elitist as a result of high illiteracy rates. Many Moroccans also view Lamrabet's work, particularly on inheritance laws as far too radical. Furthermore, Manal Dao-Sabah claimed that even within elite circles, the Islamic feminist movement lacks a well-established organization and a uniform message. In the webinar I attended, the panelists also explained that established conservative Islamic scholars can easily dismiss these women's work as a secular movement imported from the West rather than a serious hermeneutical practice. These accusations prevent average citizens from taking these women's scholarship seriously.

Conclusion

The 2004 Moudawana utilized ijihad based on maqasid al-shari'a to increase women's rights in Moroccan society. However, the regime instituted these reforms unilaterally and undemocratically and has largely failed to implement the majority of the reforms outlined in this new Family Code. The Islamic feminist movement combats both the neo-colonial imposition of secular Western feminism on Moroccan society and the patriarchy supported by conservative interpretations of Islamic law. Through Islamic feminism Moroccan Muslim women can establish their legal rights not in spite of but based on the values of Islam. I propose that this movement has the potential to provide a religious backing for further reforms to the Moudawana that would resolve barriers to implementation such as excessive judicial discretion and women's lack of economic independence.

Limitations of the Study

I acknowledge that my positionality as a Western woman trained in secular, liberal frameworks may have influenced the direction of my research. I acknowledge that my personal beliefs

concerning individual rights might be at odds with the beliefs and desires of more traditional Moroccans, particularly those of traditional Moroccan women.

Recommendations for Further Study

I believe that research on this topic could be strengthened through a more in-depth analysis of how judges are applying the Moudawana throughout the country on a case-by-case basis. I would investigate the legal justification judges provide for their rulings, particularly in underage marriage and polygamy cases as well as cases involving the division of marital assets. I believe that such research would both demonstrate the sources of inconsistencies in interpretations (resulting from region, training received, etc.).

References

- Catalano, Serida Lucrezia. "Islamists and the Regime." *Party Politics*, vol. 19, no. 3, 2011, pp. 408–431., doi:10.1177/1354068811407577.
- Cavatorta, Francesco, and Emanuela Dalmasso. "Liberal Outcomes through Undemocratic Means: the Reform of the Code De Statut Personnel in Morocco." *The Journal of Modern African Studies*, vol. 47, no. 4, 2009, pp. 487–506., doi:10.1017/s0022278x09990164.
- Eddouada, S. & Pepicelli, R. (2010). Maroc : vers un « féminisme islamique d'État ». *Critique internationale*, no 46,(1), 87-100. doi:10.3917/cii.046.0087.
- Hursh, J. (n.d.). Advancing Women's Rights Through Islamic Law: The Example of Morocco. Retrieved from Berkeley Journal of Gender, Law & Justice database.
- "Literacy Rate, Adult Female (% of Females Ages 15 and above) - Morocco." *World Bank Data*, 2018, data.worldbank.org/indicator/SE.ADT.LITR.FE.ZS?locations=MA.
- Maddy-Weitzman, Bruce. "Women, Islam, and the Moroccan State: The Struggle over the Personal Status Law." *The Middle East Journal*, vol. 59, no. 3, 2005, pp. 393–410., doi:10.3751/59.3.13.
- Mashhour, A. (2005). Islamic Law and Gender Equality: Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt. *Human Rights Quarterly*, 27(2), 562-596. Retrieved April 23, 2020, from www.jstor.org/stable/20069797
- Ottaway, Marina, and Meredith Riley. "MOROCCO: From Top-down Reform to Democratic Transition?" *Carnegie Endowment for International Peace*, 2006. *JSTOR*, www.jstor.org/stable/resrep12921.

Pektas, S., & Leman, J. (2019). Prospects for Counter-Theology against Militant Jihadism. In *Militant Jihadism: Today and Tomorrow* (pp. 187-216). Leuven (Belgium): Leuven University Press. doi:10.2307/j.ctvq2vzmt.14

"Ratification Status for Morocco." *UN Treaty Body Database*, United Nations Office of the High Commissioner,
tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117&Lang=EN.

Rddad, Sadik. "Moroccan Feminists: between Activism and 'Muslima' Theology." *Culture & Society*, vol. 9, no. 1, 2018, pp. 11–30., doi:10.7220/2335-8777.9.1.1.

United States Department of State, *2015 Country Reports on Human Rights Practices - Morocco*, 13 April 2016, available at: <https://www.refworld.org/docid/57161232109.html> [accessed 15 May 2020]

"Women in the Qur'an: 'Reappropriating' Muslim Women's..." *Women in the Qur'an: 'Reappropriating' Muslim Women's Destinies* by Ilham Essalih, 2019, www.asma-lamrabet.com/articles/women-in-the-qur-an-reappropriating-muslim-women-s-destinies/.

Yavuz, Miyase. "Allah(God),Al-Watan(the Nation),Al-Malik(the King), and the Role Ofijtihādin the Family Law Reforms of Morocco." *The Journal of the Middle East and Africa*, vol. 7, no. 2, 2016, pp. 207–227., doi:10.1080/21520844.2016.1193687.

Zoglin, K. (2009). Morocco's Family Code: Improving Equality for Women. *Human Rights*