Reflections on a Reform:
Inside the Moroccan Family Code

Rachel Salia
Senior Thesis
Department of History
Martha Howell (Advisor)
Victoria de Grazia (Second Reader)
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# TABLE OF CONTENTS

Acknowledgements.............................................................................3
Glossary.............................................................................................4
Introduction........................................................................................6
Chapter 1..........................................................................................17
Chapter 2..........................................................................................38
Chapter 3..........................................................................................51
   Part 1: “On Feminists”.................................................................52
   Part II: “On Islamists”..............................................................69
Conclusion..........................................................................................80
Works Cited.......................................................................................85
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Glossary

Fiqh
Literally “Islamic Jurisprudence.” It centers on correct observance of rituals, morals, and legislation within Islam. This is the process of interpreting the Qur’an, Hadith, precedent and using *ijtihad* to apply Shari’a concepts to specific cases. There are four main schools of *fiqh* within Sunni Islam, called the *madh’hab*, among which are the Hanafi (centered in Turkey and the Levant), Shafi’i (centered in the gulf and Egypt), Hanbali (centered in Saudi Arabia) and Maliki (centered in North Africa). Morocco is a country that follows Maliki *fiqh*. Those who are knowledgeable about historical *fiqh* are known as *fuqahā*.

Shari’a
The sacred Islamic law, set forth within the Qur’an and Sunnah. Not punitive nor a set of given codes: instead, these texts provide the basis for a moral path that Muslims should follow. Often confused for *fiqh*, which is the actual interpretation of these sources and the application of Shari’a in legal situations.

Qur’an
The religious text of Islam. It is the actual word of God, revealed through the Prophet Muhammad.

Hadith
Collections of actions and sayings attributed to the Prophet Muhammed. These are narratives about the Prophet passed on through word of mouth and recorded, then verified according to the chain of narration (*isnad*). Depending on the *isnad*, the *hadith* is either considered to be sound or weak.

Sunnah
 Recorded collection of the sayings (*hadith*) and living habits of the Prophet Muhammad.

Ijtihad
Technical term which refers to making a legal decision by independent interpretation of legal sources, the Qur’an and the Sunnah. Recent reforms have called for an increase in *mujtahids*, who are those independent citizens who reject the authority of the ‘*ulama* and interpret the texts for themselves.

‘*Ulama*
The plural Arabic term of Muslim legal scholar, trained in one form of *fiqh*. Usually considered to represent the consensus (*ijma*) of the Ummah. Traditionally those who practice *ijtihad*.

*Ummah*
Community of Muslims

*Amir al-Mu'minin*
Literally “Commander of the Faithful” is the title of the King of Morocco.

*Bey’a*
Contract of allegiance, both religious and political between Moroccans and the Sultan.
Introduction

“How can we hope to achieve progress and prosperity while women, who constitute half of society, see that their interests are ignored, regardless of those rights that our holy religion has given them…even though they…[can] compete with men… in science or employment [?]”

-King Mohammed VI of Morocco, the day of his ascension to the throne

The date is 1999, and the new King Mohammed VI has ascended to Morocco’s throne. In addition to taking on the illustrious title of King of the modern state of Morocco, he also takes on the title of “Commander of the Faithful,” a historical title that connects the legitimacy of his role to the religious actions that he undertakes. His first speech focuses on his project as the new King, which consists of the continuation of a dynasty while bringing Morocco into accordance with international human rights law. He questions how Morocco can move forward without equal rights for women and therefore for all people. Regarded as the “King of the Poor,” he focuses on how he can improve the conditions of Moroccans throughout the country through the integration of

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1 « Comment espérer atteindre le progrès et la prospérité alors que les femmes, qui constituent la moitié de la société, voient leurs intérêts bafoués, sans tenir compte des droits par lesquels notre sainte religion les a mises sur un pied d’égalité avec les hommes, des droits qui correspondent à leur noble mission, leur rendant justice contre toute iniquité ou violence dont elles pourraient être victimes, alors même qu’elles ont atteint un niveau qui leur permet de rivaliser avec les hommes, que ce soit dans le domaine de la science ou de l’emploi? » King Mohammed VI “Discours du 46ème Anniversaire de la Révolution du Roi et du Peuple,” 20 August 1999.
women into Moroccan society.² The combination of tradition and modernization is encapsulated within the Mudawwana, or the Moroccan family code.

On the surface, the Mudawwana is a simple legal document of 132 pages consisting of 7 sections which detail the law applicable to Muslim Moroccans³ pertaining to family and to personal status; that is, marriage, divorce, nationality, custody and inheritance. Although it is but one part of Morocco’s body of laws, it has long been held up as the ignominious proof of Morocco’s lack of opportunity for women.⁴ Not only do its critics use this document to criticize Morocco’s status as a modern state, but this document has also traditionally precluded Morocco’s adherence to international human rights conventions.

Codified in 1957 by the first independent King of Morocco, Mohammed V, the Mudawwana functioned as a “declaration of independence”⁵ from the French colonizer’s values and morals. Determined by the elite ‘ulama,⁶ the Mudawwana was created as a continuation of traditional Maliki fiqh.⁷ This codification was the result of a post-colonial

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³ Jewish Moroccans have their own family code called the Hebraic Moroccan Family Law.
⁵ Nadia Guessous, in conversation, January 19.
⁶ Islamic legal scholars who are the historical arbiters of Shari’a. See Glossary, page 4.
⁷ Fiqh literally means “Islamic Jurisprudence.” It centers on correct observance of rituals, morals, and legislation within Islam. Morocco is a country that follows the Maliki school. Hence, historically Morocco is a country whose laws followed Maliki fiqh.
scholarly investigation taking place in many Muslim countries about the nature of *fiqh* and *Shari’a* and the ways in which *Shari’a* should be codified, if indeed it was possible.

Historically, *Shari’a* is more of a way of life than “Islamic Law” in the sense of punitive western legal codes. *Shari’a* “represented a complex set of social, economic, moral and cultural relations that permeated the epistemic structures of the social and political orders.”8 In short, *Shari’a* is the spiritual path for how to live one’s life correctly as a Muslim. On the other hand, the actual practical application of this message is encapsulated in *fiqh*. *Fiqh* roughly refers to Islamic Jurisprudence, which is how most people (incorrectly) translate *Shari’a*. *Fiqh* is the result of a series of steps of analysis and interpretation of foundational sources and contextual details that determines the correct way to apply the spirit of *Shari’a* in specific situations. In addition to juridical reasoning and analysis of the Qur’an and the Sunnah9 (*ijtihad*), *fiqh* is derived from consensus (*ijma*) and reasoning by analysis (*qiyas*).10 There are four main schools of Sunni *fiqh*, including the Maliki School practiced in Morocco. Although many scholars11 argue that the “gates of *ijtihad*” were closed in the 10th century, this was challenged by the post-colonial debate about *Shari’a*. In Morocco, the ‘*ulama* (Muslim scholars)

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9 Recorded collection of the sayings (hadith) and living habits of the Prophet Muhammad.
concluded the codifying *fiqh* was possible, and this was expressed in the creation of the 1957 *Mudawwana*.

The term “*Mudawwana,*” literally meaning “register” or “written document,” refers to the title of “one of the most authoritative compendia [of opinions]…of the [Maliki] school [of *fiqh].” This compendium of opinions actually has nothing to do with the family, but instead harkens back in time to suggest that this Code is in fact the natural heir to the entire Maliki *fiqh* tradition. This is the only Moroccan law code to be “based systematically on Islamic law.” The full name of the *Mudawwana* is “al-*Mudawwana* al-ahwal al-Shakhsiyya,” literally a translation from the French “statut personnel,” or “Code of Personal Status.” With the codification of the *Mudawwana* came the beginning of a protest by female members of Morocco, beginning in 1957 and continuing up to the present.

As one of the few Muslim countries to both sign and attempt to ratify CEDAW (the Convention on the Elimination of all forms of Discrimination against Women), Morocco inhabits a unique position in the Muslim world.  

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13 This Convention was adopted by the UN General Assembly in 1979 for the 1980 Copenhagen World Conference on the United Nations Decade for Women: Equality, Development and Peace. It is an effort to “codify comprehensively international legal standards for women.” Countries are allowed to sign CEDAW and submit reservations to specific articles “provided that these reservations are not incompatible with the object and purpose of the Convention.” CEDAW lists official “impermissible reservations” which include reservations to Articles 2 and 16. These Articles are the most “core” provisions of CEDAW so a reservation to Article 2 or 16 is a reservation to the entire Convention. CEDAW argues that neither “traditional, religious or cultural practice” justifies a reservation to these Articles. The Committee offers option of removing these reservations, however to this day “few
under Hassan II in June 1993, but never published it in al-Jarida ar-Rasmiyya, which is
the official law magazine in the country. In addition, Morocco retained a series of
reservations to the Convention, unable to fully ratify it. Each of these reservations has
its base in the Mudawwana and its tenets concerning the equality of men and women in
legislation governing marriage, divorce, nationality and custody.

All Muslim countries save for Afghanistan and Yemen have formally expressed
reservations to CEDAW, all sharing the “impermissible” reservation to Article 16.
Article 16 of CEDAW stipulates that States Parties must take all appropriate measures
to eliminate discrimination against women in all matters relating to marriage and
family relations, including providing both men and women the “same right to freely
choose a spouse and to enter into marriage, the sharing of rights and responsibilities
during the marriage and its dissolution, and with regards to guardianship of
children.” Morocco retained a reservation to this Article and to Articles 2, 9(2), 15(4)
and 29(1). Each of these reservations has its base in the Mudawwana and its tenets
concerning the equality of men and women in marriage, divorce, nationality and
custody. In short, the pre-2004 Mudawwana created a so-called “authentic” Moroccan
family identity that precluded any full engagement in the international (secular) human

reservations to Article 2 have been withdrawn or modified by any State party...and reservations to
Article 16 are rarely withdrawn.” (CEDAW’s website,
14 Buskens, 109

15 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 18 December
1979, Article 16
16 Buskens, 109
rights community because it upheld the patriarchal nature of the text. Despite its many reservations to the document, beginning in the very end of the 20th century, Morocco began to undertake comprehensive reforms to try to remedy these reservations.

In a bid to attract international appreciation of Morocco’s move towards a so-called “modernity”, Mohammed VI focused on “creating an image of openness and renewal in political life” and claimed his intentions to institute a reform of the Mudawwana in accordance with international human rights and Islamic values. On April 27, 2001 the King established the “Consultative Commission Entrusted with the Reform of the Mudawwana,” consisting of sixteen members, 13 of whom were ’ulama and three of whom were female professionals. This Commission was entrusted with the creation of a new document which adequately reflected the duality of the King’s mission and fixed the “political shortcomings” of Hassan II’s reform. However, at the same time it was tasked with looking at and incorporating almost 50 years of discussion surrounding the Mudawwana.

With the establishment of the Royal Commission came a renewed debate held in both governmental and non-governmental circles. Though the majority of traditionalist

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17 Buskens, 94
18 There were no women who were specialists on Islamic texts or who were part of feminist movements. Instead, these women were all highly educated and successful in their respective professional fields. One was a sociologist (Rahma Bourquia), a judge (Zhor el-Horr) and a doctor (Nouzha Guessous). The ’ulama were mostly traditionalists, with two reformers who wanted to change the Mudawwana. Please see Buskens, 113 for more information.
governmental parties and religious elites (the ‘ulama) rejected reform, non-
governmental organizations (so-called Islamist and feminist groups alike) united in
calling for a change. Because of the high level of illiteracy among women (60% are
illiterate) and the linguistic diversity of the country, this discussion took place largely in
major metropolitan areas, usually limited to Rabat (the capital) and Casablanca (the
largest city) which are geographically and politically very close and in a constant
discussion. I will be looking at non-governmental organizations that fall into two
groups: Islamist and feminist.

The words “Islamist” and “feminist” are both weighted terms in Morocco. In this
thesis I am choosing to use the word “Islamist” only when groups specifically define
themselves as such. The word feminist will incorporate groups who use the word
“feminist” and “feminine,” as long as their main concern is the state of women and not
Islam. Most groups use these words interchangeably, so any references to “women’s
groups” refer to feminist groups. The term “Islamic feminist” is particularly
problematic, because all members of Moroccan society who identify as feminist would
reject the descriptive term “Islamic.” When using the descriptive term “Islamic
feminist” I refer specifically to Margot Badran’s definition of an Islamic feminist as one
who “dismantles the alleged opposition between feminism and Islam” and “unsettle a
common claim that feminism is Western.”20 I will also not be using the word “secular”

to describe any group, because each group “was born out of nationalism and Islam” due to their place in Moroccan history. By American standards no group would be considered secular. As author Sami Zubaida said, “many secularist writers have tried to exclude Islam and Islamism from definitions of civil society.” My goal is not to do so.

Many of the recommendations made by Islamist groups were opposed by the feminist groups and vice versa, even though all non-governmental groups were alike in calling for reform. The discussion held between feminist groups and Islamist groups culminated in two competing marches held on Sunday, March 12 2000 in honor of International Women’s Day.

After the 2003 bombings of Morocco’s largest city Dar al-Baida (Casablanca), the reform became a symbolic necessity for the King. In May of 2003, five suicide bombers attacked three separate areas of Casablanca, killing Moroccans and alerting the government to the fact that for the first time, “imported” radical Islam was within Morocco’s borders. This was the first terrorist attack by Moroccans on Moroccans and the King reacted strongly. He used this attack to place Morocco squarely within the

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21 Baker, 11
23 Buskens, 103
24 The following page is heavily influenced by a research paper prepared in 2010 for MDES G4253 with Professor Hallaq.
25 In Buskens “Recent Debates,” he explains that Moroccans consider radical Islam to be a form of Islam imported from Saudi Arabia. He explains that “their ideas are foreign” to Moroccans. Feminists and liberals in Morocco accuse Islamists of following Saudi Wahhabism instead of Moroccan Maliki Islam. (Buskens, 103)
fight between “democracy” and “terror,” creating a Moroccan version of the PATRIOT Act and signing a Free Trade Agreement with Washington. Part of the King’s project in the post-2003 Morocco was to prove his “anti-Islamist moderation” and to convince the west that Morocco was modern. Though the Moroccan Islamist groups were not responsible for these bombings, the King disenfranchised and suppressed them regardless of culpability and moved to quickly reform the Mudawwana. The Royal Commission heard testimony from members of all feminist groups, but none from Islamists. Some scholars, including Zakia Salime, have argued that without the Casablanca bombings, the Royal Commission would have remained symbolic and the reform process would have taken much longer.

In 2004 the King published the reformed version of the Mudawwana. He ushered in this reform with great pomp and circumstance, claiming that the reformed document represented a consensus within Moroccan society. In fact, the Commission itself had not come to an agreement and had been unable to generate a document. Instead it created two lists of suggestions: one list (produced by the traditionalists and ‘ulama) suggested no change, and one (produced by the five reformers on the Commission) incorporated hearings from non-governmental feminist organizations. The King produced a


\[27\] For more information see Gray, xvii

reformed *Mudawwana* on his own and presented it to the Commission and the Moroccan people at the same time. Though the King and his Prime Minister both signed the reformed *Mudawwana* document as the authors, several feminist groups have since claimed authorship of this document although it is entirely unclear how much influence they had on the final document issued by the King. In addition, the Islamist group *al-‘Adl wa-l-Ihsan* has claimed to be the first to call for reform and thus insists on its responsibility for the reform effort and product.

This thesis will examine the discussion surrounding the *Mudawwana* between non-governmental organizations from 1992 to 2004, focusing on two feminist organizations (*Association Democratique des Femmes du Maroc*\textsuperscript{29} and *Union de l’Action Feminine*\textsuperscript{30}) and one Islamist organization (*al-Adl wa-l-Ihsan*\textsuperscript{31}). These groups were the largest proponents of reform, and all called for different forms the *Mudawwana* should take. In addition to looking at speeches and publicity campaigns, I will focus on these organizations’ websites and internet resources. Modern historiography on the *Mudawwana* tends to focus on the political ramifications of the reform itself, but largely ignores websites and social networking utilities. Because sites like Facebook function as the personal letter of our time, the ways in which actors disseminate information on these sites is of paramount importance. These sites are the way in which they are

\textsuperscript{29}“Democratic Organization of Moroccan Women”
\textsuperscript{30}“Union of Feminine/feminist Action”
\textsuperscript{31}“Justice and Spirituality”
engaging those not within their immediate surroundings, and promoting what they feel is their main message. I argue that each of these three organizations have all claimed to be actively and intellectually behind the reformed *Mudawwana* even while it does not adequately reflect any of their demands.

These facts lend themselves to a series of questions this thesis will investigate. It will explore the nature of authorship in the *Mudawwana* and will examine the claims of authorship made by multiple groups. How does the King’s imposition of the international human rights frame on this document appropriate, alter or affect the way the *Mudawwana* is used by these groups? For the King, the reformed *Mudawwana* is the culmination of more than 50 years of discussion about women’s rights in Morocco. For these groups, the reformed document does not adequately reflect any of their original claims and instead appropriates 50 years of their discussion about women’s rights in Morocco for the King’s use. Though the document itself does not achieve the changes the Commission, feminists, Islamists or even the King claimed it should, paradoxically each group has claimed to at least partial authorship in the years following the reform. This thesis will question this paradox and determine what might motivate these groups to claim authorship of the new *Mudawwana*. What can the *Mudawwana* as a live text tell us about Moroccan history?
Chapter 1

“Moroccan people…[are] imbued with the spirit of the holy war led by Mohammed V, rejecting unanimously what the colonizers had tried to impose, and opting …[for] the return of their King who embodied all the religious values and ideals of the nation…. We will remain faithful to the … Bey’a…which draws its substance from the Holy Book [Qur’an] and the tradition of the Prophet, and is intimately linked with the Moroccan Constitution which stipulates that the King is al-Amir al-Mu’minin [Commander of the Faithful], and is the supreme representative of the nation, the symbol of its unity, the guarantor of the permanence and of the continuity of the state…of religion, of patriotism … [and defends] the rights and liberties of citizens whose person is sacred and inviolable.” 32

-King Mohammed VI

“Calling into question the Mudawwana meant calling into question the sacred nature of a political system that establishes its legitimacy on a particular reading of Islam…”33

-Nadia Yassine, Islamist and leader of al-Adl wa-l-Ihsan

32 Sincère et loyal, le peuple marocain a été, tout au long de cette période, imbui de l’esprit du combat sacré mené par Mohammed V, rejetant unanimement ce que le colonisateur a tenté de lui imposer, et optant avec fermeté pour la poursuite de son combat et de ses sacrifices, jusqu’au retour de son Roi qui incarnait toutes les valeurs religieuses et les idéaux de la nation. .. Nous demeurerons fidèle à la voie hassanienne, attaché à la Baiea qui nous engage et qui t’engage, Baiea qui s’inscrit en droite ligne de celles qui l’ont précédée durant plus de douze siècles, qui puise sa substance dans le livre saint et la tradition du prophète, et qui est intimement liée à la constitution marocaine qui stipule que le Roi, Amir Al Mouminine, est le représentant suprême de la nation, le symbole de son unité, le garant de la pérennité et de la continuité de l’état, de la sauvegarde de la religion, de la patrie et de l’unité du royaume à l’intérieur de ses frontières authentiques, celui qui veille au respect de la constitution, qui assure la défense des droits et libertés des citoyens et dont la personne est sacrée et inviolable. “Discours du 46ème Anniversaire de la Révolution du Roi et du Peuple,” Mohammed VI. 20 August 1999. http://www.map.co.ma/mapfr/discours/revoluti.html (Translation and bold text added by author).
Modern day Moroccan society is defined in part by its colonial experience, its subsequent independence, and its efforts to move toward becoming a modern state. The state of contemporary Moroccan history is best described as a constant effort to negotiate, balance and merge its history with its colonial past, all the while aiming to create a new frame of reference for the modern era.

King Mohammed VI’s first major speech claimed that as long as women, half of Moroccan society, were not afforded their full legal rights, Morocco could not join the modern world. In addition to providing the legitimacy for his status as Amir al-Mu’minin (Leader of the Faithful), the Mudawwana also represented the biggest barrier to this goal. While Morocco signed CEDAW in 1993, it did so with so many reservations that it “nullifi[ed] the convention’s objectives and purposes.” Thus the King’s goal in reforming the Mudawwana was not only to provide a new type of (still religious) family code for a new (still religious) Morocco, but also to conform to certain conventions that met international standards of human rights.

The Moroccan constitution defines the Kingdom of Morocco as a Muslim state whose official language is Arabic. Its government consists of a democratic constitutional

34 “Discours du 46ème Anniversaire de la Révolution du Roi et du Peuple,” Mohammed VI.
36 مغربية المملكة. Literally
monarchy, where the King serves as *Amir al-Mu’minin* (Commander of the Faithful).37 While the state may officially speak Arabic, an approximate 50% of Moroccans are illiterate and thus are conversant only in Moroccan dialect (Darija), which although connected to Classical Standard Arabic is not intelligible by speakers of Classical Standard. Furthermore, an approximate 30% of Moroccans speak different dialects of Amazigh, or Berber, and may or may not be conversant in Darija. French functions as an unofficial third language, necessary in higher levels of education and in work. The relationship between France and Morocco is complicated because part of the first independent King’s project was to distinguish Morocco as a country culturally, politically and religiously distinct from its former colonizers. The *Mudawwana* has historically been the code that both defines the King’s role as Commander of the Faithful and separates Moroccan culture from French influence. It is also the code which prohibits Morocco from fully ratifying CEDAW.

Historically, the Sultan of Morocco derived legitimacy from his status as a descendent of the Prophet Mohammed through his daughter, Fatima az-Zahra. This religiously significant bloodline gave him the blood-related title *Sharif* and the legitimacy to claim the political title of *Amir al-Mu’minin* or “Leader of the Faithful.” The Sultan’s dynasty is known as the ‘Alaouite Dynasty. Prior to colonialism the Sultan ruled by a religious contract called the *Bey’a*, which symbolized the semi-autonomous

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37 Constitution du Maroc, 1996 : Preamble, Articles 1, 6 and 19.
38 King Mohammed V
Moroccan tribes’ acceptance of his religious authority. Morocco is historically a state governed by Maliki fiqh, though some Amazigh (also known as Berber) tribes practiced their own customary law, but even this so-called customary law derived itself from Maliki tradition. The acknowledgement of the religious supremacy of the Sultan definitively constructed Morocco as a country unified, at least in theory, by its religious connection to the Alaouite dynasty. Geographically, Morocco has occupied the same territory since the beginning of the sixteenth century.

The French colonial effort began in 1912 and lasted until 1956. In the 1912 Treaty of Fez, Resident General Louis Lyautey guaranteed that Morocco’s religious and political institutions could exist side by side with the French protectorate system, and he specifically stipulated that the king would retain his religious authority. In an effort to remove the religious connection between Arabs and Amazigh, in 1930 the French issued the Dahir Berbère, which was a proclamation that stipulated that Berbers would go to special Berber/French schools, not be permitted to learn the Arabic of the Qur’an, and would be governed by the hazy concept of ‘tribal law,’ instead of Maliki fiqh.

Because of the religious importance of Islam (and therefore Arabic) in Morocco, the public reacted strongly and negatively to this proclamation. In addition to angering the religiously minded among Moroccans, it also partially removed the religious significance of the King’s rule for much of the Amazigh population. Not coincidentally,

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39 Baker, 15
this *Dahir* also coincided with the beginnings of pan-Arabism, and marks the beginning of Moroccan nationalism on a large scale.\(^4\) As a reaction, the French changed the Sultan’s official title to King, in order to both remove his religious authority and to make the country more modern. After pushing through several more policies aimed at removing the religious connection between different groups and the King (including his brief expulsion from the country from 1953-1955), the Moroccan nationalist movement gained ground, leading to the eventual independent in 1956.

The end of colonization acted as the impetus for discussions about *Shari’a* across the Muslim world. Countries were left with the infrastructure for a modern state, and the task of figuring out how to make it both Muslim and modern. Because the modern state calls for a centralized government with a legal code, states were forced to create new methodologies for the codification of *Shari’a*.

Though the *Mudawwana* is referred to as *Shari’a*, it is in reality part of historical Maliki *fiqh*. After colonialism, Morocco, like its other majority Muslim counterparts, had to decide how to represent itself as both a modern state and as a discrete entity, comparable to but not the same as its French colonial counterpart. While Morocco’s history did mean that it followed the Maliki School within *Shari’a*, no version of *Shari’a* had ever been codified. Moroccans drew from and interacted with the postcolonial

debate history of Muslim scholars and political thinkers about codification and the nature of Shari’a in the modern state.

In the post-colonial intellectual and political discussion about modern Muslim states, words like Shari’a and fiqh are often used interchangeably. Despite efforts on both the grassroots and governmental levels towards establishing a definition of Shari’a that spans the Muslim world, the very concept of Shari’a varies so widely that even the most general discussion must first distinguish between countries, and types of Shari’a. The standard now is to refer to any fiqh tradition as Shari’a unless the text is directed solely at academics. The texts dealing with codification of Shari’a presuppose that the translation of either term will be “Islamic law” regardless, and so they instead focus on the political necessity of creating a legally applicable definition. The conflation of fiqh and Shari’a is a contradiction within the discussion about codification, because what people refer to as Shari’a can refer to either Shari’a as a spiritual message or to fiqh as a legal set of guidelines.

Some scholars, like Abdullahi An-Na’im, argue that in order to have true Shari’a one must have a secular state so that each individual can act according to Shari’a’s provisions according to one’s own conscience. True Shari’a dictates that one must make a moral decision to follow Shari’a which is removed when the government enforces

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41 See the Cordoba Initiative’s Shariah Index Project as one example (http://www.cordobainitiative.org/2007/10/shariah-index-project/).
42 Pages 21-30 are heavily influenced by research papers prepared in 2010 for MDES G4253 with Professor Hallaq, and in 2009 for Gender, Islam and Society with Professor Eddouada
laws. He claims that the state was “never Islamic” in the sense that there was no formal Islamic code of law on the model of modern western legal codes and argues that true “Shari’a principles by their nature and function defy any possibility of enforcement by the state.” His argument is echoed by scholar Rashid Rida, who opines that “Shari’a cannot be codified as state law.” Prominent legal historian Wael Hallaq agrees. He argues that the Shari’a has a “moral force” which codification would destroy, though he disagrees with an-Na’im that there can even be a modern Shari’a. The traditional Shari’a “took for granted... the presence of the moral force” within its subjects. This moral subject was part of a community (Ummah) and a larger religious system, both of which functioned as the “authority” behind the law. With codification, the “moral subject” is removed from the system because all members of society are subject to the law. Without its community of moral self-regulators, the spirit of Shari’a is removed.

Despite the lack of consensus about the nature of Shari’a and its codification many countries did indeed codify a form of Shari’a, some in all realms of government (post-Islamic Revolution Iran, for example) and some in simply one sphere (like

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44 An-Na’im, 2
46 Hallaq, Wael B. Shari’a and the Fashioning the Moral Subject: An Essay on the Technologies of the Self, 5
47 Hallaq, Moral Subject, 5
48 Hallaq, Moral Subject, 7
Morocco’s Mudawwana. To do this, each country relied on their own ‘ulama (religious scholars trained in analysis of historical fiqh) to determine what was truly Shari’a and should be codified.

In 1957, alongside the creation of the Moroccan Constitution, King Mohammed V conversed with his ‘ulama and used his religious status to codify the Mudawwana based on historical Maliki fiqh, making it the one religiously inspired legal code in Morocco. The religious nature of this code functions as the proof of the King’s continued status as Amir al-Mu’minin and thus requires that it remain religiously influenced lest he lose the title. Because of its religious significance and connection to the King’s legitimacy as the religious leader of Morocco, the Mudawwana was treated as a sacred and immutable document by the government from 1957 until the 1990s, thus officially supporting the sharp distinction in gender roles and the limitation of women’s freedom to marry or divorce of her own free will that were written into the Mudawwana.

For feminist scholar Amna Arshad, this document in essence “froze a woman’s role in Moroccan society to a time before imperialism, modernization, and development.”

50 Arshad, 135
draws on in fact is “absent from authentic Islamic law.”

Beginning in the late 1950s, groups of women connected with the nationalist movement began to call for reform on their own.

These calls for the reform of the Mudawwana were not answered by the government nor were they supported by any established political group. The liberal Nationalist Party’s leader (and ‘alim) ‘Allal al-Fasi was one of the authors of the original Mudawwana, and as a result not even this party (which armed women during independence) supported calls for reform. Some scholars have argued that after its codification “there was no public comment on [the Mudawwana]” by nationalist women, which is not true. What is true, however, is that these comments were unheeded by the government until several decades later.

The late 1980s and 1990s also saw the rise of both political Islam and so-called Islamic feminism. Most scholars and activists who adhere to the latter decry the political Islamist movement, ignoring the fact that their own strategies in many ways were spawned by its rise. At first an indigenous Muslim feminism was difficult to achieve, since feminism was presented as an imposed colonial project. Political Islamists advocated for a “return to Shari’a” by a rereading of the sacred texts and abandonment of traditional fiqh, in hopes that they could evaluate all aspects of private and public life

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51 Arshad, 141 quoting Buskens, 92
52 Baker, 32
53 This category is not used by Islamic feminists themselves, but instead is a category imposed by Margot Badran. See page 25.
based on the Qur’an and other sacred scriptures.”  

Just as there are several different feminist groups and methods, so there are different Islamist groups and methods. Islamist movements are usually “characterized by moral conservatism, literalism, and an attempt to implement Islamic values in all aspects of life.” Though Islamists emphasize a return to the past, they are not traditionalists as the term is understood in Morocco. In Morocco, traditionalists are those who adhere very closely to the “tradition” implemented after colonialism which is to say they support the King’s role wholeheartedly and deny the need to reform. This group is made up of government part members and ‘ulama, largely because calling a manifestation of their religious opinions into question also calls into question their monopoly on religious authority.

Islamic feminists adopted Islamist strategies to support their ideals about Islam and feminism. Scholar Margot Badran coined the title “Islamic feminist,” defining the Islamic feminist as one who “dismantles the alleged opposition between feminism and Islam” and “unsettle a common claim that feminism is Western.” These so-called Islamic feminists “destroy” binaries like “religious and secular.” Within this group of scholars and thinkers, the strategy of returning to the texts is one of many “multiple critiques” which allow Muslim women to “reconcile their faith and identify with a

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54 Gray, xvi-xvii
55 Gray, xvi-xvii
56 Badran, Margot. Feminists, Islam, and Nation.
struggle for gender equality.” Women in Morocco were active participants in this new field of study, which in turn has influenced feminist organizations who try to gain popular support for women’s rights by using religiously based arguments.

According to Badran, Fatima Mernissi is the first “Muslim feminist” in Morocco who began the tradition of looking back at the texts to prove that Islam and feminism were compatible. Mernissi’s book “The Veil and the Male Elite: A Feminist Interpretation of Women’s Rights in Islam” was originally published in French in 1987 and translated into English in 1991. This text advocates for a feminist rereading and analysis of the Qur’an and the Sunnah. It was banned in Morocco, though it was still highly circulated in academic and activist circles. Because it was published only in French and translated only into English, it was available only to those in cities with a high level of education (like the participants in the feminist movement to begin with).

Members of this group include scholar Amna Arshad, Iranian Ziba Mir-Hosseini and Azizah al-Hibri, the American Amina Wadud and others. Arshad claims that because true Shari’a is separate from fiqh, when codified it must not be “static and immutable” but open to “reflect current times.” Mir-Hosseini asserts that since Shari’a “is sacred, universal, and eternal” while fiqh is “human and... subject to change,” then any fiqh is therefore “human and fallible” due to its reliance on “juristic speculation and

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60 See the Glossary.
61 Arshad, 151
extrapolation.” Each reform and rereading brings them closer to understanding and adhering to Shari’a’s eternal message.

Azizah al-Hibri argues that *ijtihad* gives Shari’a a “degree of flexibility” that allows it to be “suitable for all times, all people, and all societies,” as well as (one would assume) all governmental systems. These scholars, like Amina Wadud, explain that the Qur’an is “very much concerned with social justice in the sense that its message is intended to right the wrongs of this world,” and as such it cannot be interpreted as supporting inequality.”

According to Mernissi and the aforementioned Islamic feminist scholars, Islamists (not Islamic feminists) stick too strictly to the understanding of Islam as an “absolute and legalistic Islam” based on traditional *fiqh*. These feminist scholars ignore the facts that it is generally traditionalists who want to continue to adhere to traditional *fiqh* and that it is Islamists who want comprehensive reform via a return to the texts and a renewed adherence to so-called true Shari’a. While feminists and Islamists may differ politically, the feminist criticism of Islamists in Morocco specifically often rings false or semi-true. Along with many other scholars, Islamic feminists conflate Islamists and

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62 Mir-Hosseini, 632-63
64 Gray, 40
65 Mir-Hosseini, 632-63
traditionalists to make a political point or to support negative stereotypes about
Islamists and the kind of Islam that they support.

For Islamic feminists, the Islam that has contributed to worldwide reform is their
own “pluralistic and tolerant Islam” that makes room for reality and “gender
equality.” This Islam needs to combat the Islam stuck in traditional, patriarchal fiqh.
Codified fiqh texts like the Moroccan Mudawwana are generally “patriarchal in both
spirit and form,” they argue, and they further claim that they are part of a ruse used to
“silence and frustrate Muslims’ search for legal justice and equality, which are intrinsic
to this-worldly justice.” La Ligue Democratique pour les Droits de la Femme, a close
friend to ADFM, published a press release in 2000, saying that Islam has, since its
inception, been “a religion of justice and equality.” The Mudawwana and its injustice, it
argued, “date[s] from a period of decadence in Islamic scholarship [and is] closely
linked to customary law. Equality is not a foreign idea; indeed, it was put forward by
Islam long before it became fashionable in the West.” This was echoed by other actors,
including prominent scholars Abdou Filali-Ansari and Mohamed Talbi, who agreed

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66 Mir-Hosseini, 643
67 Mir-Hosseini, 633
68 “Democratic League for Women’s Rights”
69 Buskens, 102
70 See, for example Abdou Filali-Ansari, Par souci de clarté : A propos des sociétés musulmanes contemporaines. Casablanca : Edition Le Fennec (2001) or “Islam et pouvoir séculier,” Confluence Méditerranée, no. 32 (199-2000), cited in Buskens, where he defends “the proposed reform…in which he stands against a literal interpretation of any text, and believes that contemporary scholars must understand the message of Islam against injustice, and therefore “oppose gender inequality.” (Buskens, 102)
71 See Plaidoyer pour un Islam moderne, éd. Desclée de Brouwer, Paris, 1998, where he claims that family law reform is doing justice to Islam’s message.
that the Mudawwana was an act of interpretation of Maliki sources, but that it longer fit
the current circumstances and could not be practiced without creating great injustice.

These scholars and feminist organizations argue that all individuals within Islam
must have the right to practice *ijtihad*, or juridical reasoning. ‘Ulama, according to
Arshad, have been given the flexibility to practice *ijtihad* but have “violated” the Islamic
principle of “avoidance of harm.” Based on the “disproportionately negative effect on
women” that the *Mudawwana* had, all must return to the “beginning” in order to “avoid
interpreting laws in a manner that would lead to unjust results.” 72 These unjust results,
for Arshad, are encapsulated in the *Mudawwana*. Thus the feminist organizations and
human rights groups painted themselves as the true heirs to both Islam and Moroccan
history and culture, because “true Islam means equality, human rights, and *ijtihad*.73

According to Fatima Sadiqi and Mona Ennaji, the Moroccan feminist movement
is focused on “demystifying the ‘sacredness’ of Shari’a” in order to implement human
rights on the ground.74 They advocated a re-reading of the classical texts – a “flexible”
rereading of the texts.75 In this way, “rereading sacred texts and reinterpreting them
from a feminist point of view . . . open[ed] new venues to Moroccan feminist scholars”
in that it is a “means of addressing patriarchy.” They stressed that “no group possesses the exclusive right to interpret the sacred texts... *ijtihad* is a right possessed by every believer.” Instead of stressing secularist reform, these groups like ADFM, UAF and others petitioned for *ijtihad* based on universal values – freedom of speech, human rights, civil societies – that are complemented by the Qur’ān’s emphasis on equality within society. They “deni[ed] the scholars’ claims to the exclusive right to... interpret Islam” and called for added participation of women in society.

In the 1980s the calls for reform intensified alongside the development of Islamism and Islamic feminism. Groups focused on increasing rights for women began to form as former members of socialist movements began to tire of the lack of support from their colleagues. These groups, among which were two of the largest feminist organizations, *Union de l’Action Feminine* (UAF) and *Association Democratique des Femmes du Maroc* (ADFM). These groups were influenced by socialist ideals and the emerging field of Islamic feminism in Morocco. These organizations both began to call for reform separately, and as their cries for reform increased, so did the effect these cries had on the government.

In 1992 King Mohammed V’s son Hassan II took up the call to reform in order to strengthen his own position in the country, not necessarily to gain any kind of

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77 Buskens, 92
78 Ibid.
international support. His very authoritarian years are known as the “Years of Lead,” and in response to several coup attempts and several suppressed anti-government Islamist groups, he reinvented and redefined his title of Amir al-Mu’minin. As Amir al-Mu’minin he asserted that “he alone had the final say in all questions concerning Islam” and that the ‘ulama must adhere to his wishes. He decided to reform the Mudawwana in 1992. His so-called reform demonstrated a certain level of openness about reform, or at least the possibility thereof.

Rather, it was both retaliatory and extremely limited, functioning principally as a vehicle for expanding his own power. At this time, he gave a speech explaining that the Mudawwana’s status was of particular significance due to the importance of family in Moroccan society. He extended this metaphor into a discussion about how all members of Moroccan society were his children and he was the father. As in the Mudawwana, the father was in a hierarchical relationship with his family: on top. This placed the King squarely in the role of arbiter, mediator, and Amir al-Mu’minin. According to Buskens, “family law” helped the king to “legitimize his rule in Islamic terms,” and so secularization was not and will never be an option.

Although Hassan II set the ideological stage for reform, he was unable to effect change because traditionalists, personified in political groups and the traditionalist ‘ulama, resisted. He was obliged to convene a group of ‘ulama to comment on his

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79 Buskens, 83  
80 Buskens, 83
proposed reforms and even his minister of Islamic Affairs, Abdelkebir Alaoui M’Daghri, referred to Hassan II’s proposal for reform as being firmly “against Islamic law.” He and the group of ‘ulama decided that “only ‘ulama are entitled to interpret Islamic law. The decision of the traditionalist ‘ulama overrode the intentions of Hassan II, and the reform had to conform to their decision to resist any kind of comprehensive reform. As a compromise, Hassan II actually ended up removing some rights for women, including the right to retain custody of children after remarrying.

Though the 1992 reform of the Mudawwana was in fact a stunted, ineffective and almost ignored happening, it did have the effect of subtly changing the discussion surrounding reform in general. A member of UAF remarked that UAF was “not dissatisfied” in 1992, and argued that reform “succeed in breaking the taboo and the sacredness” of the Mudawwana.81 Likewise, Moroccan feminist scholar/activist Fatima Sadiqi agreed that the 1992 non-reform made people realize that the Mudawwana was “just a text” and therefore could be reformed again.82

The renewed debate about the Mudawwana took off with the ascension of Mohammed VI to the throne in 1999. During this debate, the King established the “Consultative Commission Entrusted with the Reform of the Mudawwana” in 2001.

81 Zvan, 65
82 Ibid.
Three of its sixteen members were female, and the rest were ‘ulama. The King’s instructions were to reform the Mudawwana based on Maliki fiqh, but meanwhile exercise ijtihad in order to create a document that both is consistent with the previous Mudawwana and protects human rights. His plan considered “the tolerant aims of Islam, which advocates human dignity, equality and harmonious relations,” as well as “the cohesiveness of the Malikite rite and on ijtihad, thanks to which Islam is a suitable religion for all times and places.

At the same time that women’s rights groups began to increase their call for a new reform under the new King Mohammed VI, a new reform faction entered the debate: the Islamist movement al-‘Adl wa-l-Ihsan. Though feminist groups in Morocco often equated this group with traditionalists as being anti-reform, this group in fact did call for reform by returning to a “true” Shari’a in all aspects of society. This placed the Islamists directly in conversation with the feminist groups and directly in competition for both societal and governmental support. Their debate culminated in the form of two competing protest marches on March 12, 2000.

ADFM and its allies (including Ligue Democratique) had originally planned to hold the Rabat March for Women as part of an International Women’s Day celebration to gain international attention for the feminist call for reform. This was supported by

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83 For more information, please see page 10 of the Introduction, footnote 18. Also see Buskens, 113 and conversation with Nouzha Guessous.

84 Buskens, 98. Buskens claims that this group is “anti-reform,” while the co-president actually says that they are pro-reform. This discontinuity is standard in writing that commiserates with the feminist point of view, without looking at nuance within the Islamist side.
scholars and activists throughout the country. As a countermove the Islamist groups also planned to have a counter-protest in Casablanca on the same day. Some have questioned why the government gave al-‘Adl wa-l-Ihsan permission to march since it is all but illegal and is not a political party. It may be that though al-‘Adl wa-l-Ihsan is technically banned, the government was not at this time interested in strictly enforcing this ban. In Casablanca, the Islamist parties transported supporters in buses from all over the country. They were also more organized than those marching in a large mass in Rabat – the men were led by the secretary general of al-Adl wa-l-Ihsan (Farthallah Arslan) and the women were led by Nadia Yassine. They all walked in straight lines, didn’t speak and carried banners with phrases from the hadith (sayings and actions of the Prophet), and statements such as “yes to the integration of women in development. No to westernization and submission.”

After the march, al-Adl wa-l-Ihsan tried to become a publically active participant in the debate about the Mudawwana. It tried to join a public literacy project run by Mohammed VI as a sign of good faith, but was prohibited from doing so. It was also not allowed to put on holiday camps for citizens. In protest, al-Adl wa-l-Ihsan went to the beach and performed prayers in front of beachgoers, trying to prevent people from going into the water and sunbathing. This was also prohibited, and the group went

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85 Zvan, 81
86 Zvan 81-82, Buskens 104
87 Buskens 105: “نعم لإندماج المرأة في التنمية. لا للتغريب والتباعية”
back underground. This suppression was in part due to the group’s history of conflict with the monarchy and in part to backlash as a result of the 2003 Casablanca bombings.88 This attack “paved the way for…reform” by placing Morocco squarely within the war on terror “American project” in the Middle East.89 Thus, despite all of these protests and discussions, the bombings were arguably the deciding factor in making the reform imminent and in fact critical. This attack “provided the feminists with tremendous opportunities for negotiating…as representatives of the forces of ‘modernity’ and democracy.”90 As a result, the feminists were placed as a defense against “Islamist radicalism” against which the most efficient way to fight is through the empowerment of women.

Because Mohammed VI now needed to definitively prove that Morocco was a moderate country he decided to reform the Mudawwana immediately. Though the Commission failed to come to a consensus and instead presented a list of recommendations, he produced a reformed document in 6 months. There is no publicly available data saying how the Mudawwana was reformed once the Commission let go of it. The document that the government released on February 3, 2004 instead imposed its international human rights frame onto the entire Mudawwana discussion. The government placed the new Mudawwana in the role of mediator, claiming that it was the

88 al-‘Adl w-l-Ihsan’s history of conflict with the monarchy is covered in Chapter 3, Part 2, pages 69-71.
90 Salime, “The War on Terrorism,” 20
result of a coordinated effort of the government and the Moroccan people, agreed to without dissent. As a result, the reform presents itself as a legal document and as a statement of the government’s presentation of the Moroccan family. But who actually contributed to this document, and whose opinion does it reflect?
Chapter 2

“The reforms…constitute achievements for all Moroccans, and we took care to ensure that they…adopt the tolerant principles of Islam in advocating human dignity…which makes Islam valid for any time and place.”

-Preamble to the reformed Mudawwana, 2004

The reformed Mudawwana claims to speak for all Moroccans and to embody the wishes of all Morocco’s citizens, men and women alike. Its 132 pages contain one preamble and seven specific sections containing provisions about marriage, divorce, polygamy and inheritance.91 The King and his Prime Minister signed the preamble, making it the definitive statement of his intent in both the reform and endorsement. Though he signed it, much of the document is written in a third person narrative which blesses the King, so either he is using a royal third person or there is an unnamed author who incorporates the King’s opinions into the preamble.

The preamble presents the Mudawwana without specifying any details, trying to preclude a close reading of specific points within the document itself. Though goal of the project is ostensibly “doing justice to women” with adherence to “Islam’s tolerant ends” to the extent that it adheres to the spirit of the modern era, it still must “preserve men’s dignity.” The reform incorporated “general principles” of both Islam and human

91 Currently there is an effort to reform inheritance laws in Morocco which is not yet concluded.
rights, based on broad concepts like “shared responsibility, equality, equity,” and “amicable social relations.” Each of these is inherent within Islam as well as a “substantial major component of the democratization process.” The preamble notes that it has cited “the most important” reforms for the reader’s convenience. It partially reproduces several provisions to show how they adhere to both international human rights standards and Islamic standards. The preamble does this without acknowledging how little these provisions have actually changed. 92

The preamble claims the following essential changes of particular import to the reader interested in Morocco’s adherence to international human rights law. Point 3 in the preamble provides that men and women must now both be eighteen years old to marry. This is true: Article 19 specifies that men and women “acquire the capacity to marry when they are of sound mind and have completed eighteen full Gregorian years of age,” thus seemingly revising the 1957 Mudawwana’s claim that women could marry as young as 15. However, Article 20 responds to Article 19 by stipulating that any “Family Affairs Judge” may authorize a marriage under this legal age of marriage “after having heard the parents of the minor who has not yet reached the age of capacity or his/her legal tutor.”

Like Point 3, Point 7 covers the issue of marriage without acknowledging the exceptions that undermine Article 19. Point 7 explains that a woman who has come of

92 All following quotations from the Preamble to the Mudawwana. It is not paginated.
age has the right to marry “of her own free will” without a tutor or with a tutor of her own choosing. However, at 15 any child may still be married under a tutor based on a “social inquiry.” That is to say that if a parent and judge agree a young girl must be married to an older man, it is still legally permissible. Article 19 affirms that the age of marriage is 18 across the board, while Article 20 provides a mechanism of exception for a young girl to be married off by an older family member.

Point 4 explains that polygamy is now “quasi impossible” and quotes a Qur’anic verse supporting this decision. However, Article 40 clearly stipulates the polygamy is forbidden only “when there is the risk of inequity between the wives,” or if this was a stipulation in the wife’s marriage contract. This risk of inequity is determined by the judge.

Point 6 simply asserts that women now have the right to pursue their own divorce, but glosses over the nuance of this provision. In the 1957 Mudawwana the act of divorce by repudiation¹ (talaq) was defined as a “unilateral act of the husband in the presence of two just (Muslim) witnesses.” In this text Article 44 further stipulated that divorce by the woman is not authorized, and that “a woman may file for divorce only in extremely limited cases and only before a court.” Articles 53-58 of the 1957 text
stipulated that the only way a woman could gain divorce was mutual repudiation and then only as long as the wife paid her husband compensation (khol).  

The reformed Mudawwana does not change the paths to divorce but instead gives the judges more power to decide when a divorce is valid. Article 84 clarifies that unilateral repudiation still a valid path to divorce and gives men most of the power to exercise this right. Although a man can always repudiate his wife, the only way a woman can repudiate her husband is if he has assigned his right of repudiation to her (Article 89). The reformed Mudawwana also preserves the iddat (legal waiting period) which requires the wife to remain in the conjugal home until her divorce is finalized. During this period, the husband may take the wife back at will. Articles 90-93 clearly affirm that multiple vows and symbols of repudiation are not legally binding and have no weight in court: instead, judges must approve the repudiation.

Though at times the preamble is written in third person, it opens with a statement from King Mohammed VI, claiming “I cannot, as Commander of the Faithful, permit what God has forbidden and forbid what God has permitted.” The opening of the preamble describes the reform of the Mudawwana as the culmination of a “civilizational” achievement, drawing on the kind of language frame that ADFM, UAF

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94 This is a revocable divorce which can be practiced three times, after which time the divorced woman is irrevocably divorced unless she remarries and divorces her new husband. At this point, she may remarry her first husband. (Articles 124-127). The main change in this document is that women must now receive custody of the children and receive child support in all cases of divorce (Articles 91-92).
and their colleagues use. It affirms the King is “Chief Commander of the Faithful,” who has made “the promotion of human rights a priority which lies at the very heart of the modernist democratic social project of which [He] is a leader.”95 This brief description of the King is accompanied by a glorified description of his ascent to the throne, and his project to continue the “work of the late King Hassan II.” Because the “the family constitutes the essential nucleus of society,” the Mudawwana is necessarily the most salient document in this modernist democratic and social project. This focus on the family apparently reflects the “legitimate expectations of the Moroccan people,” and is a result of the “shared will that unites the entire nation with its leader” on the path towards “civilizational enlightenment.”96

Mohammed VI’s goal upon becoming King was to place Morocco squarely within the international community as a modern state, and the preamble’s words showcase the “historical transition...this family code represents.” In this way the preamble presents the new Mudawwana as a legal text that is “constitutive of the modern democratic society...the perfect combination modernity and tradition.”97

Member of the Royal Commission Dr. Nouzha Guessous supports this claim, saying that the goal of the Commission was to follow a historical goal in the making

95 صلب المشروع المجتمع الديمقراطي الحداثي, Preamble to the Mudawwana.
96 Literally “strengthen/reinforce the civilizational radiance/beams of the Kingdom.” تقوية الإشعاع الحضاري, Preamble to the Mudawwana.
97 All quotations from the Preamble to the Mudawwana.
since independence in order to bring society “to some changes.” Instead of acknowledging that in fact the same provisions still limit Morocco from ratifying CEDAW, the preamble claims that these provisions have been reformed. Upon delving into specific tenets it is clear that though the wording has changed, both the marriage and polygamy provisions preclude Morocco’s participation in any international women’s rights convention.

The provisions about age of marriage, divorce and polygamy are the very reason Morocco cannot ratify international conventions regarding women’s rights. Because the King’s focus on the Mudawwana as a symbol is due in large part to Morocco’s failure to fully ratify CEDAW, the King was proud to announce that Morocco would be withdrawing its reservations as soon as the reform was complete. In fact, however, Morocco’s reservations have remained the same, prior to and post the reform. Its current reservations are the same as those made when the King first signed CEDAW in 1993: reservations to Articles 2, 9(2), 15(4), 16 and 29(1).

Article 2 stipulates that states must “adopt appropriate legislative … measures … prohibiting all discrimination,” in order to “establish legal protection for the rights of women.” Morocco’s reservation to this Article is based on the Mudawwana, within which the rights of women “differ from the rights conferred on men” which must not be

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99 CEDAW, Article 2
“infringed upon,” given that the Mudawwana must adhere to “the Islamic Shariah” and must “preserve the balance between the spouses and the coherence of family life.” 100

Article 16 calls for the “equality of men and women, in respect of rights and responsibilities” in terms of marriage and dissolution thereof. Prior to the reform of the Mudawwana, Morocco had a particular issue with the “equality of men and women, in respect of rights and responsibilities” in terms of marriage and dissolution thereof, because “this kind of equality...is...incompatible with the Islamic Shariah...” The original Mudawwana held that “the right of the divorce to the woman is only granted by consent of a judge.” 101 After the reform of the Mudawwana, this reservation remains. Despite this contradiction, the Morrocan government has presented the reformed Mudawwana to the people of Morocco and of the world as a document ushering in radical change.

Not only did the King misrepresent the Mudawwana’s changed provisions, but he also presented the text to Moroccans and to the world in ways that disguise the limitation of the reform. The government sanctioned two official versions of the reformed Mudawwana, which are accessible by different sections of the population. The King’s website provides both the Arabic and the French versions online, while the Arabic version is printed and available within Morocco. But because the literacy rate for

Moroccans is estimated at about 52%, the Arabic version does not necessarily reach the Moroccan population. Street sellers put the published document out with other tourist-oriented books in Classical Standard Arabic in highly frequented tourist areas in Rabat, and because the document is expensive (23 Moroccan Dirhams, about $2.75), Western students of Arabic and researchers may in fact consult this document more than Moroccans. Given the low literacy rate of Moroccans and the fact that many Moroccans do not speak Classical Standard, these copies may in fact be for sale as a show and not in the expectation that many Moroccans will read them.

The government sanctioned an official French translation a year after the reform of the Mudawwana. The French translation, entitled “Code de la famille: La Moudawana,” opens with the same legal title page as the Arabic version. However, while the Arabic version begins with the legal title, note by the Prime Minister, and the preamble by the King, the French translation has an additional two-page “preface” for the French-speaking reader, written by the Minister of Justice.

The French preface explains that there is a real need for a translation to reach international parties interested in the Mudawwana, though it stresses that it is not just “for” French people. It is also careful to explain that this is also a document of import for Moroccans living abroad who are interested in the Code. Though it doesn’t explicitly say this, it may also be for Moroccans who cannot read Arabic but can read

102 The French version was published in October of 2005.
French. There are no statistics revealing how many of these people there are, but they do exist, and this may be part of the reason the official French translation exists.

According to this preface from 2004, there are plans underway to translate the *Mudawwana* into Dutch, Spanish and English because of increased interest in the *Mudawwana* abroad. As of 2010, however, the government has published no more official translations, thus limiting the readership to speakers of French and Arabic.

The preface adopts the frame constructed by NGOs like ADFM and UAF during the debate leading up to the reform, specifying that the reform is part of a project aiming to adopt a new definition of family for a democratic and modern” Morocco, stipulating that this depends on equality between men and women. The preface claims that Morocco must still retain its “identité islamique” while reserving its character as an innovator. Continuing, it explains that Moroccans perceive the reform as a legislative and social revolution that results from Moroccan modernization efforts. It stresses that the general Moroccan public contributed to this reform but does not acknowledge the diversity of opinion among different groups, nor does it specify which groups contributed to the reform.

According to the French preface there are, “multiple meanings that reflect/testify to the importance” of the Code. These “meanings” can be found in the *Guide Practique du Code de la Famille*, which is available via the Moroccan government. The

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103 « une véritable révolution législative et sociale qui traduit une volonté et une détermination de la société marocaine pour la modernisation du pays… », Preface to the French *Mudawwana*
government places a link to this Guide right next to the French version of the Mudawwana on the main website for the Department of Justice. This is a guide to the Mudawwana for the French-speaking non-Moroccan. It is in effect a manifestation of the state’s effort to present itself to the world as a modern state that successfully melds traditional Islamic values with international human rights. Clearly catering to a Western audience, The Guide systematically explains excerpts from the Mudawwana and explains the meaning for every Islamic term, which most Moroccans would not need. As a result, while the Arabic version is the original, the French version of the text contains more official information.

Because the government did not sanction any other translations, a human rights organization named HREA (Human Rights Education Associates) published an unofficial English version. It is presented as a document which is of import to “researchers [and] NGOS… interested in family law and the rights of women in Morocco.”104 The purpose of HREA is to “organise specialized human rights training via distance… for human rights…and development workers.”105 The note attached to this unofficial English translation explains that a “team of English and Arabic speaking lawyers and a professional…translator” worked to translate the text literally, avoiding all “attempts to clarify, explain or interpret the intention of the legislator.”106 The

105 Ibid.
106 English translation of the Mudawwana.
English version of the text is accompanied by the full text of CEDAW, clearly showing that HREA’s adoption of the international human rights framework.

HREA’s note to the reader tells the reader to access the Guide to Equality in the Family in the Maghreb, which is part of a translation series by Women’s Learning Partnership for Rights, Development and Peace (WLP). The WLP is an “international non-profit…organization that is dedicated to women’s leadership and empowerment.” These translations showcase the state of women’s human rights and to empower women in “the developing…world.” The translations and articles specifically about Morocco were carried out in conjunction with ADFM and present Morocco as a country that is unique and forward thinking in its promotion of women’s rights. Though ADFM did not officially sponsor this unofficial English translation, theirs is among the few websites to list the link. Through subtle actions like these, ADFM attempts to paint the reform of the Mudawwana as a struggle for human rights and modernity, framed against groups like al-‘Adl w-l’Ihsan who want to bring a dark age of religious extremism to Morocco.

While both the English and French guides to the Mudawwana reprint only excerpts, both reprint the preamble to the original Arabic Mudawwana in full. The preamble is consistent in the Arabic, French and English versions and as the most reprinted part of the document it takes on an added significance.

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While drawing parallels to the original *Mudawwana* project, the preamble places this reform both in contrast and as complementary to the French legal system. It references the late Mohammed V, whose work changing the Code of Personal Status to the *Mudawwana* in 1957 “constituted the first step in establishing the rule of law and unification” of Moroccan society. However, this defining document is now being replaced by a document that presents itself as modern and draws upon concepts that are necessary for Morocco to join the modern international community.

The preamble glosses over the actual process of reform. The only mention of the actors within the reform process is where the preamble references the Royal Commission that interviewed Moroccans and incorporated these interviews into their reform. Nowhere in the text does the preamble explain the reform process, but instead presents the reform as a result of a consensus of the Moroccan people. In fact, however, the Commission was unable to come to a conclusion due to the serious ideological differences between the ‘*ulama* and those concerned with feminist issues. The process itself took years and incorporated testimony from all aspects of society, most notably women’s NGOs like ADFM and UAF. Islamist groups like *al-‘Adl w-l’Ihsan* were not allowed to give testimony. The only religious perspective given was from the members of the board who were traditionalists and did not want reform – the only reformist voices officially recorded were those working within the feminist NGO frame.
Although the preamble itself concedes that certain aspects of this “modernization effort” have resulted in few changes to specific problematic clauses, the language itself is a testament to its adoption of the NGO frame of reference. Though the language does support the seeming adherence to international human rights law (like the “quasi” impossibility of polygamy), it is also intentionally vague. The new Mudawwana gives judges a wide berth of interpretation and basically allows them to practice family law unchanged if they wish.

The main effect of the preamble on the reformed Mudawwana is to demonstrate that the founding philosophy of familial relations has been changed, and that instead of a hierarchical relationship the relationship is now one based on equality. Though a thorough reading of the entire document complicates this claim, the preamble acts to assuage the reader and to demonstrate that rewording makes a difference. Rewording older provisions may not change the practical application of laws but it does change the way these laws are discussed. By rewording provisions and claiming change, the reformed Mudawwana is used by feminist and Islamist groups alike as an example of radical change.
Chapter 3

“Like their liberal opponents, Islamists have adopted the idiom of human rights and civil society to defend their right to express their opinions in public.”

- Léon Buskens\textsuperscript{109}

“It is undeniable that Islamists were influenced by feminists during the reform of the Family Code.”

-Souad Eddouada\textsuperscript{110}

Although some historians place the Islamist and feminist groups on opposite ends of the ideological and functional spectrum, in reality they serve much of the same purpose. Historian Katja Zvan admits that “the role of women’s organizations in Morocco is to a certain extent similar to that of religious (Islamist) groups. They both work in the field of improving the social welfare of ordinary Moroccans because the state does not provide many of the social services it used to.\textsuperscript{111} The juxtaposition of these two types of engaged participants as “antagonistic blocs” \textsuperscript{112} is a highly simplified frame that does not reflect Morocco’s unique history and the nuance and diversity of each so-called bloc’s positions. While each group does on the surface adhere to an ideology that

\textsuperscript{109} Buskens, 120
\textsuperscript{111} Zvan, 48.
\textsuperscript{112} Ibid., 12.
places feminism against Islamism, a closer look at each group reveals both the uniqueness of each group’s position and seemingly contradictory similarities. According to Moroccan feminist and sociologist Zakia Salime, the 1990s saw the beginning of the “feminization of the Islamists [and the] Islamization of the feminists.”

I. On Feminists

Though the category of “feminist NGO” is seemingly straightforward, the two representative groups of this category promote largely divergent ideologies and argue for different types of reform. Former leftists members of the group Partie du Progrès et du Socialism (PPS) founded the feminist NGO Association Démocratique des Femmes du Maroc (ADFM) in 1985. Its website defines its mission as “protection and promotion of women’s human rights that are universally recognized.” By “defending and promoting” these rights, it hopes to open Moroccan society to increased democracy. Often ADFM is referred to as a “secular” feminist organization because it does not use the word “Islamic” to define its mission. Instead, it defines its organization as a “non-

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113 Salime, “The War on Terrorism,” 17
114 « L’ADFM s’assigne comme mission la protection et la promotion des droits humains des femmes tels qu’universellement reconnus. »
governmental, not for profit, autonomous and feminist organization.\textsuperscript{116} Though ADFM does not specifically say that it is a Muslim organization, by virtue of its location within Morocco’s history and present, it draws on Muslim conceptions of social and moral good, thus justifying my label “Islamic feminist.”\textsuperscript{117}

The goal of NGO Union de l’Action Feminine was, similarly, to fight for “the promotion of Moroccan women’s rights.” It aimed to “promote the situation of women in social and legal situations,” and to eradicate all forms of discrimination therein regarding. To do this, it would fight for literacy for women and access to positions of power. Several members of the leftist party Organisation de l’Action Démocratique et Populaire (OADP) left this party to join UAF.\textsuperscript{118} It lays claim to ADFM’s status as the first feminist NGO; its website proclaims that it was founded in 1983 as the “the first Moroccan NGO dedicated to women’s rights.”\textsuperscript{119}

These organizations have a history of cleaving to and separating from each other as they try to achieve reform. Though the inception of both groups was quite similar, after the publication of “The Veil and the Male Elite” by Moroccan sociologist and Islamic feminist Fatima Mernissi, UAF changed its methods. In the 1990s UAF began to argue for new readings of the foundational texts, thus adding a self-described “Muslim

\textsuperscript{116} http://www.adfm.ma/spip.php?article307&lang=fr
\textsuperscript{117} Many authors would disagree w this label. Katja Zvan argues that UAF’s Islamic arguments “instilled some fear” into NGOs like ADFM, not mentioning that ADFM also uses new readings of Muslim texts in its publications and arguments. (Zvan, 55)
\textsuperscript{118} Zvan, 49
\textsuperscript{119} http://www.uaf.ma
dimension.” UAF is a party for these so-called Muslim feminists in this sense, though some historians claim that it does, first and foremost, adhere to the “universal values of human rights.” These values are never specifically defined but this haziness helps scholars present UAF as part of the seemingly secular feminist NGO category.

ADFM and UAF’s historical rivalry is due to their similarity and competition for support rather than any inherent difference in opinion. Each seek claim to the title of first feminist NGO, and both seek the same constituency of local Moroccan support and international financial support. By neglecting to use the word “Islam” in most of its publications, ADFM has historically captured the international human rights groups and governments’ support. At the same time, UAF has separated from the international community and instead allied itself with the Moroccan government. UAF and ADFM are, in fact, divided in one respect: while ADFM gladly receives international funds, UAF declines any outside “sphere of influence” that comes through funding. UAF’s stance against these donations are a response to Islamist calls that financial backing from international institutions were tantamount to colonization of opinion.

The divide between UAF and ADFM began in the early 1990s at the inception of the renewed call for a reform to the Mudawwana. In 1991, members of a non-

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120 All in Zvan, 51
governmental group called Collectif 95 Maghreb Egalité\textsuperscript{122} in Morocco began to prepare for the United Nations Fourth World Conference on Women in Beijing, 1995. \textsuperscript{123} At Beijing, this group drafted a memorandum that later became the government’s Plan of Action for the Integration of Women in Development (Programme National pour l’intégration des Femmes dans le Développment), or PANIFD. Its goal was to strengthen “women’s status in the legal, political and public institutional spheres.” \textsuperscript{124} It also called for the publication of CEDAW in Morocco, as well as the removal of all reservations to the document.\textsuperscript{125} The first version of the PANIFD was created within the government by two ADFM members, and focused on the reform of the Mudawwana.\textsuperscript{126}

ADFM took an active role in this conference and so established a friendly rapport with international bodies early. UAF was not invited to join this collective, but instead simultaneously established “the One Million Signature Campaign,” a petitioning campaign with the same goal in mind. Both of these movements are considered by the respective groups as “the beginning... of the struggle... for the reform [of the Mudawwana].”\textsuperscript{127}

\textsuperscript{122} This is a transnational women’s rights group that spans the countries of the Maghreb: Tunisia, Algeria and Morocco.
\textsuperscript{123} Zvan, 50
\textsuperscript{124} As reported in Amy Freeman. “Re-locating Moroccan Women’s Identities in a Transnational World: the ‘woman’s question’ in question.” In Gender, Place and Culture: A Journal of Feminist Geography 11, No 1 (March 2004). p 27.
\textsuperscript{125} Buskens, 109
\textsuperscript{126} Salime, “Between Islam and Feminism,” 85
\textsuperscript{127} Zvan, 50
ADFM vehemently denies UAF’s influence in the struggle for reform, pointing to its efforts as part of Collectif 95 and Collectif printemps de l’égalité as symbolic of UAF’s isolation from the rest of the feminist community. Collectif printemps de l’égalité was a feminist collective which consisted of individuals and feminist groups who got together in order to support the Royal Commission in reforming the Mudawwana, and to influence their decisions with regards to women’s status in the country. On March 19, 1999, nine months after the establishment of the Royal Commission, Collectif printemps de l’égalité presented a proposal for the improvement of women’s position in Moroccan society that grew out of the memorandum adopted at Beijing.\textsuperscript{128}

The efforts of both ADFM and UAF focused on gaining financial and ideological support in order to effect real change within the government. Both constantly claim not only title to their specific status as feminist NGO, but as the sole influencing organization of real political change. Of course the facts point to one truth: both NGOs have been active in trying to push for change. But who actually made the change? Both lay claim to this as well.

ADFM’s website asserts that since its inception, the NGO has been committed to “finaliz[ing] the amendments proposed by the women’s movement on the Mudawwana [which] constitutes a major MECHANISM of discrimination against women in Morocco.” To this end, ADFM put together studies, surveys, mobilizations and memos

\textsuperscript{128} Buskens, 85
showing how much influence ADFM had on the outlook of the Moroccan people and the government. Its website has an entire section dedicated to the effort spent on working towards the *Mudawwana* reform, detailing every single pamphlet printed, amongst other things.\(^{129}\)

One publication it emphasizes as specifically contributing to the reform of the *Mudawwana* is the *Dalil pour l’égalité au Maghreb*, which is a curriculum guide that was published in conjunction with *Collectif 95 Maghreb Egalité*, which is a self-defined “Euro-Mediterranean Human Rights network.”\(^{130}\) This guide, developed in 2003 and translated into English in 2005, explains that one must achieve a new level of women’s rights in the Maghreb (the region including Morocco, Algeria and Tunisia) and explains the egalitarian vision this network has for the region. It is the product of a combined effort of several different lawyers and members of NGOs that span the Maghreb region. Developed just before the full reform of the *Mudawwana*, this piece was used to influence “concerned government departments, parliamentarians, the King’s advisors, members of the commission for reform, and others.”\(^{131}\)

The *Dalil* serves as a guide “primarily intended for activists and human rights advocates” and strives to develop arguments that can influence not only the local

\(^{129}\) The following quotations all come from this article, found here:
http://www.adfm.ma/spip.php?article332


\(^{131}\) *Dalil*, 1
governments in the region but also human rights workers across the world. According
to its introduction, tension in the society represents “ambivalence in the debate on
universal rights and cultural [religious] specificities.”

It opens with a question it dedicates half its pages to disproving: “Is family law in the Maghreb a sacred law,
doomed to remain unchanged?"

After explaining that “the idea of an immutable and sacred Islamic law is the
fruit of a doctrinal development, and a dominant version of history,” the document
goes on to explain that CEDAW is an effective meter of women’s rights, explaining its
status as a “vital instrument.” CEDAW is “comprehensive” and should be applied in
full when States ratify it. Collective 95 Maghreb Egalité is “pushing for the universal
values recognized” therein, claiming that the invocation of Islam as the State religion is
“artificial,” and that “human rights are indivisible by virtue of their universality.”

The Dalil relies on religious arguments to support the idea that human rights are
universal. The Guide is a criticism of the family law codes in all the Maghrebi countries
including the pre-2004 Moroccan Mudawwana. It brings up articles that preclude
Morocco’s 100% ratification of CEDAW that relate to polygamy, underage marriage,
divorce and inheritance. Each point has a section dedicated to sociological argument
and universal human rights arguments which are then placed together under the

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132 Dalil, 12
133 Dalil, 13
134 Dalil, 13
135 Dalil, 21
heading “doctrinal arguments” which draw on Islam to prove their point. For example, after decrying the Mudawwana’s statements that repudiation (talaq) is “is a unilateral act of the husband” and is “not authorized by the courts... a woman may file for divorce only in extremely limited cases and only before a court,” the text counters with quotes from the Qur’an in an attempt to prove that “the Qur’an has never limited a women’s ability to seek a divorce.”

Because this document was both prepared and translated by lawyers under the supervision of jurists, its legal arguments have many dimensions and also use creative strategies to prove its points. The Dalil mentions that the Moroccan Mudawwana defines marriageable age as 18 for men but 15 for women. However, it argues that in addition to this violating international human rights standards, it is also violating Maliki fiqh which demands that one must be 18 years of age prior to entering in a marriage. Although there is no clear quote within the Qur’an that supports this (the text only stipulates puberty as a requirement), the Dalil asserts that all have the right to return to the text and reinterpret statements because Islam is a feminist religion. A rereading of the Qur’an connects both the universal definition of minimum marriage age to the Islamic tenet of fairness. Because of this, all 111 pages of the Dalil rely on the Islamic

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136 Mudawwana 1993 Articles 44 and 53 respectively
137 Dalil, 92-94
138 Dalil, 34
feminist strategy of returning to the text to prove its points.\textsuperscript{139} As a result, the Dalil contributes to a takedown of historical Maliki fiqh as invalid, while relying on new religious methodology. While upholding universal human rights as the ultimate goal it uses Qur’anic verses to prove that universal human rights are valid.

Though ADFM is a Moroccan organization, the acknowledgements for the Dalil explain that this effort would not have been possible without help from many organizations that helped to fund the book, including the European Union. ADFM also lists its partners on the website, none of which is Moroccan. Its partner list, found here\textsuperscript{140} includes UNIFEM, UNICEF, WLP, UNESCO, the EU, several French NGOs and a few Spanish ones. Because ADFM courts funding from international organizations who are interested in achieving change in local communities, the group takes great efforts to present its effort as a local one to the casual (western) reader. None of this information about partners is available in Arabic, and in the Arabic version instead the website lists a series of religious books which do not exist in French.

It is difficult to separate ADFM’s opinions prior to and after the reform because it revamped its materials in 2008 and presents different opinions in different languages. Its Arabic website is questionably spare, consisting mostly of scanned photographs with little descriptions. There are no articles. This may be due to the difficult of typing

\textsuperscript{139} Dalil 38: Beijing Statement and Platform for Action, September 4-15, 1995 – Fourth International Conference on Women.
\textsuperscript{140} http://www.adfm.ma/spip.php?article353&lang=fr
Arabic, or because ADFM relies mostly on international support whose members do not speak Arabic. The French website focuses on convincing readers of the importance of ADFM’s actions in accomplishing the reform of the *Mudawwana* without specifying which provisions it actually contributed to changing. While ADFM contributed in large part to the previously mentioned *Dalil* which criticizes the King and the Royal Commission’s reform efforts, in recently written articles it claims that it has always supported both the King and the Royal Commission. Every article on the *Mudawwana* praise the government’s efforts and claim that ADFM was the main influencing factor in these efforts.

ADFM not only lays claim to influencing the reform of the *Mudawwana* but also recreates each step of its actions in reforming the code. Because each provision they take issue with in the *Dalil* remains the same, they do not mention their previous qualms with the 1957 *Mudawwana* and in fact do not place the *Dalil* among their publications. Instead, the website describes the March of March 12 200 as the “culmination” of the first stage of their “mobilization.” This march in Rabat, which was a product of the “Printemps de l’égalité” movement, was the perfect manifestation of ADFM’s progressive values. This is accompanied by a picture of said march, pictured below.
ADFM also undertook other efforts, all of which focused on gathering critical masses of women together. As part of a protest, ADFM walked with women in May 1, brandishing cooking utensils “as a tribute to all those working at home and whose work is not recognized.” ADFM also organized a sit-in in front of Parliament on March 8, 2002 in order to coordinate the distribution of leaflets on July 7 of the same year, including multiple other sit-ins. These are pictured here with minimal captions which claim that each small effort is part of a larger mobilization effort in Morocco.

ADFM’s most comprehensive article on the Mudawwana (and the only article appearing in all three languages) is entitled “Moudawana,” and details every single

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142 Ibid.
way in which ADFM was the main force in reform efforts. This article glosses over the fact that the reformed document does not correspond with their previous plans, including the PANIFD. Because this article was written after the Mudawwana reform, it connects pre-2004 efforts with a 2005 effort to create an information campaign to inform women about the new Mudawwana. In an effort to inform the population, ADFM clearly lays out each action it has taken. However, though the article is available in each language, this document itself is available only to the French-speaking reader. This document, named “les outils de la campagne,” explains that ADFM has taken specific efforts to appeal to non-French speakers, among which are: 4 television spots on the national channel in both Arabic and French, 6 radio spots in Arabic, 6 press releases in Arabic and French and a variety of surveys with no clear indication of who it surveyed or what kinds of places/languages it surveyed in. ADFM describes certain ad campaigns that did not run, but which are proposed to educate the population about the new Mudawwana.

This picture above refers to the new Article 25 of the *Mudawwana* which declares that a woman is able to conclude her own marriage. However, it ignores the fact that a judge may override this with a parent or guardian’s consent. Likewise, its other pictures, although they make correct statements about the new *Mudawwana* itself, ignore the exceptions to the rule. Only available in French, like the Preamble to the *Mudawwana*, the explanation of campaigns glosses over the increased leeway judges have to decide whether or not to impose changes. ADFM uses these documents as proof of its role as “a force of proposal and advocacy”¹⁴⁴ for women’s rights in Morocco.

While ADFM relies on its participation in organizations like Maghreb 95 and international collectives, UAF defers to the Moroccan government. In fact, though there is a UAF website, its current information is updated on tanmia.ma, which is the government’s development project website. It is not friendly to the Western press, and the online information about UAF is available only via the government.

UAF’s website is very spare, preferring instead to link to tanmia.ma’s campaigns. Its website documents various sessions held by the government, like an awareness session held on the 12th of January, 2009.¹⁴⁵ This session was held to “discuss the advantages and disadvantages of different types of divorce in the *Mudawwana,*” and

¹⁴⁴ “Une force de proposition et de plaidoyer.
¹⁴⁵ http://www.uaf.ma/fr/file3.php?id1=50&id2=3
was held to engage with “university professors, students, doctors, social workers, journalists and women’s associations.”

Unlike ADFM’s photos of radical action, UAF presents photos of calm meetings and decisive legislative action, representing itself as an active participant in government action rather than as an organization that is out in the streets holding and organizing protests. It is interesting to note that UAF’s website does not mention their co-sponsorship of the Rabat March in 2000.

UAF is careful to show its national partners in order to emphasize that it is not like ADFM with its large body of international supporters. Though UAF does have support from a host of international endowments and smaller European NGOs, the UN does not endorse UAF, nor do any other universal human rights organizations or EU organizations. Its national partners include the Ministries of Justice, National Education, Social Development and family. It is also supported by a host of Islamic organizations, and Arabic women leagues.

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146 Picture found at “Session de sensibilisation sur le nouveau code de la famille,” http://www.uaf.ma/fr/file3.php?id1=50&id2=3
Instead of focusing on its protest actions, UAF instead emphasizes its instrumental role in establishing Tanmia, which is an internet project for organizations to make social change. By using the internet as a resource, these organizations can effect change more quickly and effectively. 147 The financial partners of Tanmia are all western organizations, including the economic section of the American Embassy and an English program named Development Gateway. UAF supports the program because it is still under the auspices of the Moroccan government.

A main part of Tanmia’s website is the campaign known as *Connais tes Droits*148, which is geared towards reaching Moroccan women and telling them about the new *Mudawwana*. This section presents a series of videos entitled “Divorce, Marriage and Custody” respectively. Each of these videos is in French, Arabic and Amazight, and each has two parts. The first video represents an artificial family situation and instructs Moroccan woman about their rights. In each movie a French advisor appears and explains that with the new *Mudawwana* everything is changed. The second part of the videos is called “speakerine” because a speaker comes on and explains exactly why this is true. However, if the person accessing these videos wants specific information this person must speak French because almost all written information in this section is only available in this language. In addition, only a projected 33% of the population has

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147 [http://www.tanmia.ma/article.php3?id_article=181](http://www.tanmia.ma/article.php3?id_article=181)
148 “Know Your Rights”
access to the internet and 60% of women are illiterate.\textsuperscript{149} Though this project is geared towards accessing all members of Moroccan society, the only people accessing the videos will be those who speak French and have access to the internet, not the women in the countryside who are pictured in the videos.\textsuperscript{150}

Not ADFM, UAF nor even the government has undertaken cohesive projects that actually reach the population at large. The government has shown one movie that has probably reached the general population. The government’s film/radio station 2M reaches 80% of the population with its multiple language broadcasts, and shows movies each night which are seen by a majority of Moroccans. This station broadcast 2009 Zakia Tahiri film “Number One” when it came out as an effort to reach Moroccans about the Mudawwana, though the view it gave of the reform was not serious or necessarily for Moroccan viewers.

First and foremost, « Number One » is not a translation of the Arabic, but instead the name in Arabic is simply a transliteration of this, which speaks to its clear targeted audience (namely, English-speakers). The synopsis of the film describes Aziz, who runs a clothing factory and terrorizes his wife and daughter. One day his wife sees that he can be gentlemanly while he is trying to impress a foreign client, so she casts a spell “so

\textsuperscript{149} \url{http://www.internetworldstats.com/africa.htm#ma}

\textsuperscript{150} \textit{Connais Tes Droits!” Tanmia Maghrib, accessed September 2009. \url{http://connaistesdroits.tanmia.ma/}}
that this moment of happiness will never end’ and ‘Aziz becomes a feminist despite himself… his life becomes a hell.’\textsuperscript{151}

This film, which was funded by the fashion magazine \textit{Femmes du Maroc}, presents the new Mudawwana as a \textit{bouleversement} (total upheaval) of the hierarchies in the family where the father is “number one.” However, this is really represented as an entertaining concept, which the new Mudawwana does not change. This film in effect is a humorous take on the reform which merges the claims of the feminists with the claims of the Islamists: while the Mudawwana adheres to certain provisions of rights these rights are imposed and are fundamentally unnatural to Moroccan society. The attached poll undertaken by ADFM supports this, with almost 50\% of those polled say the Mudawwana gave too many rights to women.

\textsuperscript{151} Number One – Un film de Zakia Tahiri, 23 September 2009, http://www.numberone-lefilm.fr/  
\textsuperscript{152} From “les outils de la campagne” by ADFM.
II. Islamists

While ADFM and UAF both belong to the same general feminist category, the Islamist groups occupy a different category also interested in reform. There are two large Islamist groups in Morocco: *al-Tawhid wa-l-Islah*, or Unity and Reform and *al-Adl wa-l-Ihsan* (Justice and Spirituality). While *al-Tawhid wa-l-Islah* is a government party, *al-Adl wa-l-Ihsan* operates underground and is scorned by the government who called it a group of “Islamic dissidents.”

Because of the controversial nature of *al-Adl wa-l-Ihsan* it is difficult to gauge its influence in the process of the *Mudawwana* reform. However, it is credited with convincing the government to drop *Printemps de l’égalité’s* suggestions and to change PANIFD completely.

*Al-Adl wa-l-Ihsan* was established in 1978 by Sheikh Abdessalem Yassine, a religious and politically minded teacher. He gained recognition in Morocco prior to the establishment of this group with his 1974 pamphlet entitled “Islam or Deluge.” He sent this pamphlet to Hassan II calling for him to renounce the title of *Amir al-Mu’min* and to admit that Morocco was no longer an independent Muslim country but instead a secular, Western-influenced country. His reward was imprisonment, followed by house arrest. His organization continues the call for a return to a true Islamic state and is generally considered to be the “largest movement of opposition to the monarchy,” or at

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153 Salime “Between Islam and Feminism,” 10-11
least to its role as head of religion. \(^{154}\) *Al-Adl wa-l-Ihsan* is the Islamist organization with the most active women’s component, which developed in the late 80s “in parallel to the rise of feminist groups.” \(^{155}\) Most Moroccan women who identify as Islamists or who subscribe to Islamist positions are part of the movement started by *al-‘Adl w-l-Ihsan*. \(^{156}\) Because Sheikh Yassine is now in his seventies, his daughter Nadia has become one of the most vocal members, promoting the group’s causes and founding the women’s branch of the organization.

Nadia Yassine is arguably one of the most publicized Islamic figures both in Morocco and around the world. While her father is a part of the Sufi brotherhood (a collective of Muslim mystics) she self-identifies as a “militant Neo-Sufi.” \(^{157}\) Though she has spent much of her tenure in this position in exile and under threat of prosecution, most scholars agree that although she is not the president of *Al-Adl wa-l-Ihsan*, the organization “evolved” around Nadia Yassine. Yassine’s is not only the group’s spokeswoman but also proof that the Islamist movement is not anti-feminist. She has been much quoted railing against the “ready-made cliché” which is perpetrated by the international press: “the reactionaries, the women’s backward enemies have demonstrated in Casablanca. The democrats, the woman’s progressive friends have

\(^{154}\) Salime “Between Islam and Feminism.”

\(^{155}\) Salime, 13 and 17

\(^{156}\) Gray, xvi-xvii

\(^{157}\) Gray, 33
marched in Rabat.” She explains that although Al-Adl wa-l-Ihsan marched alongside those who did not want reform, it was because it did not agree with the method of reform feminist groups were advocating. She agrees with feminist groups that the “Mudawwana gave power to men in the name of religion.” She goes further, however, saying that the nature of the King’s rule is unavoidably “patriarchal” and in fact the Maliki fiqh behind the Mudawwana is a return to the “heathen patriarchal system upon which the Prophet… declared war.” This “particular reading of Islam” is false, and therefore is not religious at all.

Yassine argues that in fact, groups in ADFM and UAF were too afraid to call the Mudawwana into question until she herself did so. She claims that in the 1990s she was the first to actually “break the taboo” and publically communicate that “the Mudawwana was not a sacred text.” The feminists were afraid to do so because calling it into question would “mean calling into question the sacred nature of a political system that establishes its legitimacy on a particular reading of Islam.” While she agrees with feminist groups about reform and in fact apparently supported their march, any reform within which the King has a role is “aberrant.” In a series of articles, speeches and interviews given in French magazines she argues that though the feminist

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159 They asked me: what do you think of the women who demonstrate in Rabat? I said: my thoughts are with them, but politically I have to march in Casablanca. In other words, I agree with them that we should reform the Mudawwana but I disagree with them on the method to make this reform.(Yassine 2006 at Harvard)
160 Buskens, 100
movement “pretends to be democratic and modernist,” the members of this movement participate in a government which is non-democratic. 161

For Yassine, the entire reform process touted in different ways by ADFM and UAF is part of “the framework of a desire by the North to dominate the South through setting up a standard model for the world in order to facilitate a better cultural domination of nations.” 162 Members of ADFM generally do not acknowledge al-Adl wa-l-Ihsan’s charges against their organization, but UAF’s president Latifa Jbabdi, responded saying that Yassine’s “pro-reform stance is “pure demagogy…What she says is one thing. What she does is another.” Though UAF is negative towards Yassine’s words it is aware of their power: it refuses to take international donations partially to counter this specific criticism. While Yassine’s criticisms influence UAF’s actions, Yassine’s actions support Jbabdi’s criticisms.

Though Yassine decries both the government and the westernization of the reformed Mudawwana, she spends much of her time promoting books in the west trying to gain support from western scholars. In addition to spending much of her exile in

161 Le Maroc n’est pas un pays démocratique. Nous rejetons ce jeu imposé par le Makhzen. : la moudawana exclusivement, tout ce qui a trait au pouvoir, vous en êtes exclus. Le roi prend les décisions et le gouffre se creuse entre le peuple et la chose publique. Voilà pourquoi au Maroc, nous vivons une véritable calamité. Et c’est pour cela que j’ai formulé cette opinion académique, en l’occurrence ma préférence pour le régime républicain. Ceci ne nous empêche pas de préparer le peuple marocain, d’éveiller sa conscience politique en remettant en cause la politique éducative. – Nadia Yassine, “Interview donné par Nadia Yassine à l’Hebdomadaire al-Osbo’iya al-Jadida.” 2005. (Translation by author)
162 Buskens, 12, 92 and 100, quoting Nadia Yassine in: L’Opinion 3 April 2000, 5-6; La Vie economique 28 July 2000, 8-10; Le Journal Hebdomadaire no. 76 (27 July-2 August 2002): 12-18). Using other scholars as a guide, I used Buskens’ quotations from journal articles as a primary source. All other scholars use the exact same quotes as he, probably because the journals in question have periodically been purged by the government.
France, she has gone on several American university tours to spread al-Adl wa-l-Ihsan’s message. Transcripts of her tours are posted immediately on her website, fully interactive and available in French, Spanish, English and Arabic. Instead of referring to al-Adl wa-l-Ihsan as an Islamist group, she constantly argues that it is in essence “one hundred percent political” and the members are fighting for their natural human rights. In a RFI (Radio France Internationale) interview, she claimed that the march in Casablanca was a march for cultural “self-determination.” Instead of marching against reform or against feminism, members of al-Adl wa-l-Ihsan instead were marching to “end their marginalization from the political field.” She uses words like “liberty” and “freedom” only when targeting a western audience, favoring the use of Qur’anic verses or references to the Prophet when speaking in Arabic or French in Morocco.

Though al-Adl wa-l-Ihsan is a strictly Moroccan group focused on resolving issues in Morocco, Yassine has shifted a huge part of its focus onto disseminating information to the non-Arabic speaking reader. Sheikh Yassine published all of his books in Arabic but Nadia Yassine publishes her books in French and English. Al-Adl wa-l-Ihsan now has an English book publishing company named “Justice and Spirituality Publishing” which puts out translations of books, namely written by Nadia Yassine. Though Yassine does not speak English and is ostensibly against any and all

164 Quoted in Salime, “Between Islam and Feminism,” 98
linguistic colonization by the French, her various book tours celebrate the communication with the west.

During one such tour for her book “Full Sails Ahead” in 2006, Justice and Spirituality Publishing released a press release entitled “Nadia Yassine Builds Bridges of Understanding During her Book Tour in the US.” This press release is accompanied by a photo of Yassine sitting happily, surrounded by western faculty and happy to be building “bridges of understanding with the people of the West.”  

When Yassine publishes books abroad she presents herself as an emissary of cultural understanding, trying to correct misperceptions about Islamist groups and their goals. Her various websites and social networking sites also picture her carrying

166 Ibid.
English slogans referring to certain rights considered inalienable. For example, on her English facebook page all of her pictures have her marching nonviolently, surrounded by men and wearing an English slogan. These pictures draw a parallel between her non-violent protest for freedom of press and opinion and America’s provision for freedom of press. However, Morocco does not and has never had this provision, making the charge less valid if one knows Morocco’s constitution. No picture of the kind can be found on her French or Arabic sites, suggesting that this kind of depiction is intentionally focused on gaining support or empathy from Americans or other English-speakers.

In her Arabic and French publications, Yassine presents her social activism as a direct counter to that of ADFM and UAF. While ADFM’s presents the Rabat rallies through pictures of large groups of women and men all yelling, Yassine always presents pictures of organized groups of women in straight lines and never surrounded by men.

168 Both of these pictures can be found on Nadia Yassine’s facebook: https://www.facebook.com/Nadia1Yassine
Yassine portrays herself as both militantly anti-establishment and pro-Islamic: both respectably hijabi\textsuperscript{169} and radically politically active. She is always pictured in active poses but she never has an open mouth, and she is always pictured with women wearing traditional Moroccan clothing.

By joining her struggle with narratives from western countries, Yassine portrays herself as an activist interested in enacting social change and limited by the ban on her non-governmental organization. Some scholars argue that this is because al-Adl wa-l-Ihsan is trying to reinvent itself as a force for “secular civil-society activism.”\textsuperscript{170} Other scholars like Léon Buskens disagree, and argue that al-Adl wa-l-Ihsan uses its influence in order to stall activism.

Yassine fights these accusations by explaining that al-Adl wa-l-Ihsan does block reforms lacking in religious legitimacy but is in favor of a different form of reform. Statistically, al-Adl wa-l-Ihsan has a larger base of support than do ADFM and UAF.

While the march in Rabat was large (approximately 40,000-100,000) the Casablanca march was larger still (100,000-200,000).\textsuperscript{171} Léon Buskens argues that Al-Adl wa-l-Ihsan’s participation in this march was the reason the Islamist side was so large and effective.\textsuperscript{172} In fact al-Adl wa-l-Ihsan’s participation in the march “pushed the government to withdraw its National Plan for the Integration of Women in Development (PANIFD)

\textsuperscript{169} Wearing a hijab, as in the picture above.
\textsuperscript{171} Le Monde, 14 March 2000
\textsuperscript{172} Buskens, 104
that proposed major changes to the Mudawwana."\textsuperscript{173} This march showed \textit{al-Adl wa-l-Ihsan}’s strength and “reversed the gains made by feminist groups” by showing that it had more local support.\textsuperscript{174} This moved the reform to “less contested grounds” and may be the reason why the King was unable to fully change the document itself. The group would prefer a different kind of reform which fully incorporates a back-to-the-text reading of the foundational documents. This is the reason by Yassine came out against the reform in 2004.

By 2006 Yassine changed her methods and instead claimed authorship of the \textit{Mudawwana}. In 2004 she argued that the \textit{Mudawwana} was a religiously invalid document, existing only to support the rule of the king and reformed in “the image of the ruling autocracy.” During her book tour in 2006 she shifted her critique, explaining that the reform was in fact “good and important, without a doubt.” While on the same book tour, she softened her rhetoric and began to call for a new reform because the new \textit{Mudawwana} “does not match up with Moroccan reality.”\textsuperscript{175} This softening of rhetoric came at a time when her exile was lifted and she was no longer under the threat of prosecution, and may in fact be a bid for increased participation with other organizations.

\textsuperscript{173} Salime, “Between Islam and Feminism,” 19.
\textsuperscript{174} Ibid.
\textsuperscript{175} Yassine quotes in Zvan, 89.
ADFM and UAF have agreed with *al-Adl wa-l-Ihsan* that the reform of the *Mudawwana* is not the last reform that must take place. One highly censored and controversial magazine, *TelQuel* (the Arabic version *Nichane* is often banned for brief periods of time) published a criticism of the new *Mudawwana* with quotes from ADFM members and Moroccans who did not know what the new *Mudawwana* was.\(^\text{176}\) One ADFM member explained that the government did not provide information to citizens in the correct languages, and *al-Adl wa-l-Ihsan* agreed. While they all claim authorship of the reform, they also criticize the reform’s actual impact.

As of 2011, all three groups claim that they are responsible for the reform of the *Mudawwana*, and that any and all defects in this reform are due to the government. While *al-Adl wa-l-Ihsan* did in fact cause the government to abandon the ADFM pushed PANIFD, it never once acknowledges the increased role feminists had in influencing the government after the Casablanca bombings or the fact that it was excluded from interaction with the Royal Commission. ADFM and UAF ignore the role the other had in calling for a reform and deny that *al-Adl wa-l-Ihsan* ever wanted reform. These groups reject Yassine’s arguments about a different kind of reform, instead treating her speech as hyperbole. Each group uses the method of returning to Islamic texts, though *al-Adl wa-l-Ihsan* uses this rereading to prove that the King’s religious legitimacy is invalid.

\(^{176}\) Daïf, Maria, “Nouvelle Moudawana: L’opinion de la rue” *TelQuel Online*, accessed October 2010. “Morocco has become a model for women’s rights in the Muslim world.” CNN Inside Africa, June 30, 2009.
while ADFM and UAF use this rereading to prove that human rights and Islam are compatible.

It is impossible to gauge who had more of an influence in the reform of the Mudawwana, and whose suggestions were taken into account in 2004. These three organizations span the categorization of “feminist” and Islamist” which are usually placed at opposing ends of the spectrum. Each entered into the discussion about the reform of the Mudawwana calling for change but disagreeing about how to accomplish this change. Though the finished Mudawwana doesn’t reflect specific claims from any group all have subsequently claimed authorship of the text and responsibility for the reform.
Conclusion

“[The 2004 Mudawwana is a text] that both Islamists and feminists could claim as a victory for their respective positions.”

-Janine A. Clark and Amy E. Young, “Islamism and Family Law Reform in Morocco and Jordan” 345

The Mudawwana is a deceptively simple text. It is a document touted by the King as the manifestation of a unified effort of the Moroccan people to reform women’s rights. It is hailed by scholars as one of the “most advanced codes for families” in the MENA region.177 Its status has been a topic of debate from inception, sparking conversations about reform from 1957 on. King Mohammed VI shifted the frame of the conversation to the interplay of international human rights and Islam when he rose to power. While the political nature of this document clearly called for engagement by the government, non-governmental organizations also contributed to the reform.

Although these non-governmental organizations fall into two categories that are seemingly opposed (feminist and Islamist), through a reading of their documents and presentation of arguments for reform, the reader sees the similarities between the

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projects. Each group spoke, and each group advocated for a variation on a rereading of Islamic texts and a combination with international human rights.

If the *Mudawwana* reflects the discussions of thousands of people, multiple groups and lots of social activism, then who is the author? Is it King Mohammed VI, who absorbed all of the information and made the definitive choice about wording and provision? Is it ADFM, who spent their internationally funded money trying to make change within the government? It could be UAF, who worked with the government to get local support, or even al-Adl wa-l-Ihsan whose notoriety has increased its popularity with the Moroccan people. Each of these groups has claimed authorship of this document while simultaneously criticizing the others groups that claim authorship.

Most writers credit one actor in the *Mudawwana* reform without considering the other influences and groups that participated in the reform. Many ignore the Islamist contribution altogether, referring to their beliefs as “ideological straitjackets”\(^{178}\) and explaining that the Casablanca bombings removed any influence the Islamists might have had. This same argument is used to support why the feminist groups had the most influence in reform, though the provisions they were trying to change (polygamy, underage marriage) did not succeed. That being said, the opacity of the text allows judges to interpret change into the text at will and effectively either disallow or uphold

provisions like polygamy. Because of this flexibility, any group can claim change provided the judge agrees with its point of view.

ADFM, UAF and al-‘Adl wa-l-Ihsan all claim authorship to the reformed Mudawwana in order to preserve their social capital. That is to say that these groups have been at the forefront of discussions and pushes for the reform of the Mudawwana for 50 years. The King appropriated the discussion and used the reform as a tool to change Morocco’s international image. Rather than be shut out, all three groups tried to join in the process. Though al-‘Adl wa-l-Ihsan was shut out of the Commission’s hearings, the Commission’s list of provisions may not have incorporated the testimony of ADFM and UAF. In order to prove that their organizations are making a difference, these groups have claimed responsibility for and influence in the reform making process. Accordingly, ADFM refers to the Mudawwana as the “culmination” of the first stage of their “mobilization.” If the Mudawwana does not adhere to their original demands, they will adjust those demands to claim social capital and power as activists.

New scholarship continues to emerge that focuses on the reform as an interesting example of grassroots effort that culminates in political action, stating that the process itself is admirable and that the results may take time.\footnote{New scholarship continues to emerge that focuses on the reform as an interesting example of grassroots effort that culminates in political action, stating that the process itself is admirable and that the results may take time.\footnote{ADFM, “La Moudawwana.”}} \footnote{ADFM, “La Moudawwana.”} \footnote{Zoglin, Katie. “Morocco’s Family Code: Improving Equality for Women.” Human Rights Quarterly 31 (2009): 984, interview with Nouzha Guessous.}
If each group can equally claim authorship of the reformed document then the actual purpose and accomplishment of the reform is up for debate. The King ostensibly supported reform in order to remove reservations to CEDAW and to bring Morocco into the international community. But not one reservation to an international convention has been lifted.\textsuperscript{181} Nevertheless, international bodies believe that the reform “constitutes a landmark in the history of Moroccan women’s struggle for equality,” and claim that it “represents a successful test for Morocco’s progress in the field of human rights.”\textsuperscript{182} Although ADFM, UAF and \textit{al-‘Adl w-l-Ihsan} each claim authorship of the reform, each also calls for a more comprehensive reform that makes more decisive change.

The \textit{Mudawwana}, like many legal texts, leaves us with a paradox. It is impossible to determine an author because the ideas discussed and reformed have been present in Moroccan society since its independence and the first codified \textit{Mudawwana}. The Mudawwana is a nationalist document, a royalist document, a feminist document and an Islamic document. The reformed document may be more about appearance than change, and serves to underscore the importance of the discussion about women, family and Islam within 21\textsuperscript{st} century Morocco. Whether or not the reform succeeded or will

\textsuperscript{181} With one exception, not pertaining to the Mudawwana.

succeed in effecting change is for the future to determine. The Mudawwana will have the last word.
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