Sharia Incorporated

Otto, Jan Michiel

Published by Leiden University Press

Otto, Jan Michiel.
Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present.

first ed. Leiden University Press, 0.
Project MUSE.muse.jhu.edu/book/46349.

3 Sharia and national law in Morocco

Léon Buskens[1]

Abstract

Islamic law has taken a drastically different place in the legal system of Morocco in the course of the twentieth century. The protectorate rule of France and Spain, between 1912 and 1956, was a turning point. Until then, Islamic law was, at least ideally, the law of the state, although in practice the decrees of the sultan and local customs also had considerable importance. Colonialism implied the creation of a dual legal system, formalisation of Islamic and customary law, and large scale import of European legal norms. After independence, this system of legal pluralism was gradually replaced by a unified legal system based on the French legal model. Nowadays, Islamic norms are mainly to be found in the law of family and inheritance, codified in the *Mudawwana*; in limited parts of the law of evidence; and in some areas of the law on immovable property. Although in this process of state formation Islamic norms have been marginalised in substantive terms, they have recently become very important in the political domain. The king uses Islam to legitimise his rule, while islamist opposition movements refer to sharia as a way to criticise the regime in power. In present-day Morocco, opposing groups engage in public debates in which they invoke their particular understandings of Islam, human rights, and civil society.

Table of contents

The Kingdom of Morocco gained independence in 1956. The country counts over 33 million inhabitants and has a surface area of 446,550 square kilometres – roughly the size of California – not including the area mass of the disputed territory of the former Spanish Sahara. A considerable part of the Moroccan population has Berber ancestors with Arabic, sub-Saharan, and European influences. Distinguishing between Arabs and Berbers on a racial basis is impossible, yet the distinction has begun to gain importance as an ethnic phenomenon. The official language is Arabic, but Berber languages are taught at school on a limited scale. Approximately half of the population mainly uses a Berber language in daily life, while the other half speaks variants of Moroccan Arabic. The French language is used in trade and public administration. Almost the entire population is Muslim (98.7%), while there are small Christian (1.1%) and Jewish (0.2%) minorities.

(Source: Bartleby 2010).

Introduction

For more than a thousand years, Morocco has had a central state administration of some form.[2] Many Moroccans consider the origin of the present Islamic nation to lie in the eighth century, with the establishment of the first Muslim dynasty of the Idrisids. The present contribution provides a brief historical overview of the coming into being of the modern Moroccan legal system and an analysis of the role of Islamic norms in the development of this system. This contribution focuses on the substantive law of Morocco rather than actual legal practice.[3] Because the present-day legal system has been so heavily influenced by French law, the author has chosen not to provide information about the legal system of the former Spanish zone.[4]

The division of periods complies with the general analytical framework of this book. For every period the author analyses the continually shifting configuration of three normative domains: state law, Islamic law, and local customs (cf. Buskens 2000). In the period between 1800 and 1920 Moroccan rulers and scholars attempted to reform the state and its law. Meanwhile, Morocco became more entangled in the web of European imperialism, resulting in the establishment of French and Spanish protectorates in 1912. From 1920 until the early 1960s, the character of the state changed fundamentally, with an emphasis on a new, more powerful central authority and demarcated boundaries. The government introduced modern legislation as an instrument with which to rule this state. During the colonial period the authorities stimulated legal pluralism. Subsequently, from 1961 until the late 1980s, King Hassan II developed his own vision of a modern state. His

despotism led to a strong centralisation of the administration, denial of legal pluralism, and serious human rights violations. During the last decade of King Hassan II's rule and continuing into the present reign of his son Mohammed VI (from 1999), the government has shown more attention for human rights in combination with neo-liberal politics, but the interpretations of these norms have varied considerably.

3.1 The period until 1920

Attempts at reform and loss of independence

Moroccan society underwent several drastic changes in the nineteenth and the beginning of the twentieth century, which culminated in the formation of a strong central authority. In the decades around 1800, the sultans Sidi Muhammad III (1757-1790) and Mawlay Sulayman (1792-1822) attempted to reform understandings of Islam, law, economy, and the state system. A period followed in which the central authority faced difficulty in maintaining its power, particularly in the face of a declining economy related to growing European imports. Sultan al-Hasan I (1873-1894) succeeded in considerably expanding the territory over which the central authority (the *makhzan*) exercised effective control.

Islamic law as scholars' law

Available literature on Morocco presents the image of a traditional Islamic legal system during the second half of the nineteenth century. The state system was a mixture of administrative centrally-driven law, Islamic law, and customary law. Authoritative legal scholars formulated Islamic legal norms in accordance with their own visions of sharia. Some scholars worked as Islamic judges (*qadis*) in the name of the sultan. Simultaneously, sultans proclaimed legal rules through decrees called '*dahirs*'. Local representatives of the central authority, such as governors, also offered a form of administrative justice.

In areas beyond the control of the central authority (the *makhzan*), areas often referred to as 'the area of rebellion' or 'dissidence' (*bilad al-siba*), the population acknowledged for the most part the leadership of the sultan as '*amir al-mu'minin*', which meant 'the leader of the community of believers'.[5] Recognition of his role as a leader did not, however, result in tax collection or the acceptance of his legal norms. In large parts of Morocco, the population lived according to the norms of local custom, applied by community councils called *jama'as*. In some regions these councils appointed judges, who judged according to Islamic norms. Although scholars criticised these local customs in their writings, they simultaneously searched for practical solutions for the

problems of everyday life. The many collections of their legal opinions on particular issues (*fatwas*) offer valuable insight into their attempts to accommodate Islamic law and local practices.

As in most pre-modern Muslim societies, the treatises of the legal scholars (the *fiqh* books), were the main sources for Islamic norms. In Morocco, the legal scholars almost exclusively followed the doctrine of the Maliki school, as formulated by the Egyptian scholar Khalil bin Ishaq al-Jundi (died 1365) in his *Mukhtasar*, a concise overview intended for memorisation. Generation after generation of Moroccan scholars added their explanations to this compendium in order to render it intelligible to their students. Many commentaries circulated in handwriting among scholars and legal practicioners. Furthermore, scholars copied, on a large scale, manuscripts about specialised legal questions, compilations of *fatwas*, and answers from authoritative predecessors to questions on concrete legal issues. This *responsa*-literature fulfilled an important role in the application of Islamic law in practice, and contributed greatly to the further development of the legal doctrine.

In the nineteenth century, the city of Fez was the intellectual and political centre of the country. Many important scholars taught at the mosque university al-Qarawiyyin in Fez (cf. Berque 1949). Despite rivalries among scholars from different regions, the legal scholars (*fuqaha'*) from Fez were in principle considered to be the most authoritative. And, for many students, studying at the Qarawiyyin University was the highest goal. In the works of the school of Fez, many references can be found to the rituals and customs of the bourgeoisie of the city, but scholars also attempted to construct rules that reached beyond these local traditions so as to represent a more abstract, general custom. The scholars of Fez moreover legitimised to a certain degree the sultan's regime. Their recognition was an important condition for the effectiveness of the central authority. Together with treatises of authoritative scholars from other parts of Morocco, the legal treatises of the school of Fez formed a sort of proto-national tradition of the Maliki law.

The traditional form of jurisprudence sanctioned a form of Islamic orthodoxy in which recognition of the special position of descendants of the prophet Mohammed (the *shurafa'*), the veneration of 'saints', and allegiance to mystic orders played an important role. These conceptions contributed to the legitimacy of the political system, in which the sultan as a descendant of the Prophet was imputed with miraculous gifts and blessings, or *baraka* (cf. Munson 1993). Many legal scholars were also members of mystic orders and wrote treatises about the orthodoxy of Sufism. The connection between Maghribi Malikism and traditional orthodoxy was embodied in the work of the nineteenth century scholar Al-Mahdi al-Wazzani, who compiled an authoritative collection of *fatwas*, and also wrote a treatise in which he defended the traditional

veneration of the saints against criticism inspired by the Egyptian reformer Muhammad Abduh (cf. Berque 1949). This polemic shows that the Maliki tradition was not static and isolated, but instead dynamic and responsive to foreign developments.

One of the manifestations of these internal dynamics were the attempts of several Moroccan scholars and sultans to reform Islamic thinking from the second half of the eighteenth century onwards. Sultan Mawlay Sulayman, for instance, sent his son Ibrahim to Arabia in 1812 to acquire knowledge about Wahhabism (Abun-Nasr 1963: 94; El Mansour 1990: 137-143). Contact with the Wahhabis contributed to the sultan's disapproval of visiting the graves of saints and other folk practices. His father, Sidi Muhammad II, had already started with attempts to reform the study of Islamic law, for instance by contesting the dominance of Khalil's *Mukhtasar*. He also demonstrated great interest in Hanbalism, the understanding of God's will revived by the Wahhabis. Reformist ideas from Egypt became known among a small circle of students and scholars in Fez in the second half of the nineteenth century (Abun-Nasr 1963). Calls for a puritan interpretation of orthodoxy were also perceived in the works of traditional scholars such as Ma' al-Aynayn. These developments fit within more general tendencies of puritanism and reform that characterised many Muslim societies in the late eighteenth century (cf. Voll 1994; Peters 1980).

European expansion

In economic and political terms, Morocco was increasingly pulled into the European sphere of influence. The country was surrounded by areas controlled by Europeans, such as French Algeria and the Spanish and French territories in the Sahara. From 1830, France protected its interests on the Eastern border with Algeria. Spain occupied the Northern city of Tétouan and enforced an unfavourable peace treaty upon the central authority, or the *makhzan*, in 1860. Likewise, in 1907, France found a pretension to occupy the area surrounding Casablanca. In response to these developments, some Moroccan scholars and political leaders, including Sultan `Abd al-Hafiz, called for a holy war (*jihad*) against the French who threatened the frontiers of Morocco (Burke 1976).

From the second half of the nineteenth century and the early part of the twentieth century, European law began to spread in earnest through European consulates in the form of consular courts. In response to the growing rivalry amongst European countries competing for influence, Morocco and several other European countries and the United States concluded the treaty of Madrid in 1880. Among other things, they reached a consensus about the doctrine of *allégeance perpétuelle*, which formally clarified that in principle, Moroccans would always remain

Moroccan citizens, regardless of which foreign entity ruled them or which other nationality they would acquire (cf. Guiho 1961: 91-97). This notion remains until today one of the foundations of the Moroccan law of nationality, which creates concern for Moroccan immigrants who wish to obtain citizenship of the European countries in which they have settled.

In 1910, attempts at reform resulted in two proposals for a constitution that were influenced by political developments in Iran, the Ottoman Empire, and Egypt. The first proposal advocated, among other things, a legal system in accordance with the sharia. Both proposals contained the institution of a parliament. At that time, few people appeared to be interested in these ideas coming from the East, but later nationalist activists used these documents in their struggle for independence as proof for the Moroccan constitutional tradition (Pennell 2000: 143-145).

Creation of the protectorate

In 1912, France and Spain had won the bid against other contesters such as Germany and Great Britain, obtaining the authority to support the sultan in modernising the country. One of the justifications for creating the protectorate was the necessity to address the vast foreign debts that the Moroccan sultan had accumulated through extensive European loans. The Spanish gained control of the Northern part and an enclave in the South; the rest of the country was placed under the authority of France, with the city of Tangier functioning as an international zone under the joint administration of several foreign nations.

Article 1 of the 1912 Treaty of Fez established that the sultan and the French agreed to legal reform, according to what the French government deemed necessary. With the establishment of the protectorate, the power of the central authority would prove to be greatly strengthened. The character of the legal system would also undergo a fundamental transformation in the decades to come. The French created a dualistic system whereby indigenous law, including Islamic, Jewish, administrative, and customary law functioned in parallel with modern law based on a European model. French scholars and administrators immediately began with legislative activities that resulted in 1913 in a code of contracts (*Dahir formant codes des obligations et des contrats*). This code remains the cornerstone of Moroccan civil law.

The First World War slowed down French reform plans and obstructed military actions to submit the *jihad*-waging rural areas to the new *mahkzan*. The French not only needed their own soldiers to fight the Germans in Europe, but soon began to enlist men from the colonies, among them Moroccans, to join their forces.[6] Only from 1920

onwards were the French able to seriously resume work on establishing a new Moroccan state and a modern legal system. After the newly gained independence in 1956, the protectorate regime created by the French would form the basis of the present Moroccan legal system.

3.2 The period from 1920 until 1965

Colonial rule as the foundation of a modern state

The period between 1920 and 1934 was marked by the establishment of a strong, centrally administered state. The French and Spanish armies used brutal force to pacify the Berber regions in the South, the Middle-Atlas, and the North. The most famous episode from this battle of conquest was the Rif War (1921-1926). The Spanish protectorate government eventually succeeded in subduing the *jihad* of the inhabitants of the Northern mountainous region led by reformist scholar Muhammad bin Abd al-Karim al-Khattabi with significant help from the French army. Both parties suffered great losses and committed atrocities. The Spanish army even resorted to the use of poisonous gas bombs delivered to them by the German government in a desperate attempt to win the war of the guerrillas. Traces of this war can still be found in the Rifian landscape today.

With the gradual pacification of the Moroccan territory, the central government claimed a monopoly in the development and promulgation of legal norms in the new state structure. A norm only had the status of a legal rule when the central government had recognised it as such and formally promulgated it. In this process Islamic law and customs became incorporated into the formal framework of state law.

Colonial legal pluralism

The 'framing' of various normative domains in a state context implied an official recognition of a situation of legal pluralism, which until then the Islamic scholars had only grudgingly accepted through the accommodation of *fiqh* to local customs in areas where they could not do otherwise. Colonial rule divided the national legal system into two large domains, namely the Sharifian and the French or Spanish administration of justice.

The Sharifian administration of justice, as it was coined by the French to set it apart from European-derived law and to connote the law's link to the sultan, himself a descendent of the Prophet Mohammed (a *sharif*), was further subdivided into four areas of law:

– Islamic law administered by Islamic judges according to rules of Maliki *fiqh*;

– *Makhzan*-law as a continuation of the pre-protectorate administration of justice by government officials according to the rules promulgated by the sultan;
– Customary law for the officially recognised Berber regions; and
– Jewish law applied by rabbinical courts.

The competence of the courts depended on the religious and ethnic backgrounds of the parties involved and the nature of the conflict. The Sharifian administration of justice took place under supervision, or *contrôle*, of French and Spanish officials who, depending on the region, had either a civil or a military status.

Europeans in principle fell under the French or Spanish system. The consular administration of justice was abandoned by all countries in the course of the protectorate, with the exception of the United States. The French and Spanish administration of justice was inspired by the legislation in France and Spain. Formally, however, this system was also Moroccan: administration of justice took place in Moroccan courts in the name of the sultan and in accordance with Moroccan law. While colonial authors often spoke of French and Spanish law, Moroccan scholars used the term 'modern' to refer to this part of the law (cf. Essaîd 1992: 271-272).[7]

Islamic law obtained a well-defined place as part of Sharifian law within the protectorate system. Islamic judges took care of administration of justice mainly in family and inheritance matters for Muslims and for immovable property rights that were not registered and with which no French party was involved. French officials supervised the work of the judges, which was formalised according to French 'rational' norms. In practice, this meant that legal procedure was structured according to the French model, which, for example, introduced appeal requirements and the creation of archives to keep court records.

New forms for legal norms

The interference of French control also resulted in changes in the substance of Islamic law. The way in which the French formulated their legal texts created new genres of legal writing, such as codification (Buskens 1993). Since the conquest of Algeria in 1830, French scholars had been studying Maliki law as it had developed in the Maghrib (Henry & Balique 1979). They published important editions and annotated translations of authoritative legal texts and documents recording Moroccan legal practice. These writings, authored by foreign scholars, led to a summarising and restructuring of the legal tradition itself as in their task of compilation and annotation scholars necessarily showed

preference for certain writings and views of Moroccan scholars over others, thus creating a colonial vulgate.[8]

In the incorporation of customary law in the protectorate legal system the same tendencies can be discerned as for Islamic law: control, formalisation, and standardisation. In a 1914 *dahir*, the sultan, instigated by the French, had already formulated the principle that Berber population groups should have their own administration of justice based on local customs. This principle was further elaborated in the notorious *dahir berbère* of 1930 (Lafuente 1999). According to this decree, large groups of the Moroccan population no longer fell under Islamic law, but were instead subjected to their 'own' Berber legal norms. Administration of justice took place through local community councils under the supervision of French officers. This control implied that French researchers and administrators described and systematised the legal norms and the judgments of the councils in impressive overviews, such as Aspinion (1946) on the customary law of the Zayyan tribe and Marcy (1949) on the Zemmour. In the Rif region, the Spanish military officer Emilio Blanco Izaga engaged in similar work with his monumental studies about the customs of the Aith Waryaghar (Hart 1995).

French administrators and scholars were led in their formalisation of customs into law by previous experiences in Algeria, notably in the Berber mountains of Kabylia. The preference of customary law over Islamic law was a widespread colonial phenomenon that was also prominent, for instance, in the Dutch legal policies pursued in Indonesia. In the Netherlands during this same period, scholars such as Christiaan Snouck Hurgronje and Cornelis van Vollenhoven were advocating for a transformation from custom (*adat*) to customary law (*adat law*) in order to satisfy the sense of justice of the native population (cf. Burns 2004). Scholars from a number of European nations maintained extensive contact, and as such shared experiences and their visions of colonial rule. Snouck Hurgronje, for example, in addition to being a prominent advisor and scholar in Indonesian affairs, was also appointed as an honorary advisor to the French protectorate administration in Morocco.

Opposing Arabs and Berbers

Some European administrators and scholars viewed colonial legal politics as an instrument of recognition of 'native cultures' and as a means of advancement for the 'natives'. In the eyes of the French, the Berbers were merely superficially islamised and actually possessed European racial and cultural roots. From their perspective, in the distant past, at the time of the church father Augustin (of Berber descent), they had been Christians. Some colonial officials cherished the hope that the Berbers could once again be converted to Catholicism and become allies in the

fight against Islamic-Arab invaders, who had occupied their country at a later time.

Many progressive Maghribis considered the confrontation between Islamic law and local custom to be artificial and aimed at creating discord. Laying down both systems of norms in separate and contradictory colonial vulgates and regulations was an expression of a divide-and-rule policy aimed at the continuation of European-Christian dominance. The *dahir berbère* was by far the most important symbol of the colonials' divisive policies, and as such the primary target of opposition for the young, educated middle class. Outside of Morocco, as far as the Dutch Indies, Muslim activists were also protesting on a large scale against what they, too, perceived as an anti-Islamic legal policy being implemented by European rulers.

Islamic reformism and nationalism

These young Moroccan townspeople presented a programme that promoted Islamic reformism and nationalism as an alternative to European dominance. Their reformism implied a rejection of traditional orthodoxy, in which the veneration of saints and a Moroccan form of Malikism, with respect for local customs, were important. The French administrators had canonised this traditional orthodoxy in their endeavours to rule Morocco by means of indirect rule, relying on the elite of *makhzan*-officials and Islamic scholars. For the reformists, the traditional orthodoxy was a form of superstition and control, as they considered many of the loyal scholars to be collaborators.

Moroccan reformism was part of an international revival movement that intended to purify Islam by returning to the original Islam of the pious early Muslims (*salaf*), which in this particular context meant breaking away from many customs introduced in the orthodox Islam in the course of the centuries. For them, thinking in terms of schools of law was less important. The *Salafiyya* movement initially had many supporters in Egypt, Syria, and Lebanon; it later spread throughout the Muslim world. The reform movement of Muhammad bin Abd al-Karim al-Khattabi, the hero of the Rif War, was a precursor to this Moroccan form of puritanism. Reformers felt connected with Muslims all over the world, and were part of the revival movements that developed from the late nineteenth century. Exiled leaders of the Moroccan reformists found shelter in Egypt, where they met activists from other parts of the Muslim world who shared their views as well as their plans for political action. Colonial regimes demonstrated great concern over Pan-Islamism, which they considered to be a possible source of worldwide rebellions and conspiracies of Muslim populations against their Christian rulers.

For Moroccan intellectuals, Islamic reformism and internationalism were inextricably linked with nationalism. They wanted to be free from the reigns of French and Spanish occupiers and to unite the entire region into one nation. Their plan was that this independent state would be ruled by the activists according to the principles of pure Islam as formulated by *salafiyya* thinkers such as the young religious scholar Allal al-Fasi and other prominent members of the independence movement.

Independence and codification

In 1956 resistance against colonial rule led to independence for a reunited Morocco, meaning both the Spanish and the French protectorates fell once again under the same borders and under the control of the *makhzan*. Sultan Muhammad V had played an increasingly important role in the nationalistic movement from the time of the Second World War and came to symbolise national unity for all parties. He adopted the title of 'king' instead of 'sultan' and quickly placed himself at the head of the state. Nationalistic reformers led by Allal al-Fasi hoped for an entirely revised legal system based on a new interpretation of sharia. They were, however, ultimately disappointed as genuine reform remained limited to the abolition of customary law in the Berber regions and a codification of family law in the 1958 'Code of personal status' (the *Mudawwanat al-ahwal al-shakhsiyya)*.

The *Mudawwana* (personal status code) was a symbol of regained national unity: one corpus of legal rules was from now on applicable to all Muslims living in Morocco. In substance the law remained close to the traditional Maliki doctrine, to the extent that Lapanne-Joinville characterised it as 'une sorte de loi-cadre à rebours' (Lapanne-Joinville 1959: 101). In the choices between different legal scholarly opinions, the legislator was guided by reformist ideals, such as the protection of weaker parties, women and children, against possible abuse by men of their God-given privileges. Although the Tunisian family law of 1957, the *Majalla*, had served as a source of inspiration, the Moroccan legislator did not consider radical reforms to be desirable nor possible. For the Jewish minority in Morocco, family law was not codified, but the classical compilations of the Jewish legal scholars remained in force.[9]

The legal system of the new Morocco was in many ways a continuation of the colonial system as developed by the French. The codifications of criminal law and criminal procedure in 1962 and 1959, respectively, contained virtually no references to classical Islamic law, but instead drew inspiration from French law.

The new government continued the formation of a modern nation state through the submission of 'rebellious' regions, the centralisation of the government, and the establishment of a monopoly on the

development of legal norms. On this basis, the *makhzan* proceeded with a legal policy that was primarily focussed on unification and modernisation. Islamisation of the law was largely an ideological preoccupation of a group of nationalist reformists. For the actual rulers islamisation of the law was merely a symbol of political legitimacy to which they paid lip service through the codification of the *Mudawwana*. State law was of prime importance, and allowed only very limited space to Islamic norms, while denying or even resisting the existence of local customs.

3.3 The period from 1965 until 1985

Authoritarian rule and the creation of a unified legal system

After the premature death of King Muhammad V in 1961, his son Hassan took over the throne. He considered it his task to transform Morocco into a modern state, which in the first place meant strengthening the central authority of the king. He used the law as one of the instruments at his disposal for control and the continuation of the reigning `Alawi dynasty.

In 1962 King Hassan II invited the Moroccan population to approve of the constitution designed by him by means of a referendum, the first one in Moroccan history. The constitution was strongly inspired by French constitutional law, as King Hassan had studied law in France. At first sight, the constitution formed the basis for a democratic regime: Morocco was set up as a parliamentary democracy with several parties. Islam occupied a limited position as the state religion; there was no further mention of Islamic law in the entire constitution.

The constitution did, however, grant a great deal of power to the king. Article 19, in which the king was given the task of acting as the 'commander of the faithful' (*amir al-mu'minin*) was of particular importance. King Hassan was to shape this institution according to his own particular views during his rule, making it a truly invented tradition. In his opinion, Islamic leadership consisted of having complete authority in all matters relating to Islam, including the interpretation of Islamic law. For Hassan, the constitution was an instrument that allowed him to impose an autocratic regime. He repeatedly dissolved the parliament and proclaimed a state of emergency, and also freely promulgated several new versions of the constitution. In practice, King Hassan replaced the democratic principles embedded in the constitution with an authoritarian rule.

Authoritarian rule and contestation

The first twenty-five years of King Hassan's rule are known as 'the years of lead'. They were characterised by serious violations of human rights and elimination of political adversaries. In the 1960s the progressive elements of the Istiqlal movement, which had formed a political party of their own soon after independence, expressed strong criticism of the king. In 1964, King Hassan reacted by having their exiled leader Mehdi Ben Barka kidnapped in broad daylight in Paris. The former crown prince's teacher of mathematics, Ben Barka, quite literally disappeared without a trace. During the years to come many activists would share this fate. In addition to outright intimidation tactics, Hassan regulated internal politics by controlling the election of members of parliament as he pleased. Resistance against him led members of the army to instigate rebellions in 1971 and 1973, which included assassination attempts on his life. Miraculously, Hassan managed to escape death every time, only serving to strengthen the belief some had that the king possessed God-given power.

At the beginning of the 1970s the kingship was no longer the symbol of national unity it had been during the resistance against the colonials in the 1950s. In an attempt to create a new rallying point of national unity, Hassan called on his subjects to join in a peaceful march in 1975 in order to incorporate the Spanish Sahara in the Moroccan territory. The grand Moroccan ideal had been important for many in the struggle for independence and was still able to enthuse a considerable part of the population in the 1970s.

Moreover, for many rural poor, the march to the Sahara contained a promise of a better future. Prosperity had remained a privilege for a small elite on whom Hassan relied for the enforcement of his regime. The nationalisation of the Moroccan economy at the expense of the interests of the former colonists had been especially advantageous for the king and his clients. The vast majority of the population, both in rapidly growing cities and in the countryside, continued to live in great poverty. For many, emigration to Western Europe was the only way out. Unrest periodically manifested itself in the cities in the form of violent protests against rising food prices, one of the last large-scale outbreaks being 'the bread riots' of January 1984.

From the late 1970s onwards an increasing part of the population turned to political forms of Islam to express its feelings of discontent (Zeghal 2005). King Hassan saw the Iranian Revolution of 1979 as a serious threat to his regime. He harshly persecuted his islamist critics and condemned Imam Khomeini's views in the strongest terms. His Minister of Religious Affairs propagated a moderate form of traditional orthodoxy, which presented Malikism as an age-old tradition in

Morocco and articulated Islam as the way of 'the proper middle'. This policy focus had almost no impact on the development of substantive Islamic law. In fact, since the codification of the *Mudawwana* in the late 1950s, there had been numerous pleas for reform of Islamic family law, all of which remained unheaded, despite ever more vocal demands for reform from the 1980s onwards. The king rightly understood that it would be extremely difficult for him to reform the vulnerable symbol of Islamic identity and national unity to everyone's satisfaction. Modernists, reformists, conservatives, and islamists all held strongly deviating conceptions of the substance of an ideal Islamic family law (cf. Buskens 1999).

Unification of the legal system

Some of the most important events for the development of the Moroccan legal system in this period were the Arabisation, Moroccanisation, and unification of the law. A complete unification of the law was brought about by the law of 26 January 1965, which came into force on 1 January 1966 (Azziman 1986). It ended the division between *Makhzan* and 'modern' (previously French, Spanish, and international/Tangiers) legal rules. The Islamic courts were also integrated into the same unified system. Unification of the law implied the choice for 'modern' law as developed in the former French protectorate. The norms of the Spanish and international zone of Tangiers were abolished. Islamic law and Jewish law only kept their place in family affairs. Islamic norms furthermore regulated the transfer of rights to non-registered immovable property, and the administration of religious institutions (*wafqs* or *habus*).

The law of 26 January 1965 also determined that only persons of Moroccan nationality could act as judges, which meant the end of the work of over one hundred judges of French and Spanish nationality. The administration of justice was from that moment forward to take place entirely in Arabic. A large amount of laws and regulations therefore had to be translated into Arabic. The organisation of the judicial system remained strongly inspired by the 1913 Code of Civil Procedure promulgated by the French.

In practice, the system of 1965 proved to be strenuous and costly. Hence, new laws on the organisation of the courts and legal procedure were introduced in 1974, bringing about a drastic reform of the legal system. These laws still form the basis for the present judicial administration. The judiciary consists of four layers: 'jurisdiction communale et d'arrondissement' (lowest level local courts); first instance courts; Courts of Appeal; and a Supreme Court. Once again the influence of French legal models on these reforms was considerable.

The most important development with regard to Islamic law since the codification of the family law was the promulgation of a new statute governing professional witnesses who write down documents for all matters in which Islamic law applies (the *ʾudul*, sing. *ʾadl*). The institution of Islamic witnesses has a history of more than a thousand years in Morocco. Colonial administrators had increased their control over the *ʾudul* by implementing measures such as the creation of archives and the levying of taxes. The law of 1982 and a ministerial decree of 1983 fully integrated the *ʾudul*, and thereby also brought this important branch of Islamic evidence law into the new legal order (cf. Buskens 1999, 2008).[10] Through the incorporation of this classical Islamic institution, government control was further strengthened. Thus, the government affirmed once again that in Morocco Islamic law only functioned within the context and by the grace of state law.

3.4 The period from 1985 until the present

Human rights as an instrument of control and criticism

The last fourteen years of King Hassan's 38-year rule were characterised by cautious changes in the political system. Opposition groups increasingly invoked the concepts of human rights and civil society to voice their criticisms of the regime (cf. Hegasy 1997; Rollinde 2002; Sater 2007; Touhtou 2008). The sharp attacks on the political system by various islamist movements were worrisome for the central government because critics used the very Islamic idiom which the king himself used to justify his regime (Tozy 1999; Zeghal 2005). The islamists also increasingly called on human rights standards in order to claim their right to freedom of expression. Pressure from abroad meant that King Hassan could no longer ignore the growing criticism of his human rights record. Extremely critical publications appeared in France and, with the end of the Cold War and less geopolitical interest in Morocco, the United States also began to exert more pressure on Morocco to respect its human rights obligations. Eventually, the king could no longer refuse the visit of representatives of Amnesty International.

From the end of the 1980s the Moroccan government made attempts at solving its economic problems through neo-liberal means, such as large scale privatisation of the public sector and promotion of foreign investments. Through steps toward economic liberalisation the king attempted to increase support for his regime among the urban middle class. Until that point in time, Hassan had largely ruled by relying on his strong patronage relations with the rural elite. The increasing freedom for the media and the intellectual debate stimulated by new policies on public expression were also aimed at creating legitimacy for the

regime in the eyes of the urban middle class. In 1990, the *makhzan* formally adopted the discourse of human rights by setting up a national human rights institution ('Conseil consultatif des droits de l'Homme'). Finally, a Minister for Human Rights was appointed in 1993. The fact that the highly respected professor of law Omar Azziman was prepared to fulfil this difficult post was a considerable success for King Hassan II.

The acceptance of the *makhzan* by a considerable part of the middle class was also the result of the widespread horror over the savage civil war in neighbouring Algeria, in which islamist groups played an important role. Many Moroccans preferred Hassan's despotism to the display of bloody chaos being witnessed over the border. The king continued to use the Moroccan tradition of Malikism as a means to counter his islamist critics. As part of this strategy, the Ministry of Religious Affairs published important classics on Islamic law and theology at low prices. The king also demonstrated his religiosity and particular views on Islam by inviting obedient scholars to deliver a series of pious speeches in the palace each year during the fasting month of *Ramadan*.

Though the state from the early 1990s onwards began to permit the establishment of non-governmental organisations, it simultaneously tried to control these initiatives (cf. Hegasy 1997; Sater 2007; Touhtou 2008). Some of these groups specifically targeted the improvement of women and children's rights, while others focussed on regional identity issues, notably in Berber-speaking areas. The *makhzan's* evident increased openness on issues of Berber language and culture indicated that the regime had chosen to no longer associate the Berber issue with colonial policy and collaboration. Instead of repressing these movements, the king attempted to co-opt the Berber activists. In a royal speech in 1994 King Hassan recognised the importance of Moroccan 'dialects' next to 'the language of the Qur'an' (Kratochwil 2002). The king issued a decree permitting the teaching of these Berber 'dialects' at schools (Sater 2007: 141). On a formal political level, the constitutional modifications of 1992 and 1996, which introduced a two-chamber parliamentary system, also suggested new openness and democratisation. King Hassan presented the referenda about these proposed constitutional modifications as *bayas*, collective oaths of loyalty to his person, which would legitimise his rule.

Hesitant family law reforms

King Hassan again granted a symbolic role to Islamic family law in the creation of his new order. In 1992, after many years of debate, the king was finally prepared to consider a reform of the *Mudawwana*. He explicitly stated, however, that an eventual modification of the law should

not become a topic of public debate between different political factions. He used the example of the Algerian civil war as a possible consequence of public confrontation on this matter, thus legitimising his firm control over the reforms. As it happened, the parliament had been dissolved due to upcoming elections and the king, according to the constitution, had the power to single-handedly promulgate laws. Hassan explicitly referred in his speeches to his right to use *ijtihad* (free legal interpretation) as commander of the faithful. Ultimately, he claimed to hold the highest authority in the interpretation of Islamic law, and, as such, promised to protect the interests of his female subjects as a real father of the nation.

In the end, the legal reform proposals were the result of consultations of a committee consisting mostly of religious scholars and jurists appointed by the king himself. Participation of women's organisations in these consultations was severely limited. Despite his broad based public statements beforehand, modifications proclaimed by the king in September 1993 were extremely modest. The revised articles had little effect on male privileges concerning marriage, guardianship, polygamy, and repudiation. The main effect was new administrative procedures, supervised by judges and professional Islamic witnesses (the *ʿudul*), that made it more difficult for men to abuse their privileges. Rather than contribute to more equal and progressive relations between men and women, though, the new more stringent measures seemed to result in men attempting to escape from their obligations through informal ways, for example by simply disappearing when wishing to divorce their wives, instead of repudiating them in an orderly fashion.

In short, the revisions of a limited number of articles of the *Mudawwana* appeared to be largely a gesture by the king towards progressive, and vocal, groups to indicate his political willingness to consider reform. Reform from the king's perspective meant change that would not shock the traditional conceptions of Islam and society held by the majority of the population. A compromise proved to be virtually unreachable: islamists and orthodox were troubled by every reform, while the reformers remained disappointed by the lack of genuine change. In the end, all camps were forced to grudgingly accept the authority of the commander of the faithful.

A new family law code

According to a decision made by King Hassan, the elections of November 1997 were to result in what in French was called '*l'alternance*': the parties that had until then formed the opposition would now be given the chance to form a government and to rule the country for several years. This particularly concerned the socialist USFP (Union

Socialiste des Forces Populaires) and the centre-right Istiqlal party. Furthermore, in these elections the PJD (Parti de la Justice et du Développement), an islamist party permitted by the king and often referred to as 'the king's islamists' ('les islamistes du roi') obtained twelve seats in parliament. The new government that started in March 1998 aroused hope for social and political change. The government had ambitious ideas for social reforms for women in particular.

Indeed, within a year, in March 1999, the government presented a grand plan to get women more involved in the development of the country. Part of it was a drastic reform of family law to promote the equality between men and women. The expectations increased when King Hassan died in July 1999 and was succeeded by his eldest son Mohammed VI. The young king explicitly presented himself as a social reformer and happily made use of the nickname 'king of the poor', which he quickly acquired after ascending to the throne. He promised his support for reform plans in favour of the poor and the weak, which included women and children. With little ceremony he replaced the loyal collaborators of his father, such as the feared Minister of Interior Driss Basri, in order to symbolise the break with the old regime in a manner that would not directly forsake his father.

Supporters of the drastic reforms of family law hoped that the king would be on their side. They desperately needed his support because the government plans for radical reform of the *Mudawwana* had received a great deal of fierce condemnation from the side of traditional orthodox scholars and islamists. The traditionalists also expected support from the king because of the old ties between the `Alawi dynasty and the Islamic scholars and also because the former Minister of Religious Affairs, a faithful ally of King Hassan II, had expressly chosen their side. The clergy felt threatened in their traditional power concerning the interpretation of Islamic law. Islamists of all sorts, both those loyal to the king and those supporting revolutionary reform, used the debate over family law to find out how much space the young king would allow them to express their views in public. The apogee of the confrontation took place on 12 March 2000 in the form of two protest marches, one in Rabat *for* and one in Casablanca *against* government plans to reform the family law. The number of participants was difficult to estimate, but hundreds of thousands of people were involved. Notably, islamists and traditionalists were able to gather considerably more people in Casablanca than the progressive groups in Rabat.

In the course of the year 2000 tensions between the different factions increased. Each group was convinced of its own interpretation of Islamic law. There were accusations back and forth of heresy and un-Moroccan ideas and conduct. The progressive groups were, in the eyes

of the traditionalists and islamists, lackeys of the West. The reformers, in turn, portrayed their opponents as 'Taliban' and representatives of Saudi Wahhabism. Their differences appeared to be irreconcilable. Moroccan migrant communities in Western Europe also engaged in fierce discussions about the family law. In Morocco itself all factions, with the exception of the revolutionary islamists, called on the young king to decide what should happen with the family law. Finally, on 5 March 2001 King Mohammed VI reacted by promising to set up a committee to formulate a draft for the family law. He officially established this committee on 27 April 2001. Among its sixteen members, there were three women. The majority of members were Islamic scholars, jurists, and judges.

For the time being it appeared that the conservatives and the islamists had gained the upper hand. The debate on family law was waged almost entirely in Islamic terms. Progressive groups frequently referenced the applicability of universal human, women's, and children's rights and the importance of international women's conferences and conventions, but they never dared to voice the possibility of viewing Moroccan family law from a secular perspective.[11] By constantly referring to *ijtihad*, the modernists placed themselves within the Islamic tradition. The various islamist groups also succeeded in publicly expressing their views on Islam and its role in politics. The public atmosphere that existed in the newly emerging civil society in the post Hassan II period offered all sides an opportunity to participate in the political arena. This was a big step forward as compared to the repressive regime of Hassan II (cf. Buskens 2003).

On 16 May 2003 the world was shocked by a series of terrorist attacks in Casablanca. When the inconceivable news came that the culprits were Moroccan, king Mohammed VI reacted sharply against those who had abused their newfound freedom of expression. He claimed the right to interpret Islam as commander of the faithful and took strict measures against islamist activists. The repression was so fierce that it immediately provoked protests by human rights activists.

Concomitant to its repression of radical forms of political Islam, the government also offered an alternative view of what it considered 'real' Islam to be. With the appointment of a new Minister of Religious Affairs, historian and novelist Ahmad al-Tawfiq, the king wished to promote a policy concerning Islam in which an individual experience of religion was stressed as an antidote to political activism. As with new policies on Berber language and culture, this signalled that for the government mysticism (Sufism) had lost its association with colonial rule and 'backwardness'. Intellectuals and other members of the urban middle class had already rediscovered Sufism as an authentic Moroccan understanding of a peaceful Islam.

Mohammed VI settled for relatively liberal reforms of the *Mudawwana*, which he announced in a speech at the opening of the new parliamentary year in the fall of 2003. For the first time, an Islamic family law in Morocco became the subject of a parliamentary debate. The representatives of the islamist PJD proposed numerous amendments, but, in the end, both chambers voted unanimously for the new family law. On 3 February 2004 the king proclaimed the new *Mudawwanat al-usra*. With publication in the official government bulletin, the new family law went into effect immediately.

Many reform-minded people were satisfied with the results, although they considered the new law to only be a first step. They felt that they were the victors in the debate. Conservatives and islamists had no choice but to accept the inevitable. The real winner, however, appeared to be King Mohammed VI. Through his manoeuvring and an unexpected course of events he had been able to strengthen his power considerably. He emphasised his right of *ijtihad*, while simultaneously demonstrating himself to be a democrat by allowing a parliamentary debate on the law. He had grounded the contents of the new law in a liberal interpretation of Islam, linked to notions of progress and social justice. He emphasised continuity with the previous family law by presenting the reforms as further elaborations of the reforms granted by his late father in 1993.[12] Although traditional Malikism had lost substantial ground in favour of modernism, the modifications were justifiable within the context of traditional *salafiyya* ideology of the nationalist movement. The new law was, however, an explicit rejection of puritan views as preached by Wahhabis from present-day Saudi Arabia.[13]

As in the first years of the creation of an independent state, during the reign of his grandfather, Islamic family law proved once again to be a powerful symbol: King Mohammed VI showed his subjects at home that he still was in charge of his country and had effectively wielded his power. At the same time, the new family law was a sign to the outside world: the young king presented Morocco as a model for all Islamic countries, a state that wished to propagate a modern moderate Islam. This message was well received by Morocco's traditional Western allies France and the United States. The presidents of both states praised the new law as an important step forward, the king as a wise arbiter, and both as an example to the entire Muslim world.

In actual fact, the reforms were not as drastic as the previous government in 1999 had envisaged. The social meaning of the reforms would depend to a large extent on the ways in which judges would interpret the new law. Until now, our knowledge about actual practice is scant; progressive Moroccan scholars and activists have been very critical of the judges' interpretations of the new law (e.g. Benradi et al. 2007).

Research on judicial practice and everyday understandings of the law is still required.

The extent to which globalisation played a role in the debate over Moroccan family law was remarkable. Modernists as well as conservatives and Islamists defended their positions by referring to universal norms of human rights and international conventions. The different factions thereby propagated their own forms of universalism. Modernists referred to the women's conferences in Cairo (1994) and Beijing (1995), islamists to notions of puritanism, such as Wahhabism. To a certain extent they agreed on the fact that they could disagree with one another in the public sphere of the civil society.

Control of the public sphere

King Mohammed VI succeeded in dominating the debate about family law, just as the *makhzan* has attempted from the early 1990s onwards to control the debate on human rights and non-governmental organisations. In this way the state hoped not only to gain the support of the emerging middle class, but to simultaneously secure continued control of the public sphere. The result was previously unknown freedom for the press, for social movements, and for Berber activists. Mehdi Ben Barka, who had been a symbol for the oppressive rule of King Hassan II, became a symbol for the new democratic system of Mohammed VI after shocking revelations about his disappearance and the relatively open debate about it. Several weeks after his father passed away, the new king established a committee to compensate victims of unjust detention or disappearance (cf. Slyomovics 2005). In January 2004 Mohammed VI installed the '*Instance équité et reconciliation*', a government body whose task it was to investigate the human rights violations in Morocco during the 'years of lead' by convening public meetings throughout Morocco (cf. Vairel 2004). Names of the accused were not allowed to be mentioned.

The dominant political culture has remained rather authoritarian also in other domains. News about the royal family that is considered too outspoken has led, for example, to censorship and even criminal prosecution (cf. Hidass 2003). During the last years, the position of the *makhzan* appears to have hardened. As recently as 2009, there continue to be indications of severe censorship; the judiciary has reacted with high fines for journalists and further limitations on press freedom. It remains to be seen to what extent the *makhzan* will manage to control the discourse of human rights and civil society and to turn it into an instrument to dominate public debate. Many intellectuals and activists do not seem willing to give up the freedom they have tasted during the last years.

Drastic changes have not taken place in the Moroccan legal system in the course of the last twenty-five years concerning the relationships between state law, Islamic norms, and local customs. Since the protectorate period state law has constituted the framework in which other forms of normativity are integrated. Islamic law has remained relatively marginal, although the regime confirmed its symbolic importance through the reforms of the *Mudawwana*. New liberties for Berber movements and non-governmental organisations do not imply renewed recognition of customary norms, although scholars and activists can, after years of denial of the existence of Berber customs, openly publish on the issue (e.g. Arehmouch 2001, 2006; Ouaazzi & Aît Bahcine 2005; Hitous 2007; Belghazi 2008). The most remarkable development is the increased attention of government and social organisations for international legal norms, notably human rights, as laid down in international conventions. While Islamic family law has gained renewed meaning as a political symbol, 'human rights' (*huquq al-insan*) as a concept has become the most important political discourse in present-day Moroccan society, as a means of both legitimising and criticising government policy.

3.5 Constitutional law

Since 1962 Morocco has had a constitution (see 3.3). This constitution has been revised four times, namely in 1970, 1972, 1992, and 1996. The most important reform of the 1996 constitution is the institution of a parliament consisting of two chambers; previously the parliament consisted of a single chamber (cf. Buskens 1999: 51).

The Moroccan constitution does not contain a stipulation regarding the position of Islamic law in the legal system. All versions only speak of Islam in general terms. In the preamble, Morocco is described as an Islamic state; the state motto is: 'God, the fatherland, the king' (Art. 7).

Article 6 stipulates that Islam is the state religion and that the state guarantees religious freedom to all. Government policy is explicitly focussed on the peaceful co-existence of Islam, Christianity, and Judaism. Jews and Christians each have their own institutions, which are recognised by the state and entitled to certain tax benefits. There appears to be less acceptance of 'heretic' Muslims, such as Shi`ites, Ahmadis, and Baha'i, and for revolutionary islamists. The extent to which religions that are not recognised by Islam are accepted is unclear. In the past, members of the Baha'i community were prosecuted and hindered (cf. Buskens 1999: 51-52). It appears as though these prosecutions by the government have ceased (U.S. State Department 2009). The small community of foreign Hindus is also allowed to practice its religion. Each

year a festival for sacred music with performances stemming from religious traditions from all over the world is organised in Fez, with the explicit backing of the authorities. The festival fits with the official image of tolerance and religion as a personal experience that the government promotes. The victims of the 9/11 attacks in New York were commemorated in a ceremony in the cathedral of Rabat, whereby representatives of the three main religions came together, as well as important representatives of the *makhzan*. A group of orthodox *`ulama'* expressed fierce criticism of the presence of Muslims at this ceremony in a *fatwa*. The Minister of Religious Affairs responded immediately by refuting the rebellious scholars (cf. Buskens 2003: 114).

In the preamble of the constitution the legislator explicitly refers to human rights as the foundation of the Moroccan system. The constitution guarantees Moroccan citizens their fundamental rights. For example, according to Article 5 all Moroccans are equal before the law. Article 8 grants men and women equal political rights. All citizens have access to public functions on the basis of Article 12. The influence of French public law is also evident in the separation of powers and in the structure of the state and the legal system, as was previously mentioned.

The most peculiar aspect of the Moroccan constitution concerns the position of the king in the state system: he has considerable powers. Article 19 is of particular importance for the relation between Islam and the constitution. It refers to the king as 'the commander of the faithful' (*amir al-mu'minin*), who has responsibility for, among other tasks, ensuring respect for Islam. The king is, therefore, not only head of state, but also leader of his subjects in Islamic matters. King Hassan II, the architect of the Moroccan constitution, regularly referred to this function in order to legitimise his regime. In his vision he held the highest power in Islamic matters and he had the authority to independently interpret Islamic law (*ijtihad*). The king also serves as chairman of the council of Islamic scholars and determines the substance of Islam in Morocco (Buskens 1999: 52-55). The recent debate about reforms of family law affirmed the key role of Muhammad VI in Islamic matters. According to Article 106, the position of the king and Islam are not subject to constitutional revision or review.

Article 20 determines that the eldest son of the king succeeds him. This signifies that the head of state can never be a woman or a non-Muslim. Despite this construction, women have already been holding positions as ministers and as members of parliament for a number of years. Both King Hassan II and his son Muhammad VI have also appointed influential counsellors from the tiny Jewish community, with which the royal family maintains excellent relations.

3.6 Family and inheritance law

The reform of family law in 2004 is the most important event in the area of Islamic law in Morocco since the codification of the *Mudawwana* in 1957-1958. The new law symbolises continuity with tradition, as well as change. This is already implied by its title *Mudawwanat al-usra* ('Code for the Family'). The law, like its predecessor, is named *Mudawwana*, literally 'collection' or 'code of law'. The name is also a reference to the famous overview of Maliki jurisprudence composed by the Maghribi scholar Sahnun in the ninth century. Instead of the factual specification *al-ahwal al-shakhsiyya*, or 'the personal status', added to the 1958 code, the legislator specified the new law as referring to *al-usra*, or 'the family'.

The legislator explicitly focusses on new rules to promote the stability of the nuclear family, within which men and women are to act as equals. Although King Muhammad VI repeatedly positioned himself as a great supporter of the rights of women and children, he ultimately legitimised the reforms by presenting them as measures to promote the effectiveness of the revisions introduced by his late father Hassan II in 1993. In comparison with the old code of law, which contained 298 articles, the new code with its 400 articles is much more extensive. In addition to important innovations, the legislator has also retained much of the material from the old *Mudawwana*, partially rephrased. The new law, like its predecessor, contains a reference in the last article to the Maliki legal tradition. New in this code is the reference to *ijtihad*, which must serve justice, equality, and a harmonious family life, all of which constitute important Islamic values. At the same time the legislator cautions that efforts toward reform through the use of *ijtihad* should not go too far, always keeping in mind fundamental principles of fairness.

Until the reforms of 2004 the patriarchal model of family relations formed the basis for Moroccan family law. Marriage and regulations concerning divorce, descent, custody over children, and inheritance law were structured by intrinsically unequal relations of exchange between a husband and wife. According to this conception of marriage, the man offers a bride price and financial support to the woman in return for her obedience and sexual availability. This patriarchal model is rooted in classical Islamic law and the related world view, as well as in conceptions shared by many Moroccans. In family law this resulted in institutions criticised by reformers, such as obedience of a wife to her husband, polygamy, male marriage guardianship over daughters, and repudiation as a male privilege.

The new *Mudawwanat al-usra* is meant as a break with this model, as the change of its name already indicates. The overriding principle of the new model is contained in Article 4, which states that the goal of

marriage is 'the formation of a stable family under supervision of both spouses'. According to Article 1 of the old *Mudawwana*, the husband was considered to be the head of the family. In the stipulations on the legal consequences of marriage, the distinction between rights and duties of husband and wife are replaced with one article that describes their reciprocal duties. The woman is no longer required to be obedient to the man; instead, 'the wife and the husband together are responsible for the administration and the control of the house and the children' (Art. 51(3) Mud). The view of equality between the spouses underlies numerous other reforms in the new family law. However, some traces of the old patriarchal model remain, such as the obligation for the husband to provide his wife with a bride price and maintenance, the possibility for polygyny, the prohibition for Muslim women to marry non-Muslim men, the male privilege of repudiation, the different rights of fathers and mothers over their children, and the inequality in inheritance.

Marriage

One of the most important issues in the reform was the institution of marriage guardianship. According to the Maliki school of law, a woman has to be represented by a male marriage guardian, preferably a close relative such as a son, father, brother, nephew, or grandfather, when contracting a marriage. Some modernists considered this subordination to be outdated. In an opinion poll, however, it appeared that not only conservatives and islamists, but also many reform-minded persons were opposed to abolishing this institution (Buskens 2003: 106-107). The large majority of the respondents considered control by the family over an intended marriage to be a core value in Moroccan culture. Nevertheless, the legislator decided to offer an adult woman the possibility to marry without a marriage guardian (Art.s 25-25 Mud). The new law adopted a view current in the Hanafi school and, thus, remained within the bounds of classical law. In 1993 the legislator had carefully taken a first step in this direction by making marriage guardianship optional for an adult woman whose father had died (Art. 12(4) Mud 1993). At that time, the right of a father to force his daughter into marriage against her will (*jabr*) was also completely abolished (Art. 12(4) Mud 1958; Art.s 5, 12 Mud 1993). According to the new law of 2004, adult Moroccan women can enter into a marriage autonomously, although they may still opt for assistance by a male guardian.

Another issue garnering continued attention has been the minimum age of marriage. In 2004 the minimum marriage age for women was raised from 15 to 18 years, becoming equal to the required age for men (Art. 19 Mud). Islamists fiercely protested against this increase in age, arguing that it would be a source of moral decay. Article 20 offers the

judge the possibility to exempt women from this requirement, granting them permission to marry at a younger age. In this case they need a marriage guardian to conclude the contract for them. They would also need the consent of their legal guardian since they have not yet reached the age of legal majority. The reforms of 2004 lowered the age of legal majority for both girls and boys to 18 years (Art. 209 Mud).

It is still not possible for a Muslim woman to marry a non-Muslim man. The Moroccan legislator does, however, permit a Muslim man to marry a Jewish or Christian woman, in accordance with classical sharia rules (Art. 39(4) Mud). Few activists advocate the elimination of this inequality, which is supported by the majority of the population. Some, such as the Moroccan imam El-Moumni in Rotterdam (the Netherlands), argue that it is wrong or even forbidden for Muslim men to marry non-Muslim women in situations where Muslim women have difficulty finding husbands, as seems to be the case in many Muslim immigrant communities in Western Europe (cf. Van Koningsveld & Tahtah 1998: 58-59).

The obligation for the husband to give his wife a bride price (*mahr* or *sadaq*), a clear patriarchal element, has been maintained in the new law. According to Article 13, the bride price is a condition for the legal validity of a marriage contract, in accordance with Maliki rules. The legislator emphasises that the bride price is a woman's exclusive right, and that as such she can dispose of it as she pleases (Art. 29 Mud). The size and manner in which the bride price is handed over are laid down in the marriage contract. Parties can also include other conditions in the contract so long as they are not in conflict with the law (Art.s 47-48 Mud). An important innovation is the possibility to lay down in a separate document that property acquired by both spouses during the marriage is communal property. If such an agreement is lacking, it remains at the discretion of the judge to decide whether he nevertheless wants to divide the property in case of divorce (Art. 49 Mud).

Under the new law, women have the right to set the condition that their husbands may not marry another woman (Art. 40 Mud). In the reforms, extensive attention has been given to measures limiting polygamy by men by introducing a series of administrative restrictions. The man can only marry another woman in case the judge, his current wife, and his future wife give their permission (Art.s 40-46 Mud). If a husband violates his promise not to marry another woman, his wife can apply for a judicial divorce. Polygamy has been an important symbol in the struggle for reform of the family law. For progressives, it has been seen as a sign of inequality, for conservatives and part of the islamists, a God-given privilege for the man. It is remarkable that the Moroccan legislator, like legislators in other Arab countries, did not dare to abolish this practice completely, even though it seldom occurs in practice.

The reforms expressly emphasise the equality of men and women in marriage (Art. 51 Mud). Neglect of reciprocal rights and duties is sanctioned, and marriages can be dissolved by the judge on the basis of enduring discord (*shiqaq*) (Art. 52 Mud). The rights of children have also received a great deal of attention, with reference to international conventions (Art. 54 Mud).

The 2004 law gives rules for the writing down of a marriage contract by professional witnesses (the *ʿudul*) under the supervision of a judge. These representatives of the government are tasked with seeing to the enforcement of legal stipulations that for example define and condition the minimum age of marriage, polygamy, and mutual consent to the marriage contract. The obligation that a marriage must be mentioned as a side note in the birth register is also meant to contribute to increased government control.

Articles 14 and 15 contain an important innovation concerning the acknowledgement of foreign family law in Morocco. Moroccans who reside abroad may conclude a marriage according to the law of the country in which they are residing. This marriage can be recognised in Morocco, if several requirements of Moroccan marriage law are also met, such as the stipulation of a bride price, the presence of two Muslim witnesses, and the absence of marriage impediments. Article 128 contains a similar rule for the recognition of divorce by a foreign judge.

With these reforms the legislator attempts to find solutions for the possible problems faced by the numerous Moroccans who have emigrated to Western Europe (cf. Rutten 1988; Foblets 1994; Foblets & Carlier 2005; Jordens-Cotran 2007). Maintaining ties with European immigrants is of great importance for the Moroccan economy, since they are the main source of foreign currency. At the same time, the recognition of foreign marriages and divorces are also meant as an expression of goodwill toward the European governments with whom Morocco would like to conclude bilateral conventions concerning the application of Moroccan family law, and to whom it wishes to show a positive image of the Moroccan legal system.

Divorce

The forms of divorce stipulated in the new *Mudawwana* are manifold and complex. The original plan to replace all existing possibilities with a judicial divorce accessible to both spouses equally was not adopted. Judicial divorce based on enduring discord between the couple (*shiqaq*) has been added to the law, next to the already existing forms of divorce in the previous *Mudawwana*. The legislator has probably retained the old forms in order to prevent the reforms from appearing too abrupt

and to avoid fierce criticism from opponents. The right of repudiation had great symbolic value in the debates about reforms, both for supporters and for opponents. Conservatives and islamists considered it to be a God-given right that could not be abolished. For defenders of women's rights, it was one of the most blatant examples of inequality between the sexes and a threat to children's rights.

Moroccan family law contains, in addition to decease and annulment due to flaws in the contract, the following possibilities for marriage dissolution:

1. Repudiation (talaq)

Repudiation is a simple legal procedure that can be performed by the husband, or by the wife if she has been granted this right by her husband (Art.s 78-93 Mud). The law provides extensive rules for the procedure that must be followed. The *ʿudul* can only draw up a repudiation document after approval from a judge. The judge summons both spouses and attempts to reconcile them before giving his approval. When attempts at reconciliation fail, the law gives detailed rules that aim to ensure that the woman and any children suffer as little damage as possible from the repudiation. The man, for instance, must deposit a certain amount at the court so that financial support can be provided for his ex-wife and their children. Traditional forms of repudiation, such as by oath, linked to fulfilment of certain conditions, and triple *talaq*s, are not valid under current Moroccan law (Art.s 90-93 Mud).

2. Repudiation by the judge (tatliq)

There are two forms of judicial dissolution: repudiation by the judge upon the request of one or both spouses due to enduring discord (Art. 94 Mud); and repudiation by the judge upon the request of the wife. The law only recognises six grounds on which a woman can base her request (Art.s 98-113). The legislator in this regard follows a liberal interpretation of classical Maliki law, which allows the judge to dissolve a marriage in case the man does not fulfil his marital duties to the extent that his neglect harms his wife. Continuation of the marriage in that case is considered unreasonable and undesirable according to the Maliki scholars. The six grounds, as enumerated in the new law, are:

– failure of the husband to fulfil the conditions agreed upon in the marriage contract (Art. 99 Mud);
– the woman suffers harm (*darar*) caused by the husband; in case the woman cannot prove the harm but nevertheless persists in her desire for divorce, she can use the procedure for enduring discord between the couple (*shiqaq*) (Art. 100 Mud);
– failure of the husband to fulfil his duty to provide maintenance to his wife (Art. 102 Mud);

– absence of the man for more than one year (Art.s 104-106);
– ailments and defects that hinder the marriage and of which the person requesting the divorce was unaware at the time of the marriage, such as long-term illness; a man can also request divorce on this ground (Art.s 107-111 Mud);
– refusal of the man to engage in sexual relations with his wife, as expressed in a vow (Art. 112 Mud).

3. Repudiation by mutual agreement

This form of dissolution can occur with (Art.s 115-120 Mud) or without (Art. 114 Mud) compensation by the husband to the wife. The repudiation of the wife by her husband in lieu of compensation is known as *khul`*. In case where parties cannot agree about the compensation, women may make use of the procedure for enduring discord (Art. 120 Mud).

All forms of divorce are effectuated under the supervision of the judge, and sometimes professional witnesses as well. Both parties are summoned by the judge in the handling of the divorce. In almost all cases, except for repudiation by the judge due to absence of the man with an unknown place of residence (Art. 113 Mud) or repudiation against compensation whereby parties have reached an agreement about the compensation (Art. 120 Mud), the judge attempts to reconcile the parties prior to approving the divorce. In the procedure to be followed, judges and the *`udul* are tasked with ensuring that men fulfil their financial obligations towards their wives and children. The rules for registration have also been made stricter under the new law. As with marriage status, the civil register of births and deaths contains a side note of the divorce, where applicable (Art. 141 Mud).

Article 128 further broadens the possibilities for divorce by recognising decisions by foreign judges, as was previously mentioned. The new *Mudawwana* in principle grants both men and women the opportunity to request the judge to dissolve their marriage. Although not all Moroccan jurists want to acknowledge this, a certain inequality does remain because men automatically have the right of repudiation by entering into a marriage, while women only have this right in case the man grants it to her. The man's right to repudiation is nevertheless subjected to judicial control. For this reason some Moroccan jurists, including representatives of the Ministry of Justice, argue that the term *talaq* should no longer be translated as 'repudiation', but should instead be considered a special form of judicial divorce.

Descent and relations between parents and children

The *Mudawwana* contains several important innovations as compared to classical Islamic law and the previous family law with regard to descent and the relations between parents and children.

Possibilities to establish the descent of a child with regard to a father have been broadened as a reaction to the important social debate about unmarried mothers with illegitimate children (Bargach 2002). The legislator has made it more difficult for men, who get women pregnant and then abandon them, to escape from their responsibilities. The new law provides the judge more discretion in establishing paternity and the existence of a marriage. Article 16 enables the judge to declare the existence of a marriage, even when a marriage contract is lacking: progeny or pregnancy are considered as means of proof of the existence of a marital bond. Articles 155 and 156 further elaborate on this possibility. When persons assume they are maintaining conjugal relations, without formally having entered into a valid marriage, this can be considered as a case of what is called *shubha*, or maintaining relationships in good faith without actually knowing the legal details. Articles 152 and 155 recognise *shubha* as a valid ground to establish descent. Article 156 provides further conditions for establishing descent in case of a marriage without an official marriage document. If the man denies fatherhood, the law allows the use of all legal means of evidence to establish paternity (cf. Al-Kashbur 2007). With these innovations based on the classical concept of *shubha*, the legislator has taken an important step to limit the negative effects – legal, economic, and social – of illegal descent for both mother and child.

With regard to the authority of parents over their children, the legislator has retained the classical distinction between care (*hadana*) and legal guardianship (*wilaya*), while simultaneously strengthening the position of mothers. During the marriage both parents provide care for their children, *hadana* (Art. 164 Mud). After dissolution of marriage, the mother is the first to obtain the right to care, the father being the second in line (Art. 171 Mud). At the age of fifteen children can choose with which parent they wish to stay (Art. 166 Mud). The mother no longer necessarily loses the right to care if she remarries, unlike under classical law (Art. 175 Mud). Another reform allows the mother more flexibility in exercising her right to move within Morocco, even if this move would result in the children living geographically farther away from their father (Art. 178 Mud). The authority over the children or the legal guardianship (*wilaya*) remains the privilege of the father, in accordance with classical views (Art. 236 Mud). The mother can obtain this right if the father is unable to act as a legal guardian (Art. 231 Mud), a reform of the classical law that was already introduced in 1993 (Art. 148 Mud 1993).

Another important institution related to the patriarchal family model is the husband's duty to provide maintenance to his wife and children (*nafaqa*). This duty has not been abolished: the man remains obliged to support his wife and children (Art.s 194, 197, 198 Mud). The woman, in contrast, cannot be obliged to financially support her husband. In case the father is not capable of supporting his children and the mother is capable of doing so, then it becomes her duty to provide for their maintenance (Art. 199 Mud). The new law strengthens the rights of children to maintenance in cases where they are, for example, still studying or are disabled. In Article 202 the *Mudawwana* refers to the possibility of criminal prosecution when the father neglects his duty to support his family for a month or more.

The Moroccan legislator has respected the classical prohibition of adoption in Article 149 of the *Mudawwana*. A testamentary bequest favouring a person whereby he or she receives part of the inheritance as if he or she were a child is possible, but only within the limits that apply for bequest, thus not exceeding one third of the total inheritance. In addition, the *Mudawwana* offers the possibility to contract the duty to financially support a third party (*kafala*) (Art.s 187, 205 Mud). Morocco succeeded in 1996 in receiving recognition from the Hague Convention on Protection of Children for this institution of *kafala* as one of the instruments for the protection of a child. The recognition of this duty as a sort of adoption was a reason for Morocco to give up its objections towards this convention and become a party to the convention (cf. Buskens 1999: 196-198).

Inheritance law

The structural inequality between men and women is sustained in the rules of the *Mudawwana* on inheritance: a woman inherits half of what a man in the same position inherits (cf. Rutten 1997). Reforms in this area are apparently difficult to realise. In debates, women have addressed this inherent inequality, but it has not been given high priority. For many this is an issue that has only relevance for a small group of wealthy women. It is understood that in these circles fathers know how to use the means offered by law to favour their female relatives.

The legislator did remove the inequality between grandchildren who would be excluded from an inheritance of a grandparent because their parent had died. Since 2004 a bequest is not only obligatory for grandparents in favour of their grandchildren via the son, but also via the daughter (Art.s 369-372 Mud). Hereditary succession between a Muslim and a non-Muslim is still impossible, as between a natural parent and an illegitimate child (Art. 332 Mud).

Judicial practice

Not all Moroccans endorse the new vision according to which women and children have increased rights, while men are forced to accept stricter obligations. In fact, the significance of the reforms largely depends on the way in which judges and *ʿudul* apply the law in practice.

The administration of justice concerning family law takes place in special family law courts that are part of the first instance courts. Both men and women can act as judges. They supervise the *ʿudul* – male professional witnesses – who write down marriage contracts and repudiation documents and who divide inheritances. The *ʿudul* have protested because the reforms have limited their tasks in substance and scope, while at the same time making their jobs more complex and cumbersome in practice. Due to their education in classical law, the *ʿudul* also generally adhere to a more conservative vision of Islam.[14] Likewise, it appears that not all judges of the old guard are prepared to apply the new visions espoused by the most recent version of the *Mudawwana*. For example, a judge in Rabat in November 2004 responded to the question of whether a woman could always obtain a judicial divorce by stating that nobody could force him to pronounce a divorce. The female president of the family court promptly corrected him by explaining that her older colleague did not yet understand the new law. But indeed, a report from a Moroccan women's organisation indicates that judges do frequently give preference to interpretations of the law, which go back to earlier visions of family life (Ligue Démocratique 2005).[15]

The Moroccan government has started a widespread campaign to clarify the vision of the legislator to the judiciary and to thereby promote the application of the law. The Ministry of Justice organises courses and meetings all over the country. It has also published an official manual for the application of the law in practice, which provides for the proper interpretation of articles and further legitimises their existence in Islamic terms. A French version of this guide has also been published, and is available on the website of the ministry as well.

It is evident that the Moroccan government considers it important that a suitable image of the law is presented outside of Morocco. The new family law could apply in several Western European countries via international private law. Through the reforms, the government wishes to promote international cooperation in legal matters and recognition of Moroccan law. The concern about images held by foreign countries partly explains why an official French translation of the *Mudawwanat al-usra* took so long. Moroccan jurists could not agree on the translation of several terms. The jurists of the Ministry of Justice, for example, were of the opinion that the word *talaq* in the new law should no longer be translated as 'repudiation'.

3.7 Criminal law

In Moroccan criminal law, norms that are directly derived from classical sharia play a limited role. There is no mention of corporal punishments for specified crimes mentioned in the Qur'an (*hudud*) or retribution. The criminal law is for an important part inspired by French legislation and codified in the Code of Criminal Law of 1962, most recently revised in 2003, and in the code of criminal procedure of 1959, of which a new version went into effect on 1 October 2003. The reforms are partly related to the war on terrorism that received a great deal of attention in Morocco following the attacks in Casablanca in May 2003. According to human rights organisations, the methods of prosecution used resulted in violations of human rights, even though Morocco is party to the Convention Against Torture.

Article 222 is one of the few stipulations of the criminal code that explicitly refers to a norm derived from Islamic law. The article sets forth that Muslims who publicly disrespect the rules of fasting in a provocative manner during the month of *Ramadan* can be punished with a fine or detention. This article is part of a series of general articles concerning the respect for religious practices that fall under a chapter on civil rights. The maximum punishments are three years imprisonment and a fine of 500 dirham (around 50 euro). Articles 220 and 221 make the obstruction of religious practices also, in principle, punishable. Article 223 concerns damaging, destructing, or staining buildings, places, and/or objects related to religion. Articles 268 to 270 focus on desecration of tombs and Articles 271 and 272 focus on protecting the integrity of mortal remains, all with maximum punishments of five years imprisonment and fines of up to 1000 dirham (around 100 euro).

Article 220 of the criminal code forbids the undermining of the faith of a Muslim or attempts to convert a Muslim to another religion. The article specifies charity and welfare work as punishable methods of converting a person. Christians who limit themselves to charity work can carry out their work unhindered, but missionary work may result in prosecution and expulsion. Distributing Bibles in European languages is permitted, but for the import of Arabic translations the government refuses to give permission, despite the absence of any explicit legal prohibition (U.S. State Department 2004).

Morocco has made a reservation to Article 14 of the Convention for the Rights of the Child (CRC), which grants children freedom of religion, on the basis that Islam is the state religion. In April 2005 a group of members of parliament for the Istiqlal party called on the Minister of Religious Affairs to take measures against evangelists who presumably tried to convert poor youth. Although apostasy is not punishable for Muslims according to the criminal code, persons who converted to

Christianity were until a few years ago questioned by the authorities and sometimes even detained for a short period of time on the basis of Islamic legal norms (U.S. State Department 2004). Furthermore, converting is not socially accepted and can lead to scoffing and expulsion from the community.

A series of articles make the corrupting of Islamic values with regard to family life and honour punishable. This can be conceived as a confirmation of the patriarchal Islamic family model, which is rooted in the Moroccan culture. These stipulations can, however, for the most part be traced back to the French *Code pénal* and are not examples of the influence of classical Islamic criminal law. Penalisation applies to abandoning children (Art.s 459 and further), child abduction (Art. 471 and further), and abortion absent medical grounds (Art. 449). Articles 479 to 482 concern criminal prosecution with regard to the abandonment of household duties by one of the spouses, non-compliance with the obligation to provide maintenance, and neglect of the children.

In Articles 483 to 496 the criminal code sets forth punishments for a number of violations of public morality and virtue, such as rape, indecent assault, incest, sexual contact between unmarried people, adultery, and the abduction of a married woman. Articles 497 to 504 prohibit prostitution and moral corruption, such as pornography, and Article 608 (4) prohibits the public display of offensive images. Article 488 prescribes an increase in the penalty in case indecent assault, rape, or incest has led to the loss of virginity. According to Article 492, adultery is an offence that is only punishable in case a complaint is made.

The penal code prescribes rules for cultural crimes in which generally men use violence against members of their family or household when they consider their honour to have been tarnished. Article 414 of the criminal code prescribes an increase in the penalty if the accused has used violence against relatives with whom he is in a relationship of authority. Articles 418 to 424, in contrast, allow a decrease in penalty in case a family member or a third party has used violence when he is confronted with an act of a sexual offence. Article 418 allows for manslaughter and maltreatment in case a man catches his wife committing adultery. Article 419 allows castration in case of direct confrontation with an immoral offence. Article 420 excuses a family head for maltreatment, even if this unintentionally results in death, when he is confronted with unauthorised sexual acts in his household. Article 422 states that there can never be a decrease in punishment in case of the murder of a parent. Various women's groups have been struggling for years for the abrogation of Article 418 in particular, which they perceive as an approval of violence against women. Until now this combat against what they consider to be the Moroccan patriarchal 'macho' culture has not been successful (Buskens 2003: 109).

Other articles that can be understood as a protection of Islamic norms without being directly founded on classical Islamic law include, for example, Article 377, concerning false oaths and Articles 368-379 on false testimonies and perjury. Article 609(35) of the criminal code states that predicting the future and explaining dreams is punishable.

Numerous other forms of behaviour that are in conflict with Islamic norms are only punishable in case the party involved does not stay within the state legal framework. Licences are required, for example, for operating gambling halls and organising gambling games (Code of Criminal Law, Art.s 282-286). Selling alcoholic beverages is permitted, but also tied to licences. Alcoholics and other addicts can be forcibly admitted to rehabilitation according to Articles 80-85 when they have committed punishable acts as a result of their addiction.

In sum, one can conclude that the Moroccan criminal law contains few traces of classical Islamic criminal law. French criminal law served as a model that reinforced some 'Islamic' norms concerning family life, public morality, property, and violence. Other Islamic norms, such as the prohibition of gambling and alcohol, are not directly enforced by the law.

3.8 Other areas of law, particularly commercial law

Morocco does not have a comprehensive civil code. The relevant legal rules are spread over several codes and laws. French jurists composed the code of contracts in French in 1913, immediately after the establishment of the protectorate (*Dahir formant code des obligations et des contrats*). This code remains the cornerstone of civil law, yet it barely contains any reference to Islamic legal norms. Other areas of civil law, such as trade law (1996 *Code de commerce*), insurance law (2002 *Code des assurances*), and banking law, are also familiar for jurists who have some knowledge of French law.

Since the end of the 1980s the Moroccan government has been trying to promote economic growth by making it easier for foreign investors to do business in Morocco. There is no prohibition on interest; Moroccan banks offer and demand relatively high interest rates. A legal obligation to pay an Islamic tax (*zakat*) to a religious tax office is also absent from the law.

Rights to real estate are modelled after French law in so far as the real estate is registered in public registers. About 90 per cent of immovable property is not registered, in which case Islamic and customary rules apply. These rules are not codified, but partially gathered in classical legal treatises. Religious foundations (*awqaf*, sing. *waqf*) also exist. They are administered by the Ministry of Religious Affairs and

Religious Foundations and form an important source of income (Stöber 1986). Limited reforms have recently been introduced (cf. Benyahya 2007).

As previously mentioned, the Moroccan state structure and the legal system are characterised by a creative and selective usage of elements of Islamic tradition, the most famous being the institution of 'the commander of the faithful'. Another example of this is King Hassan's response to the riots in Casablanca in 1981, where he tried to appease the masses by creating new institutions to oversee the quality and prices of staple food items. He did so by reinventing in 1982 two economic functions to control the market, namely the *muhtasib* (market inspector) and the *amin* (head of corporations). The terms are taken from classical Islamic law, even though their structure is for the most part new. The *muhtasib* controls the price and quality of goods and services as well as respect and good morals in the public space, hence fulfilling the function of *hisba*. He is supported in his function by *umana'* (sing. *amin*), heads of corporations of craftsmen and merchants. The *muhtasib* is appointed by royal decree (*dahir*), and the *amin* is elected by the members whom he leads.

An example of an invented tradition that uses classical Islamic legal terminology to bestow legitimacy on a modern state institution was the establishment by King Mohammed VI of an ombudsman institution by the name of *diwan al-mazalim*, where citizens could submit complaints about the functioning of government services. The institution was created on 1 December 2001 on the occasion of the international day for human rights. The king presented the institution as a strengthening of human rights in conjunction with the principles of Islamic law and his function as commander of the faithful (*amir al-mu'minin*).

3.9 International conventions and human rights obligations

The Moroccan state officially assigns great importance to human rights. At the end of the 1980s King Hassan II began to pay lip service to human rights as part of a new policy aimed at the urban middle class and economic liberalisation (see 3.4). In 1990 he established a Council for Human Rights, and in 1993 he appointed a Minister for Human Rights. His successor Mohammed VI reformed the Council for Human Rights and implemented the above-mentioned ombudsman institution (*diwan al-mazalim*). On numerous occasions he emphasised the compatibility of Islamic norms with human rights. This official ideology can also be found in the preamble of the 1996 constitution, in which human rights play a prominent role.

Morocco became a member of the United Nations on 12 November 1956, several months after independence and the unification of the three zones into one national state. Since that time, the country has ratified a series of important conventions: the Convention on Genocide; the International Covenant on Civil and Political Rights (ICCPR); the Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention Against Torture (CAT); the Convention on the Rights of the Child (CRC) and its two optional protocols; and the International Convention on the Rights of All Migrant Workers and Members of Their Families (ICRMW).

Morocco has made reservations and declarations with the signing of some of these conventions. The reservations to the Convention on Genocide, ICERD, CAT, and ICRMW were made for the purpose of limiting the jurisdiction of international judicial bodies with relation to Morocco and its full compliance with the conventions. In terms of conventions specific to the rights of women and children, as set forth by CEDAW and CRC, Morocco made reservations invoking Islam. The reservation made to the CRC concerns Article 14, which offers children freedom of religion. Morocco refers to the freedom of religion in the national constitution, but also to the stipulation that Islam is the state religion. This means that a Muslim child cannot change his or her religion, and thereby does not have absolute freedom of religion.

The declarations made *vis-à-vis* CEDAW primarily concern Article 2. The obligations to lay down the equality between men and women in legislation, and to take measures accordingly, may not restrict the constitutional stipulations that regulate the succession to the crown. This means that Morocco maintains the requirement that the head of state is a man. Article 2 furthermore only applies in so far as it does not conflict with the stipulations of Moroccan family law which grants different rights to men and women based on Islamic law and which are aimed at creating harmonious family relations. The enforcement of Article 15(4) of CEDAW, which grants women freedom of movement and freedom of residence, was limited by Articles 34 and 36 of the 1993 *Mudawwana* as those articles obliged women to obey their husbands and to live with them. The obligation of obedience has been abolished with the family reforms of 2004, but Article 51 of the 2004 *Mudawwana* still mentions co-habitation as a legal consequence of marriage.

The reservation made to Article 9(2) CEDAW concerns the equality between men and women in the possibility to pass on their nationality to their children. Until 2007 the Moroccan legislation on nationality restricted the right of women to obtain Moroccan nationality for their

children. Moroccan women's rights movements have long advocated for the abolition of this discriminatory barrier to obtaining nationality. At present, it appears that while Morocco has not formally withdrawn its reservation, Article 6 of the 2007 Nationality Act allows women to transfer their nationality of origin to children born of foreign fathers and could in practice be considered as a withdrawal of the initial reservation to the Convention on this point.[16]

The reservation made to Article 16 CEDAW concerning the equality of men and women in entering into marriage and the possibility to obtain a divorce is aimed at safeguarding the male privilege of repudiation. According to Moroccan family law in force until February 2004, the marital duties of men and women were unequal: a husband had to offer the woman a bride price and maintenance, whereas his wife enjoyed complete control over her own property. For this reason, the man had the right to repudiation, while the woman had to request a judge for a divorce. In the vision of the Moroccan legislator, this inequality no longer exists in the *Mudawwana* of 2004. In the reservation made to Article 29 CEDAW, Morocco does not subject itself unconditionally to mediation in case of a dispute between states about the interpretation or application of this convention.

Morocco ratified CEDAW in 1993, but never published the text of the convention in the official bulletin. In the context of the debate about reforms of family law, Moroccan women's organisations requested King Mohammed VI to withdraw the reservations and to publish the convention. Their actions were only partially successful: on 26 December 2000 the king proclaimed CEDAW by royal decree, but did not at the same time withdraw Morocco's above-mentioned reservations to the Convention (cf. Buskens 2003: 108-110). Indeed, although it would appear based on Morocco's latest report to the Committee in 2006 and a statement by the Ministry of Justice on the occasion of International Women's Day in March 2006, further reiterated in a royal statement on the occasion of International Human Rights Day on 10 December 2008, that Morocco intends to withdraw most of its reservations to the Convention, it has not yet formally done so. During the fortieth session of the Committee in February 2008, the Moroccan representative (the Minister for Social Development, the Family, and Solidarity) made the argument that some reservations, such as to Article 9 as addressed above, have already begun to take place, but that the Committee should bear in mind that Morocco is still a young nation and that 'attitudes [do] not change overnight'.

In the debate about family law, human rights and international conventions have played an important role for activists of different backgrounds as well as for the government. King Mohammed VI repeatedly emphasised his respect for international law and his desire to bring the

family law into compliance with both Islamic law and human rights. The Moroccan Ministry of Foreign Affairs published a book in 1997 in which the international conventions for the benefit of women's rights were extensively presented (Ministère des Affaires Etrangères et de la Coopération 1997). The fact that this work was published in French showed that it was also aimed at improving Morocco's international reputation with regard to its treatment of women and respect for human rights standards.

The Moroccan reservations to the conventions partly serve to allow Islamic norms to prevail, mainly concerning the unequal relations between men and women. On the formal level of Moroccan legislation, the possibilities of conflict between Islamic law and human rights norms are indeed mainly in the domains of the relationships between men and women and between parents, especially fathers, and their children, as regulated in family and criminal law. Particularly the reservation made to Article 2 CEDAW, one of the main articles of the convention, permits Morocco to avoid adjusting its legislation to realise more equality between men and women. According to the official Moroccan view, the 2004 reforms in family law satisfy the required equality between men and women.

In accordance with its reporting obligation under CEDAW, the Moroccan government submitted an official report to the U.N. Committee for CEDAW three times, with the latest in August 2006 acting as a combined third and fourth periodic report. The Committee discussed the reports in meetings in January 1997, July 2003, and February 2008. In each session, the Committee urged Morocco to fully enforce the stipulations of the convention and to withdraw its reservations. According to the Committee, a liberal interpretation of Islam, as practiced in some other Islamic countries that have not made any reservations, could offer a solution for the obstacles Morocco has identified. In the first discussion of 1997, however, Morocco argued that the reservations were the result of a consensus in the Moroccan society, and that they would, therefore, be difficult to modify. The Committee responded that educating the population would be a good method to bring about social changes. Members also expressed their concern about the scarce participation of women in the political system and about reports of high rates of violence against women. In the discussions of 2003, the Moroccan representation presented the proposals for reform of the *Mudawwana* as an important instrument in satisfying the requirement of the convention to abolish all forms of discrimination against women. By the time of the discussions in 2008, the new *Mudawwana* had been brought into force and from the Moroccan representation's perspective comprehensively included 'the principles of equality and shared

responsibility'. While the Committee applauded Morocco for its steps thus far, it pressed for clarification as to the status of its withdrawal of the reservations and expressed ongoing concern about discrimination against women and girls in practice as well as in accordance with formal legislation.

The official treaty obligations were also the subject of alternative reports and important debates for women's and human rights organisations within Morocco. They have used the findings of the committee in their struggle for reforms of family and criminal law (cf. Buskens 2003: 108-110). These groups also advocated for the abolitions of reservations made to CEDAW, but have not yet proven fully successful.

As part of its official policy to establish the rule of law and to uphold human rights, the Moroccan government formally established bodies such as the Consultative Council for Human Rights ('Conseil consultatif des droits de l'Homme'), the Ministry of Human Rights, and the Equity and Reconciliation Commission ('Instance équité et reconciliation'). According to numerous reports, however, government actions in practice are often not in accordance with the official policy. International organisations such as Human Rights Watch, Amnesty International, and the U.S. State Department's Bureau of Democracy, Human Rights, and Labor have published detailed reports about the enforcement of human rights in Morocco.

Violations of human rights in several areas are revealed in recent reports from these organisations. The Moroccan authorities took strong actions against various islamist groups after the bomb attacks in Casablanca in May 2003. The employed methods of investigation, arrests, and acts of torture have led to fierce domestic and international criticism. This criticism appears to have resulted in improvements. The freedom of press, particularly in matters concerning the royal family and the status of the Sahara provinces, has seriously suffered over the past years. These violations are, however, not related to Islamic legal norms.

Freedom of religion, as guaranteed in the constitution, proves to be relatively effective in practice. Christians and Jews can practice their religions freely, as long as they do not attempt to convert Muslims. As was mentioned previously, Morocco has made a reservation to the Convention on the Rights of the Child that forbids apostasy for Muslim children. There is less tolerance for deviating Islamic ideas than there is for other religions of the Book. This is partly due to cultural factors, such as the stigma of apostasy, and partly because the government considers Shi`ites to be a direct threat to authority. The *makhzan* supports the ideal of the peaceful coexistence of religions, as can be noted from the welcome prepared for the late Pope John Paul II and the close relationships between the royal family and the Jewish community.

Violence against women is also a topic that has received attention in recent human rights reports. The criminal code determines that certain forms of violence are punishable, but for other forms, such as the so-called 'honour related' offences, there is a possibility for a reduced penalty. In practice, domestic violence is prevalent in Morocco, as in many other Mediterranean and Middle-Eastern societies where gender relations are conceptualised in terms of honour and shame. Human rights organisations have repeatedly called upon the government to take measures against this. The underlying reasons for male abuse, however, are more related to general social and cultural issues, than to specific Islamic norms.

The public debate about human rights in Morocco has shown an unprecedented openness in the past years. A delegation of Amnesty International commented on this new openness following an official visit in January 2005 and again as recently as 2009 in the context of Morocco's progress on women's rights laws and its uniqueness within the Arab world in establishing an Equity and Reconciliation Commission.[17] Not only the official views of government organisations have received publicity, but also the voices of numerous non-governmental organisations. This development of the public sphere can also be understood as a struggle of opposition groups to gain access to the political arena (Hegasy 1997; Rollinde 2002; Slyomovics 2005). An important part of the attention is focussed on disappearances, murders, and torture of political adversaries during the regime of Hassan II, but there is concern that the Commission's investigations are limited and that years later its recommendations have still not been implemented.

3.10 Conclusions

The historical overview demonstrates that Islamic law is not a static corpus of rules, but rather a dynamic tradition that has been changing for centuries in conjunction with social and political developments. During the twentieth century in particular, Islamic law was marginalised in the Moroccan legal system. Under the influence of French and Spanish protectorate rule, state law gained primacy, while Islamic norms and customary law were restricted to a subordinate position within state law. Their incorporation into the legal system also resulted in changes in form and content of Islamic law and customary law. Colonial officials concluded that within this wider framework Islamic law and local customs were to a large extent mutually exclusive systems of normativity. After independence the government further limited the influence of Islamic law and virtually denied the existence of customary law by largely excluding it from the official state system (cf. Buskens 2000).

Form and content of the prevailing Moroccan law are strongly influenced by the French model, with limited Islamic elements. According to the constitution, Morocco is an Islamic state in which Islam is the state religion, but the consequences for the legal system are not further elaborated. Article 19 of the constitution determines that the king is 'the commander of the faithful', which according to the official doctrine means that he has the highest authority with regard to Islamic law. In criminal law particularly the articles concerning morality and public order contain Islamic elements, but are not laid down as rules derived from classical Islamic criminal law. The *hudud* punishments described in the Qur'an and the rules for retribution from classical *fiqh* are entirely absent from Moroccan law. There are only marginal traces of Islamic law in commercial law, and the few Islamic norms do not hinder trade based on a Western model. Islamic restrictions concerning banking or contract formation are lacking. Rights to real estate can be established either according to modern law or Islamic law and local customs. Religious foundations (*awqaf*) also exist and are administered by the Ministry of Religious Affairs.

Family and inheritance law is the most important domain of Islamic legal norms. The *Mudawwanat al-usra* of 2004 applies to all Moroccans, except for the small Jewish community. This family law contains important reforms that are justified by the legislator by referring to the principle of *ijtihad*. The underlying model for family relations assumes the equality of both spouses, instead of the patriarchal family model of classical Islamic doctrine. This patriarchal model is widespread in Morocco as a cultural ideal, although it is at present heavily discussed and losing influence. Both parties should contract a marriage out of their own free will and for the most part equal rights are granted.

However, some elements of the Islamic patriarchal model have been kept. The man still has the duty to provide his wife with maintenance. The right of a man to marry multiple women is also maintained, albeit with strict limitations, as under the new law women are not obliged to accept polygamy. Muslim men are permitted to marry non-Muslim women, whereas Muslim women are only allowed to marry Muslim men. The man has the right to break up the marriage by means of a unilateral action (*talaq*), but he can only do so with the judge's permission. The woman, like her husband, has the right to obtain a divorce from the judge when she does not desire to continue the marriage. With regard to the authority over the children after divorce, the woman has the first right to care (*hadana*), and the man, the first right to legal representation (*wilaya*). In inheritance law a woman receives half of what a man in an equal position receives.

The reforms of family law are couched in an Islamic idiom, with explicit attention to international norms concerning human rights,

particularly the rights of women and children. The law is an expression of the political will to enforce social change by giving women and children more rights, and of a moderate progressive vision of Islam. The *Mudawwana* is moreover an expression of the power of the king as the highest interpreter of Islamic law, whose will creates law. The meaning of the new stipulations for daily family life depends to a great extent on the way in which judges, both men and women, and professional witnesses apply the law. In addition, the conceptions and the behaviour of ordinary people, for whom the law is merely one of their frameworks for family life, are also of great importance. The state attempts to set a clear course for the practicing of family law, but the extent to which it has succeeded can only be determined through detailed field research.

The inventory of Islamic legal norms as laid down in positive law leads to the conclusion that Moroccan law only contains a very limited amount of legal norms derived from classical legal tradition. In Moroccan law, one finds predominantly politically inspired interpretations of Islamic law, which have been the subject of an intense public debate during the past years. There is no increasing islamisation of the law. On the contrary, the influence of norms derived from classical Islamic law on state law have further diminished with the 2004 reforms.

Since independence in 1956, Morocco is a member of the United Nations and party to several key human rights conventions. Morocco has made reservations to several conventions by invoking Islamic norms. According to official reports, Morocco does not always sufficiently respect its convention obligations. The regime of the late King Hassan II was especially characterised by serious violations of human rights. These were fiercely criticised by foreign organisations – and inside Morocco in a more disguised manner. Under the rule of King Mohammed VI, Morocco attempted to come to terms with the past through public hearings of the Equity and Reconciliation Commission ('Instance équité et reconciliation'). International pressure and the growing domestic discourse on human rights have had important consequences for the legal system, such as reforms of family law. At the same time, the *makhzan* attempts to continue ruling the domestic debate by appropriating the idiom of human rights and civil society.

In this overview I have paid little attention to legal practice, even though this is of great importance in answering question of islamisation of the legal system. On the political level, we can conclude that Morocco has an autocratic system. The constitution prescribes a separation of powers in a constitutional monarchy, with a democracy and a multi-party system. In the past King Hassan ruled Morocco as an absolute ruler who claimed to know what was best for his country. His function as

commander of the faithful meant for him that he could determine the scope of Islam and Islamic law. As such, Islam was an instrument to legitimise his regime. At present, King Mohammed VI, political parties, and social movements appear to strive for a break with the despotism of the past. The manner in which the progressive reforms of family law came about is a paradoxical confirmation of the king's omnipotence with regard to Islamic law.

During the past centuries, Islam has been an instrument to legitimise as well as to contest political power in Morocco (cf. Munson 1993). The doctrine of *jihad* served as a means of resistance against European imperialism in the prelude to the protectorate. The struggle for independence was focussed on the spreading of a 'pure' Islam and the correct interpretation of Islamic law. Hassan II legitimised his state structure in Islamic terms, but since the 1980s his most dangerous critics have also utilised Islamic ideas. From the 1990s islamists have combined this jargon with a human rights discourse. Leftist and liberal opponents also refer to human rights in order to defend their views. The attacks committed by a group of radical islamists in Casablanca in May 2003 formed a turning point in the debate about Islam, law, and politics. Until then islamist groups seemed to have profited the most from the new openness. The king seized upon the general concern and fear to strengthen his power as 'commander of the faithful' and to enforce a moderate progressive Islam, focussed on the personal inner experience, instead of political action.

At present, two somewhat related topics dominate the political scene: Islam and human rights. Moroccans, both ordinary citizens as well as representatives of the *makhzan*, use both discourses in order to justify, but also to criticise, the political system and the prevailing law. With the new openness that came about in the 1990s, the Islamic discourse has once again become important for debate in the public sphere. The previously mentioned marginalisation of Islamic law in terms of positive law is paradoxically related to the revival of the political significance of sharia as a means of political opposition. Islamic law is a powerful political symbol. It was able to mobilise large groups of people in the struggle for independence. It turns out to be capable to do so again in the current debate. Islamic law can stand for strongly deviating conceptions about cultural authenticity that are supported, manipulated, and contested by different factions within society.

The impact of politicisation of sharia on positive law has resulted in reform of family law in favour of women and children. This reform took place within an exclusively Islamic framework, in which the term *ijtihad* played a key role. In present-day Morocco, discussion about family law or political legitimacy is not possible outside this Islamic discourse. This predicament is the result of a long historical process. Since

the beginning of the twentieth century, Islamic law has been marginalised in Morocco in terms of substance, yet its significance as a political tool has considerably increased during the last three decades. The fact that sharia has nowadays become primarily a political symbol has created new tensions between varying factions holding opposing views of Moroccan society, just rule, and the place Islam should have in it. This development is by no means unique to Morocco, but fits a more general pattern that can be discerned in many contemporary Muslim societies.

Notes

1 Léon Buskens is professor of law and culture in Muslim societies at Leiden University. He thanks the late Mostapha Naji, the late Robert Rutten, Michèle Boin, Birte Kristiansen, and Friso Kulk for their help in collecting material, as well as Baudouin Dupret for his comments on an earlier version. Many thanks to Julie Chadbourne for her editing of the English text.

2 Abun-Nasr 1987 offers a standard history of the Maghrib. Pennell 2000 gives an overview of Moroccan history from 1830 onwards. El Fassi Fihri 1997 provides an overview of the history of the Moroccan legal system as understood by a judge and diplomat. Sater 2010 provides a recent overview of the present state of Moroccan society and politics.

3 Anthropologists who have published on contemporary legal practice in Morocco include, among others, Bouderbala, Daisy Dwyer, Hammoudi, Mir-Hosseini, Pascon, Rosen, and the present author.

4 Rodríguez Aguilera 1954 offers an overview of the legal system of the Spanish protectorate; Zomeño 2002 discusses the views of Spanish colonial scholars on Islamic law.

5 In the rest of this text I use the translation 'commander of the faithful' for this concept, following the title of John Waterbury's famous analysis of the Moroccan political system. In this particular context I adopt a slightly different translation to convey the existence of a notion of religious unity, which was not identical with a territorial entity in which the sultan exercised effective political control.

6 The German orientalists Ubach & Rackow 1923 offer an overview of customary law in Morocco, Algeria, and Tunisia on the basis of interrogations of prisoners of war from the French colonies taken during the First World War.

7 Rabinow 1989 analyses French ideas about 'modernity', also related to colonial policy. Chapter 9 of his book is devoted to the French colonial policy in Morocco.

8 Examples of this colonial scholarship in action include the bilingual (Arabic and French) magazine *Revue maroccaine de législation, doctrine, jurisprudence chérifiennes (Droits musulman, coutumes berbères, lois israélites)*, created in 1935 by Paul Zeys (judge and former colonial civil servant) and the edition of the Arabic text with a French translation of Gannun's (Guennoun) introductory overview of Maliki law as developed in Morocco by Boris de Parfentief (1958).

9 Zagouri 1961 gives a general introduction to Jewish family and inheritance law as it was applicable in Morocco shortly after independence. Chouraqui 1950 offers an extensive overview of the situation during the protectorate. Caillé 1944 (for the French zone) and Ruiz de Cuevas 1950 (for the Spanish zone) also provide short introductions to Jewish law during the protectorate period.

10 Government control was further strengthened by a new law and decree, promulgated in 2006 and 2008, concerning the *`udul* (cf. Benyahya 2009). The introduction of these new rules was related to the family law reform of 2004.
11 Wuerth 2005 analyses the role of women's organisations in the law reform process.
12 Mir-Hosseini 2007 offers a comparative analysis of recent family law reforms in Morocco and Iran.
13 Confusingly, present-day currents promoting puritan understandings of Islam are also often referred to as '*salafiyya*'.
14 The rules governing the work of the *`udul* have been reformed by a law of 2006 and a ministerial decree of 2008 in accordance with the 2004 reforms of the family law (cf. Benyahya 2009).
15 Cf. Jordens-Cotran 2005: 76-93.
16 See summary record of the fortieth session of the Committee on the Elimination of Discrimination against Women on 24 January 2008, CEDAW/C/SR.824, p. 4, in which Ms. Skalli, Minister for Social Development, the Family, and Solidarity, one of the institutions responsible for guaranteeing women's rights in Morocco, makes this point that in reality certain reservations had been withdrawn, even if not formally.
17 Amnesty International, *Morocco/Western Sahara: Increasing Openness on Human Rights*, press release MDE 29/01/2005 (Public), dated 24 January 2005 and Amnesty International, *Morocco/Western Sahara: Irene Khan acknowledges positive steps and calls for more progress*, statement, dated 23 March 2009 (both last accessed 1 December 2009). For further information on the general human rights situation in Morocco see e.g. Amnesty International Report 2009, Index: POL 10/002/2009: http://thereport.amnesty.org/en/regions/middle-east-north-africa/morocco.

Bibliography

Abun-Nasr, J.M. (1963), 'The Salafiyya movement in Morocco', in A. Hourani (ed.), *The religious bases of the Moroccan nationalist movement*, 90-105. London: Chatto & Windus.

Abun-Nasr, J. M. (1987), *A history of the Maghrib in the Islamic period*. Cambridge: Cambridge University Press.

Al-Kashbur, M. (2007), *Al-bunuwwa wa-l-nasab fi mudawwanat al-usra. Qira'a fi-l-mustajaddat al-biyulujiyya*. Al-Dar al-bayda': Matba'a Al-Najah al-jadida.

Arehmouch, A. (2001), *Les droits coutumiers amazighs: Izerfan imazighen. Tome I*. Rabat: (published by the author).

Arehmouch, A. (2006), *Code des droits positifs amazigh. Tome II*. Rabat: Edition & Impression Bouregreg-Rabat.

Aspinion, R. (1946), *Contribution à l'étude du droit coutumier berbère marocain* (*Etude sur les coutumes des tribus Zayanes*). Casablanca, Fès, Meknès: Editions A. Moynier.

Azziman, O. (1986), 'Les institutions judiciaires', in M. Sehimi (ed.), *La grande encyclopédie du Maroc: Les institutions politiques, administratives, judiciaries*, 151-170. Rabat: La Grande Encyclopédie du Maroc.

Bargach, J. (2002), *Orphans of Islam. Family, abandonment, and secret adoption in Morocco*. Lanham: Rowman and Littlefield.

Bartleby (2010), 'Morocco', in *World Factbook*, see http://www.bartleby.com/151/country/mo.html (2008 statistics) and https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html (online edition). Washington D.C.: Central Intelligence Agency.

Belghazi, H. (2008), *Tada chez les Zemmour : Instances, puissance, évanescence*. Rabat : Institut Royal de la Culture Amazighe.

Benradi, M. et al. (2007), *Le code de la famille. Perceptions et pratique judiciaire*. Rabat: Friedrich Ebert Stiftung.

Benyahya, M. (ed.) (2007), *La legislation relative aux habous et affaires islamiques*. Rabat: REMALD, Collection 'Textes et documents', no. 167.

Benyahya, M. (ed.) (2009), *La profession des adouls*. Rabat: REMALD, Collection 'Textes et documents', no. 219.

Berger, M.S. (2004), *Mudawwana: Marokkaanse familiewet (nieuwe wet van 2004)*. Nijmegen: Ars Aequi Libri.

Berque, J. (1949), 'Ville et université: Aperçu sur l'histoire de l'Ecole de Fès', *Revue historique de droit français et étranger* 27 (4): 64-117.

Burke, E. (1976), *Prelude to protectorate in Morocco: Precolonial protest and resistance, 1860-1912*. Chicago/London: The University of Chicago Press.

Burns, P. (2004), *The Leiden legacy: Concepts of law in Indonesia*. Leiden: KITLV Press.

Buskens, L. (1993), 'Islamic commentaries and French codes: The confrontation and accommodation of two forms of textualization of family law in Morocco', in H. Driessen (ed.), *The politics of ethnographic reading and writing: Confrontations of Western and indigenous views*, 65-100. Saarbrücken & Fort Lauderdale: Verlag Breitenbach Publishers.

Buskens, L. (1999), *Islamitisch recht en familiebetrekkingen in Marokko*. Amsterdam: Bulaaq.

Buskens, L. (2000), 'An Islamic triangle. Changing relationships between Shari'a, state law and local customs', *ISIM Newsletter* 5: 8.

Buskens, L. (2003), 'Recent debates on family law reform in Morocco: Islamic law as politics in an emerging public sphere', *Islamic Law and Society* 10(1): 70-131.

Buskens, L. (2008), 'Tales according to the book: Professional witnesses (*'udul*) as cultural brokers in Morocco', in B. Dupret, B. Drieskens, A. Moors (eds.), *Narratives of truth in Islamic law*, 143-170. London/New York: I.B. Tauris.

Caillé, J. (1944), *La justice israélite dans la zône française de l'Empire chérifien*. Casablanca: Imprimeries Réunies (Extrait de la *Gazette des Tribunaux du Maroc*, octobre 1943).

Chouraqui, A. (1950), *La condition juridique de l'Israélite marocain*. Paris: Presses du Livre Français.

El Fassi Fihri, M. E.-H. (1997), *L'itinéraire de la justice marocaine*. Rabat: Association pour la Promotion de la Recherche et des Etudes Judiciaires.

El Mansour, M. (1990), *Morocco in the reign of Mawlay Sulayman*. Wisbech: Middle East & North African Studies Press.

Essaîd, M.J. (1992), *Introduction à l'étude du droit*. Rabat: Collection Connaissances.

Foblets, M.C. (1994), *Les familles maghrébines et la justice en Belgique: Anthropologie juridique et immigration*. Paris: Editions Karthala.

Foblets, M.C. & Carlier, J.Y. (2005), *Le code marocain de la famille: Incidences au regard du droit international privé en Europe*. Brussels: Bruylant.

Gannun, A. (1958) : see Parfentief (1958).

Guiho, P. (1961), *La nationalité marocaine*, Rabat: Editions La Porte; Paris: Librairie de Médicis.

Hart, D.M. (1995), *Emilio Blanca Izaga : Coronel en El Rif. Una selección de su obra, publicada e inédita, sobre la estructura sociopolítica de los rifeños del norte de Marruecos. Estudios introductorios y notas de David Montgomery Hart. Edición de Vicente Moga Romero y Antonio Bravo Nieto*. Melilla: Ayuntamiento de Melilla, Fundación Municipal Sociocultural, Archivo Municipal, UNED – Centro Asociado de Melilla.

Hegasy, S. (1997), *Staat, Öffentlichkeit und Zivilgesellschaft in Marokko: Die potentiale der soziokulturellen Opposition*. Hamburg: Deutsches Orient-Institut.

Henry, J.-R. & F. Balique (1979), *La doctrine coloniale du droit musulman algérien: Bibliographie systématique et introduction critique*. Paris: Editions du CNRS.

Hidass, A. (2003), 'La liberté d'opinion et d'expression au Maroc: Normes, contingentements et transition démocratique', *Annuaire de l'Afrique du Nord* 39: 255-278.

Hitous, A. (ed.) (2007), *Le droit coutumier et les législations au Maroc*. Rabat: Organisation Tamaynut.

Jordens-Cotran, L. (2005), 'Het Marokkaanse familierecht en de Nederlandse rechtspraktijk', *Justitiële verkenningen* 27(5).

Jordens-Cotran, L. (2007), *Nieuw Marokkaans familierecht en Nederlands IPR*. The Hague: SDU Uitgevers.

Koningsveld, P.S. van & M. Tahtah (1998), 'De boodschap van Khalil el-Moumni, imam van de Rotterdamse Nasr-moskee', *Sharqiyyât* 10 (1): 41-67.

Kratochwil, G. (2002), *Die Berberbewegung in Marokko: Zur Geschichte der Konstruktion einer ethnischen Identität (1912-1997)*. Berlin: Klaus Schwarz Verlag.

Lafuente, G. (1999), *La politique berbère de la France et le nationalisme marocain*. Paris: L'Harmattan.

Lapanne-Joinville, J. (1959) 'Le code marocain du statut personnel', *Revue marocaine de droit* 11: 97-125.

Ligue Démocratique pour les Droits des Femmes (mars 2005), *Rapport annuel sur l'application du Code la Famille*.

Marcy, G. (1949), *Le droit coutumier Zemmoûr*. Algiers: La Typo Litho & Jules Carbonel and Paris: Librairie Larose.

Ministère des Affaires Etrangères et de la Coopération (1997), *Le Royaume du Maroc et les instruments internationaux relatifs aux droits de la femme*. Rabat: Ministère des Affaires Etrangères et de la Coopération, Direction de la Coopération Multilatérale.

Mir-Hosseini, Z. (2007), 'How the door of *ijtihad* was opened and closed: A comparative analysis of recent family law reforms in Iran and Morocco', *Washington and Lee Law Review* 64(4): 1499-1511.

Munson Jr., H. (1993), *Religion and power in Morocco*. New Haven/London: Yale University Press.

Obdeijn, H., P. de Mas & P. Hermans (2002), *Geschiedenis van Marokko*, new edition (orig. 1999). Amsterdam: Bulaaq.

Ouaazzi, E. & L. Aît Bahcine (eds.) (2005), *Droit et société au Maroc*. Rabat: Institut Royal de la Culture Amazighe.

Parfentief, B. de (1958), *En suivant la Zaqqâqiyya. Traité de droit de Si Abdallah Guennoun. Texte arabe et traduction française*. Paris: Institut des Hautes Etudes Marocaines.

Pennell, C.R. (2000), *Morocco since 1830: A history*. London: Hurst & Company.

Peters, R. (1980), 'Idjtihād and taqlīd in 18th and 19th century Islam', *Die Welt des Islams* 20 (3-4): 131-145.

Rabinow, P. (1989), *French modern: Norms and forms of the social environment*. Cambridge/London: The MIT Press.

Rodríguez Aguilera, C. (1954), *Manuel de droit marocain (zone espagnole)*. Paris: Librairie Générale de Droit et de Jurisprudence.

Rollinde, M. (2002), *Le mouvement marocain des droits de l'homme: Entre consensus national et engagement citoyen*. Paris: Karthala.

Ruiz de Cuevas, T. (1950), *Jurisprudencia rabinica en Marruecos (La "Hazzaca")*. Tetuan: Editora Marroqui.

Rutten, S. (1988), *Moslims in de Nederlandse rechtspraak: Een inventarisatie van gepubliceerde rechterlijke beslissingen in zaken waar Islamitische rechtsnormen en waarden een rol spelen 1973-1986*. Kampen: Kok.

Rutten, S.W.E. (1997), *Erven naar Marokkaans recht: Aspecten van Nederlands internationaal privaatrecht bij de toepasselijkheid van Marokkaans erfrecht*. Maastricht: Ph.D. dissertation, Maastricht University.

Sater, J.N. (2007), *Civil society and political change in Morocco*. London/New York: Routledge.

Sater, J.N. (2010), *Morocco: Challenges to modernity and tradition*. London/New York: Routledge.

Slyomovics, S. (2005), *The performance of human rights in Morocco*. Philadelphia: The University of Pennsylvania Press.

Stöber, G. (1986), *"Habous Public" in Marokko: Zur wirtschaftlichen Bedeutung religiöser Stiftungen im 20. Jahrhundert*. Marburg/Lahn: Im Selbstverlag der Marburger Geographischen Gesellschaft e.V.

Touhtou, R. (2008), *Debating civil society in Morocco: Dynamics of gender, development and social capital*. Fez: Ph.D. thesis Sidi Mohamed Ben Abdellah University, Faculty of Arts and Humanities Dhar al-Mahraz, Department of English.

Tozy, M. (1999), *Monarchie et islam politique au Maroc*. Paris: Presses des Sciences Po.

Ubach, E. & E. Rackow et al. (1923), *Sitte und Recht in Nordafrika*. Stuttgart: Verlag von Ferdinand Enke.

U.S. State Department (2009), International Religious Freedom Report 2009, see http://www.state.gov/g/drl/rls/irf/2009/127354.htm.

Vairel, F. (2004), 'Le Maroc des années de plomb: Equité et reconciliation?', *Politique africaine* 96: 181-195.

Voll, J.O. (1994), *Islam: Continuity and change in the modern world*, Second edition (orig. 1982). Syracuse: Syracuse University Press.

Wuerth, O. (2005), 'The reform of the Moudawana: The role of women's civil society organizations in changing the personal status code in Morocco', *Hawwa* 3(3): 309-333.

Zagouri, A. (1961), *Généralités sur l'application du droit mosaïque en matière de statut privé des Marocains Israélites*. Tangiers: Editions Marocaines et Internationales.

Zeghal, M. (2005), *Les islamistes marocains: Le défi à la monarchie*. Paris: La Découverte.

Zomeño, A. (2002), 'El derecho islámico a través de su imagen colonial durante el protectorado español en Marruecos', in F. Rodríguez Mediano & H. De Felipe (eds.), *El protectorado español en Marruecos: Gestión colonial e identidades*, 307-337. Madrid: Consejo Superior de Investigaciones Científicas.