

RELIGION IN THE LEGAL SYSTEMS OF TURKEY AND MOROCCO

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Abstract

In this Master's thesis, I plan to compare the following aspects of religious life in Morocco and Turkey:

- the way religion (Islam) is regulated on the official level,
- the way religious secondary education functions (imam-hatip schools in Turkey and madrasahs in Morocco),
- the way women's rights are regulated.

I also plan to compare the religious legislation that the Moroccan and Turkish governments have passed. In my work, I will use both primary sources such as constitutions, laws and other legal documents in their original French and Turkish languages, and also secondary sources such as books and published reports.

I argue that both Morocco and Turkey have lenient and flexible systems of laws that regulate religion, and both of these countries could serve as examples of efficient governmental regulation of the religious realm.

Although Turkey has been a secular country since the demise of the Ottoman Empire in 1923,¹ it has neither been an atheist country, nor has it ever adopted atheist policies. Turkish secularism, if it can be explained in a few words, does not only separate religion and state, it also restricts and provides freedom *from* religion, *from* certain Islamic symbols and practices in public sphere and state institutions. Turkish secularism

¹ Secularism as a state policy was announced in the Constitution of 1924.

does not prohibit practicing religion. It rather curtails the exterior symbols of religion. Morocco is a Muslim country with emerging secularist policies that are being undertaken on the official level. Moroccan King Mohammad VI tries to curb any beginnings of Islamic insurgence or radicalism. The King also tries to control the religious sphere and the meanings of religion. The Turkish government, on the other hand, tries not to associate itself with religion as it might cost it the loss of its secular and moderately religious electorate.

Keywords: Religion, Islam, legislation, law, religious law, Constitution, Moudawana, secularism, Shari'a law.

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Glossary

Adalet ve Kalkınma Partisi (AKP) (tr.)	Justice and Development Party
Al Adl wa al Ihsan (ar.) ²	Justice and Charity Party
Amir al-Mou'meen (ar.)	Commander of the Faithful
Anavatan Partisi (tr.)	Motherland Party
Anayasa (tr.)	Constitution
burqa (ar.)	a Muslim outer garment that covers both head a face
Diyanet İşleri Başkanlığı (tr.)	Presidency of Religious Affairs
fatwa (ar.)	Islamic juristic/scholarly opinion
fiqh (ar.)	Islamic jurisprudence
hadith (ar.)	acts performed by Prophet Mohammad and his code of conduct that form Sunnah (Prophet's sayings and conduct) that is one of the sources of Islamic law.

² Arabic

hijab (ar.)	a Muslim headscarf
ijma (ar.)	consensus
ijtihad (ar.)	legal reasoning in Islam
madhhab (ar.)	school of law in Islam
makhzen (ar.)	governing elite in Morocco that consists of the members of the royalty and businessmen
Mecelle (tr.)	Civil code of the Ottoman Empire
Moudawana (ar.)	Moroccan Family Code
laiklik (tr.) ³	secularism
laïcité (fr.) ⁴	secularism
Refah Partisi (tr.)	Welfare Party

³ Turkish

⁴ French

Introduction

“During the eighteenth century, most theorists assumed that religions were inventions of lawgivers and priests designed solely to reinforce their privileged political power”.

David Chidester, *Savage Systems*⁵

This work is not about the Islamic law, Shari'a, rather it is a study of how religion is regulated in the legal systems of Turkey and Morocco. I plan to compare legislation that the Moroccan and Turkish governments have pertinent to religion. I will use both primary sources such as Constitution, laws and other legal documents in their original French and Turkish languages, and also secondary sources such as books and published reports. I found Tuğrul Ansay's and Don Wallace Jr.'s *Introduction to Turkish Law* probably the most extensive resource on the Turkish legal system.

I plan to compare the following aspects of religious life in Morocco and Turkey:

- the way religion (Islam) is regulated on the official level,
- the way religious secondary education functions (imam-hatip schools in Turkey and madrasahs in Morocco),
- the way women's rights are regulated.

My argument is that both of these countries have lenient and flexible systems of laws that regulate religion, and both can be examples of efficient governmental regulation of the religious sphere.

⁵ David Chidester, *Savage Systems: Colonialism and Comparative Religion in Southern Africa*. Charlottesville, VA and London, UK: University of Virginia Press, 1996.

In the first part of the thesis, I focus on the concept of Islamic law, the Shari'a. I look at Islamic jurisprudence, fiqh, fatwas, and the way different types of laws (personal-status, criminal, international, administrative, commercial) are elaborated in the Shari'a. I argue that the Islamic law is flexible, but it is not elaborated enough and developed on such aspects of legislation as administrative and international law. I give an overview of the Moroccan and Turkish legal systems that are in similar in some ways but serve different causes. The Moroccan legal system functions to protect the King and Islam, whereas the Turkish legislation serves to protect citizens from religion and safeguard secularism.

In the second part, I give an introduction to the political and social structure of the Moroccan society. I look at the role that King Mohammad VI plays in regulating religious life. I argue that Mohammad VI wants to control not only religious life but also the construction of religion. I give an introduction to the Moroccan legal system by analyzing its new 2011 Constitution that was reformed after 2011 referendum. I also analyze the Family Code, the Moudawana, that was reformed in 2004 after years of struggle of the Moroccan organizations that fought for women's rights. The King of Morocco undertook a revolutionary initiative that reviewed and reformed the Moudawana. I argue that by reforming the Moudawana, the king reasserted his control and power over the religious domain, and showed the ulama that he is the one who has power to control religion. I also argue that although the Constitution and Family Code have been reformed, the Moroccan society in big numbers is not ready to accept and exercise those reforms. I also write that the Penal Code, which is not as democratic and liberal as the Constitution or the Moudawana, will probably be the next piece of legislation that will be reformed.

Morocco is one of the few countries in the Middle East and North Africa (MENA) region that did not have an Arab Spring uprising that resulted in an overthrow of the government.⁶

In the third part of the thesis, I concentrate on Turkey. I give a background of general political and social life, and I touch upon the role religion plays in the typical Turkish political life. I look at Mustafa Kemal Atatürk's reforms that were undertaken after the collapse of the Ottoman Empire when Turkey became an independent entity. I also examine secularism, and its function in the political and religious domain of Turkey. I touch upon the famous headscarf ban as well. Since religion is mostly “ignored,” not elaborated, in the Turkish legislation because of the secularism, I was restricted to a limited number of pieces of legislation where religion is regulated. I look at the Constitution and laws that do regulate the religious domain.

In the fourth part, which is the conclusion, I argue that the Penal Code of Morocco will be the next piece of legislation to be contested, protested and perhaps finally reformed. Throughout my research I also find the concept of judicialization of politics taking place in both Turkey and Morocco. I find that courts more and more influence political decisions in the religion domain, and they have their own agenda that is controlled by the king in Morocco and by the government in Turkey. I also notice that while the Moroccan leadership is liberalizing its religious legislation, the Turkish government on the contrary is becoming conservative in the religious field.

Islam regulates all aspects of the believer's life. There are prayers you have to say

⁶ However, some experts may argue that a peaceful referendum that took place in Morocco and resulted in the constitutional reform is an Arab Spring.

when you enter the home of the ill person, before you go to bed, before you clean yourself. Islam, itself, cannot be regulated because there cannot be anything higher than Islam and God. However, in the contemporary times, Islam is regulated by the secular and non-secular governments of the countries that are part of the Muslim world. Religion and politics are connected. Religion sets the rules that influence the politics, and politics sets the framework within which religion have to function.

In both Morocco and Turkey religion is regulated by the countries' secular and religious (in the Moroccan case) legislation. Both of these countries have a rather flexible legislation that regulates official religion (in the Turkish case, religion is regulated by being almost absent from Turkish legislation). Religion is closely connected with politics and law. Religion in Moroccan and Turkish contexts is also tied to the rights of women, human rights, democratization and modernization. If the governments of these countries violate human rights, if they do not maintain equality between men and women, then most likely religion, Islam, will be accused by some people of being the reason for these violations. This happens due to the misperception of Islam as a religion that rejects human rights and equality between men and women, abuses woman's rights and stands against democracy.

Law can influence and shape the way religion, in this case Islam, is practiced in Morocco and Turkey. Religious law exists on its own. However, at the same time, it is set into the framework of the secular law, which religious law has to cooperate and co-exist with. Religion is thus regulated by both a secular [Turkey] and a religious state [Morocco]. *Ijma*, consensus, is an important aspect of the Islamic community, umma, and legislation. Islamic law, itself, is very flexible, as it is constantly seeking consensus.

However, Islamic law is abused by faulty interpretations of it. For instance, the practice of stoning, which is currently used in Afghanistan, Nigeria, Saudi Arabia and some other countries, whether legally or illegally, is not mentioned as a punishment in the holy Quran. The Quran mentions lashing as a punishment for committing adultery: *The woman or man found guilty of fornication - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah , if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment (24:2).* However, some hadiths do describe that stoning was used as a punishment for those who committed adultery: *“Two people guilty of "illegal intercourse" are brought to Muhammad, who commands that they both be stoned. Apparently their act was out of love, however, since the verse records the man as trying to shield the woman from the stones”* (Bukhari 6:60:79).

Muslim Morocco is secularizing its religious laws, while secular Turkey is undergoing an opposite process of making its policies and laws more religious. In secular Turkey, Prime Minister's wife, Emine Erdoğan, wears a hijab. In Islamic Morocco, King's wife, Queen Lalla Salma, is not veiled. Turkey is an example for a Muslim world of a country that maintains certain democratic standards, modernization and development, and it is also an example of a Muslim country where Prime Minister's wife covers her head. One of the comments to a Youtube video of Lalla Salma was a comparison of her to Emine Erdoğan. The comment (excluding the pejorative language) says: *“why can't she [King Mohammad VI's wife] be like [E]rdogan's wife?”*, another comment mocks the title of the King of Morocco, who is Amir al-Mou'meen or Commander of the Faithful:

“the wife of amier elmouminien doesnt wear a hijab” [sic].⁷

The Moroccan state combines Islamic law in cases of personal matter and Code Napoleon in criminal, administrative and some civic cases. Morocco and Turkey both neighbor the West and in their legal systems they have to combine two values, two traditions and two ideologies – Muslim and Western. Turkey's proximity to the West made it a “torn country” (Huntington:1997), and I would say that the same is true of Morocco and its religious legislation.

Morocco and Turkey have similar geopolitical significance, and both are accused of a pro-Western course of their politics and sentiments by some more conservative Muslim countries. These two countries have each a contested occupied territory (Northern Cyprus – occupied by Turkey since 1974, and Western Sahara – occupied by Morocco since 1979). Morocco and Turkey are two Muslim countries in the Greater Middle East and Mediterranean region that were not susceptible to mass protests that turned into the Arab spring.⁸

The Turkish influence is growing now. Involuntarily, Turkey is seeking a geopolitical role in the region. Ahmed Davutoglu, the Turkish minister of foreign affairs, in his interview to Al-Jazeera⁹ said that Turkey wants to become not only a regional power but a global one. While the Israeli government, during the conflict in Syria that started in 2011, mined its Syrian border, so that the Syrian refugees could not enter Israel, Turkey was letting the Syrian refugees in. Turkey needs the changes that the Arab Spring brought to the Middle East to become a regional superpower. The status quo in the

⁷ Accessed February 1, 2012, <http://www.youtube.com/watch?v=XyfGQ0BydWY&feature=related>

⁸ Although some experts may argue that a peaceful referendum that took place in Morocco and resulted in the constitutional reform is an Arab Spring.

⁹ Accessed February 1, 2012, <http://www.youtube.com/watch?v=QhrgRbjlcoA>

Muslim world has altered as the governments in Egypt, Libya and Tunisia were overthrown. This shift in the status quo gives Turkey a unique opportunity to reassert its supremacy in the Muslim world by offering a guidance through economic and political assistance to newly elected governments of MENA.

Morocco is not overtly trying to gain weight among North African Arab states. However, it does not want to give up the Western Sahara, which causes tensions with Algeria. The Moroccan government protects human rights and individual liberties to some extent. However, the freedom of speech becomes limited when it comes to sharing your stance on monarchy, Islam and the Western Sahara¹⁰. Monarchy is sacred in Morocco. The Draft to the 2011 Moroccan Constitution states that: *“Ils ne peuvent avoir pour but de porter atteinte à la religion musulmane, au régime monarchique, aux principes constitutionnels, aux fondements démocratiques ou à l’unité nationale et l’intégrité territoriale du Royaume”*.¹¹ ¹² Article 64 states that the members of the parliament cannot be detained or arrested for their vote or opinion except for the cases when their vote or opinion undermines the Muslim religion, monarchy or the king. Article 175 proclaims that no revisions can be made to the provisions that relate to Islam, monarchy, democracy and fundamental rights guaranteed by the Constitution. There is a ban on conducting opinion polls that measure people's trust and sentiments toward the monarchy.¹³ In 2009, the issue of the Moroccan French weekly *TelQuel* that presented a

¹⁰ Morocco annexed Western Sahara in 1976. The Polisario Front, Western Sahara's government in exile is based in Algeria.

¹¹ "The Draft to the 2011 Constitution of Morocco," Article 7, Section I.

¹² One cannot have a goal of undermining the Muslim religion, monarchy, constitutional principles, democratic foundations or national unity and territorial integrity of the Kingdom.

¹³ http://www.youtube.com/watch?v=cN7BVU_K9JU

people's opinion poll on the monarchy was taken out of print.¹⁴ The similar situation exists in Turkey. While the country is aspiring to become free, the freedom of speech ends when one criticizes Islam, talks about Kurds or mentions alleged genocide¹⁵ of the Armenian people.

¹⁴ Ibid.

¹⁵ The genocide of the Armenian people happened during the World War I in the Ottoman Empire (on the territory of today's Turkey). The official Turkish stance on this matter is that it was not a genocide. It was a civil war where the Turkish people were killed along with Armenian. According to different sources approximately 650.000 Armenians were killed during the alleged genocide.

Part 1. Shari'a Law

Continental Europe, some countries of Asia and South America and former French and Spanish colonies use a codified civil law. Great Britain, United States and former British colonies use common law or precedent law. Some scholars argue that juristic law is used in Islam (Vikor: 2005), but most commonly, Islamic law is called Shari'a. Some scholars also find similarities between the Shari'a and common law (Rosen: 2000).

Shari'a has a number of goals: its main goal is protection and preservation of a person, family, religion, piety and belief in God. However, nowadays Shari'a is imposed by humans whose goals of implementing it might differ from its original goals. Such organizations as Hizb ut-Tahrir al-Islami, the Islamic Movement of Uzbekistan (IMU), and the Islamic Jihad Union (IJU) fight to establish an Islamic state that would be governed by a caliph in compliance with the Shari'a law. However, their desire to implement Shari'a has somewhat different reasons from Shari'a's original goals, and very often these reasons have to do with politics and the zeal to acquire power.

According to Muslims, Shari'a is a word of God, so technically it should be unchangeable. However, it is changing and dynamic. The main sources of the Islamic law are the Quran and Sunnah. The Quran represents Allah's words that were transmitted to Muhammad through revelations. His first revelation happened around 610 CE near Makkah. As the Prophet and his followers undertook their hijrah, or migration, to Madinah, the Quranic revelations continued there. The Quran, entirely, was put in writing after Muhammad's death. Aisha, one of the Prophet's wives, memorized the Quran, and contributed greatly to putting the oral transmissions of the Quran in writing.

The Sunnah is a collection of the Prophet's actions, code of conduct and sayings. The Sunnah consists of hadiths that vary by their reliability from highly reliable to unreliable depending on the narrator and the chain of transmitters. Fiqh is the science of the Islamic jurisprudence and it encompasses Shari'a, which is Islamic law, is a way of doing things in compliance with the Quran and Sunna. A fatwa is a juristic legal ruling and it is a part of fiqh.

In the Islamic world, there are orthodox believers and hard-liners who want Shari'a to be the only source of legislation; there are conservative believers who want Shari'a to be one of the sources of legislation; there are liberal believers and non-practicing Muslim who do not want Shari'a to be any source of legislation.

Islam is a religion of peace, ijma (consensus) and compromise. Although the Holy Quran in some of its verses calls for fighting if Islam is under a threat, it does so only to protect religion, and even in that case the Quran does not approve of aggression or persecution: *“And fight in God's cause against those who wage war against you, but do not commit aggression – for surely, God does not love aggressors”* (2:190), *“...persecution is worse than killing”* (2:191). Since Shari'a is based on the Quran, it does not approve of oppression or violence either.

Some aspects of life and society were more important in the early Islamic world, therefore certain types of laws are more extensively elaborated in Shari'a, while others are not given as much attention and importance. The Quran most extensively elaborates on the issues of personal matter such as inheritance, family relations and religious regulations/rules on worshipping God. In the Arab society where Shari'a originates from, the community dominates over the individual. As for personal relations, family relations

play a big role, therefore personal status law is the most elaborated in the Shari'a. Since many Arabs were engaged in trade business, commercial law had to be elaborated. Administrative and international laws were state affairs controllable by the rulers who did not allow religious scholars to formulate them. Thus administrative and international law received the least attention in the Shari'a. Personal relations are more central in the Islamic law than the subjects that are central in the common or civil laws.

Elaboration of law in Shari'a (from the most elaborated to the least):¹⁶

1. Personal status law,
2. Commercial law,
3. Criminal law,
4. Administrative law,
5. International law.

Shari'a is flexible. It is developing and changing. The so-called gates of the Shari'a are still open for modernization. However, the problem is that there are many different interpretations and personal juristic rulings on Shari'a, which are used to form Islamic law, and create different Shari'as. Jurists and sheikhs play an important role in elaborating and expanding the law, making rulings (fatwas), and explaining and interpreting Shari'a.

Shari'a, however, is developing only as a personal status law. Economic, international and administrative legislation are not being developed, and still remain poorly elaborated. Thus Islamic law is flexible because it regulates most extensively only personal status law. Shari'a is thus flexible but not very dynamic. It is changing to adapt

¹⁶ Prof. Khalid Blankinship's suggestion

to contemporary life and adjust to the globalization and to lives of the Muslims who live in non-Muslim majority countries. Yet, Islamic law is undergoing changes undertaken by the sheikhs and the ulama only in one of its aspects such as personal status law.

1.1. Morocco and Turkey: Legal Systems

The French legal system has influenced both the Moroccan and Turkish legal systems. Already in the late 19th century Ottoman Empire, Turkey took an example from the French penal code as well as the commercial code. The Moroccan law was influenced by the French civil code or Code Napoleon during the colonization period. Now in Morocco personal and family-related cases are administered by the Shari'a law and the judges in such cases do not have to be licensed or trained. All other cases are administered in accordance with the French law. Ottoman Turkey also had a mixed legal system toward the end of its existence. As the Ottoman Empire started changing its legal system in the late 19th century and trying to accommodate it with the European law, it collapsed into newly independent states.

Islamic law, as well as the English precedent-based legal system, is not codified, in contrast with the Continental European legal system in which all laws are codified according to their type. When the French came to Morocco, they codified Moroccan law. In Turkey, Mustafa Kemal Atatürk started the codification of the law. As Josep Lluís Mateo Dieste writes, the secularization in Turkey was preceded by the process of national legal codification.¹⁷ During Atatürk's rule, the Mecelle, the civil code of the Ottoman

¹⁷ Josep Lluís Mateo Dieste, "Demonstrating Islam: The Conflict of Text and the Mudawwana Reform in Morocco", *The Muslim World* 99:1 (2009): 136, accessed January 30, 2012, doi:10.1111/j.1478-

Empire and early Turkey that was based on the Hanafi madhhab, was replaced by a modern Turkish civil code in 1926 that was based on Swiss code. Mecelle was an attempt to codify law in the Ottoman Empire during the Tanzimat period. It was written during 1869-1976.

Turkey was not colonized by the Western powers, although parts of it were occupied at times. Rather, Turkey as a part of the Ottoman Empire was itself a colonizing power. However, Morocco is one of the few Muslim countries that the Ottomans could not conquer. Morocco, on the other hand, although previously itself occasionally an empire and a colonizer, was colonized by the Western powers like Spain and France (and also, although for shorter periods in certain limited enclaves, Britain and Portugal). This colonization has influenced the Moroccan legal system and political landscape and made French a widely-used language along with the official Arabic. Turkey was influenced by the West because of its geographic location and most importantly Mustafa Kemal's zest to secularize the country.

Part 2. Morocco: Background

The Moroccan king, Mohammad VI, is the seventh richest monarch in the world according to Forbes 2009 report.¹⁸ A good part of the profit that the Moroccan royal family makes comes from the phosphate industry that the king controls. The Western Sahara that has been annexed by Morocco is rich on phosphate. Mohammad VI with his attempts to grant human rights and equality to women and secularize the country by liberalizing some Islamic tenets can be compared to Habib Bourguiba, Tunisia's president from 1957 to 1987, who during his tenure, granted human rights to women and secularized Tunisia.¹⁹

Official religion is regulated by the Ministry of Endowments and Islamic Affairs that represent Moroccan governments' interests in religious issues. Mosques are also under the supervision of Ministry of Endowments and Islamic Affairs. Some mosques are closed in between the prayers because of the governments concern that some mosques can be home to Islamic preachers that disseminate radical extremist ideas. According to the Ministry's statistics there are forty-eight thousand mosques in Morocco: fifteen thousand of them are in the cities, and thirty-five thousand are in the villages.²⁰

King Muhammad V reigned under French tutelage in Morocco from 1927 until

¹⁸ Tatiana Serafin, "The World's Richest Royals", *Forbes*, June 17, 2009, accessed February 17, 2012, <http://www.forbes.com/2009/06/17/monarchs-wealth-scandal-business-billionaires-richest-royals.html>.

¹⁹ Habib Bourguiba is remembered for drinking orange juice on the television during the Ramadan. (Anthony Shadid, "Islamists' Ideas on Democracy and Faith Face Test in Tunisia", *New York Times*, February 17, 2012, accessed February 19, 2011, http://www.nytimes.com/2012/02/18/world/africa/tunisia-islamists-test-ideas-decades-in-the-making.html?pagewanted=1&_r=2).

²⁰ Statistics of Ministry of Endowments and Islamic Affairs, cited in Hassan al Ashraf, "Debate hears over calls for banning mosque microphones in Morocco", *Al Arabiya News*, August 29, 2011, accessed February 6, 2011, <http://english.alarabiya.net/articles/2011/08/29/164551.html>.

1956 and then ruled until 1961. His son, King Hassan II's authoritarian reign lasted for thirty-eight years from 1961 until his death in 1999. The current King Muhammad VI from his first days on taking the throne promised to liberalize, democratize and modernize the country. In the first national address Muhammad VI made after coming to power, he promised to protect human rights, individual liberties and economic liberalism.

In his first national address after his father's death, King Mohammad said:

Thus, we strongly adhere to the system of constitutional monarchy, political pluralism, economic liberalism, regional and decentralized policy, the establishment of the state of rights and law, preserving human rights and individual and collective liberties, protecting security and stability for everyone.²¹

Modern Morocco cannot be called a democracy despite the king's efforts to liberalize the legislation and grant freedoms of speech, religion and expression. It is a constitutional monarchy with an authoritarian legacy and democratic endeavors. Dan Brumberg calls Morocco a “liberalised autocracy”.²² The concept of the Makhzen, a political elite comprised of the members of the monarchy and the businessmen that influences the decisions made by the Moroccan government, is still relevant to the Moroccan reality. According to the Freedom House's 2012 report on the Freedom in the World, Morocco is deemed “partly free” with 5 points²³ for political rights and 4 points for civil liberties.²⁴ Turkey is also ranked as “partly free,” however, it is freer than

21 King Muhammad's First National Address After His Father's Death. July 31, 1999.

<http://news.bbc.co.uk/2/hi/world/monitoring/408513.stm>

22 Brumberg 2002, cited in Francesco Cavatorta & Emanuela Dalmaso, “Liberal Outcomes Through Undemocratic Means: The Reform of the Code de Statut Personnel in Morocco”, *Journal of Modern African Studies* 47:4 (2009): 493, accessed January 30, 2012, doi:10.1017/S0022278X09990164.

23 Freedom House uses a scale of 1.0-7.0 with 1.0 as most free and 7.0 as least free.

24 “Freedom in the World” 2012 Report, Freedom House, accessed March 15, 2012,

Morocco as it has 3 points for both political right and civil liberties. Morocco was colonized by the European powers for a relatively short time compared to other North African Arab states. Spain had controlled some territories of Morocco since 1859, and France seized Morocco from 1912 until 1956. Morocco was also one of the few places in the Muslim world that was left unconquered by the Ottoman Empire, although there was at least one brief attempt.

Although both Spain and France colonized Morocco, the modern Moroccan legal system is an amalgam of the French legal system and the Shari'a law of the Malikite madhhab. The latter is used in the civic cases of a personal nature like family and inheritance. Berbers used to have their own legal system represented by the customary law that was abrogated when Morocco gained its independence.

Thomas H. Reynolds's and Arturo A. Flores's of University of California Berkeley Foreign Law Guide describes modern Moroccan law as “*a relatively inflexible body of legislation combined with religious and traditional mores, particularly the former*”.²⁵ Moroccan law can be deemed inflexible in a sense that it is difficult to change any laws and especially the Constitution, as only king has a power to do so. On the other hand, the revision of the Family Code, the Moudawana, and the 2011 Constitution reform proved that the changes are possible and can be made by resorting to peaceful means. Moroccan law is a combination of not only religious and traditional customs but also the French legal system that has changed the customary Moroccan law. Customary law that is based

http://www.freedomhouse.org/sites/default/files/inline_images/Table%20of%20Independent%20Countries%2C%20FIW%202012%20draft.pdf.

²⁵ Foreign Law Guide, accessed January 26, 2012, <http://www.foreignlawguide.com.libproxy.temple.edu/ip/flg/Morocco.htm> (access from Temple University Library account).

on norms and traditions by which life in a certain community is regulated, however, has been predominant in the Berber communities and not as much in the Arab Moroccan community.²⁶ Especially, the French during colonization endorsed customary law and encouraged establishment of Berber customary courts.²⁷ The 1974 Code of civil procedure in Article 25 curtails the powers of the judiciary²⁸:

Sauf dispositions légales contraires, il est interdit aux juridictions de connaître, même accessoirement, de toutes demandes tendant à entraver l'action des administrations de l'Etat et autres collectivités publiques ou à faire annuler un de leurs actes.²⁹

This article prohibits the courts to question the legitimacy of the decree if the corresponding action would interfere with the work of the government, its administration and other state institutions. It also prohibits the court to annul the acts that were adopted by the above-mentioned state bodies, saying, “All legislation must be promulgated by royal Dahir³⁰ which is then accorded precedence over any other related texts”.³¹ However, asking the opinion of the sheikhs³² and using personal relations are common methods of solving disputable cases of a personal level. This has partially to do with historic customs (premodern court justice was often only for the elite) and low trust in the official courts due to their non-transparency and corruption.³³ Premodern courts were

²⁶ However, for some people in the West, the Islamic law may resemble customary law.

²⁷ Katherine E. Hoffman, “Berber Law by French Means: Customary Courts in the Moroccan Hinterlands, 1930-1956”, *Comparative Studies in Society and History* 52:4 (2010): 853, accessed April 26, 2012, doi:10.1017/S0010417510000484.

²⁸ Ibid.

²⁹ 1974 Code of civil procedure of Morocco. Article 25.
http://www.wipo.int/wipolex/en/text.jsp?file_id=200316#LinkTarget_3911

³⁰ A Dahir is a decree.

³¹ Foreign Law Guide, accessed January 26, 2012,
<http://www.foreignlawguide.com.libproxy.temple.edu/ip/flg/Morocco.htm> (access from Temple University Library account).

³² The opinions of the sheikhs are usually issued in the forms of fatwas.

³³ The low trust in the judicial system and preference to resolve the cases of personal matter without filing the case to the court is also typical of former Soviet Union Countries in the Commonwealth of Independent States (CIS) due to the non-transparency and corruption that thrives in the courts across

more widely used by the elite and people of money. However, in premodern times and today legal advice in Islamic law is accessible through muftis and sheikhs (Hallaq: 2009).

2.1. Morocco: 2011 Constitution

A referendum of July 1, 2011 was intended to curtail the powers of the current king. However, in fact, it did not change the situation in Morocco drastically. The new Constitution includes more provisions on the practice of religion, it still carries the sacredness of the monarchy, King and Islam, and it only insignificantly curtailed some of the King's rights.

The most important changes that the referendum brings into the Moroccan society are:³⁴

- ♣ The Prime Minister will be appointed by the King from the party that wins the majority of the seats in parliament.
- ♣ The King will no longer be referred to as "sacred" in the constitution. This is more a symbolic gesture, rather than a move that would bring historic changes.
- ♣ The Prime Minister will be the head of the government. Previously, the King was the head of government. Nevertheless, the King has still big influence on the Prime Minister.
- ♣ Women will be guaranteed "civic and social" equality with men. Before, they had only "political" equality.
- ♣ The Berber language will become an official language along with Arabic. This is

CIS.

34 <http://www.bbc.co.uk/news/world-africa-13964550>

the most important achievement for the Moroccan Berber community.

One month after the referendum, the King made a speech addressing the changes the referendum brings to Morocco:³⁵

Although we have achieved the major national ambition of ushering in a new era of democracy, the greatest challenge ahead is to coach and mobilize all stakeholders, with a view to making this Constitution a concrete reality in everyday life, and ensuring that it reflects the democratization of the state as well as society. It should open up new, promising prospects for everyone to enjoy a dignified life, especially our young people and the working class.³⁶

The preamble of the draft of the 2011 Moroccan Constitution states:

*“La prééminence accordée à la religion musulmane dans ce référentiel national va de pair avec l’attachement du peuple marocain aux valeurs d’ouverture, de modération, de tolérance et de dialogue pour la compréhension mutuelle entre toutes les cultures et les civilisations du monde.”*³⁷

The new Moroccan Constitution also proclaims that the unity of the Kingdom of Morocco is forged by its Arab-Islamic, Amazigh, Sahraoui and Hassani components, and is nourished by by its African, Andalusian, Hebraic and Mediterranean heritage.³⁸ The Turkish government, on the other hand, attempts not to acknowledge and bring up its past

³⁵ <http://moroccansforchange.com/2011/07/30/king-mohamed-vi-throne-day-speech-73011-full-text-morocco/>

³⁶ This is an excerpt from his speech. The full speech can be accessed at <http://moroccansforchange.com/2011/07/30/king-mohamed-vi-throne-day-speech-73011-full-text-morocco/>

³⁷ The preeminence of the Muslim religion in this national referendum stays in accordance with Moroccan people's commitment to the values of openness, moderation, tolerance and dialogue for mutual understanding between all cultures and civilizations in the world (translation mine).

³⁸ "The Draft to the 2011 Constitution of Morocco," Preamble.

cultural heritage. In Turkey, all ethnic groups are considered Turkish.

The draft to the new 2011 Moroccan Constitution reiterates the notion of “moderate Islam”. It does not just mention Islam as Islam, it emphasizes that it is a moderate form of Islam: “*La nation s’appuie dans sa vie collective sur des constantes fédératrices, en l’occurrence **la religion musulmane modérée**, l’unité nationale aux affluents multiples, la monarchie constitutionnelle et le choix démocratique.*”³⁹ ⁴⁰ (highlighting mine). Article 3 of the Draft to the Constitution states that Islam is the state religion, but the state guarantees freedom to practice other cults. Article 7 prohibits the formation of the political parties based on religious, linguistic, ethnic or regional principles. This article of the Constitution is mainly targeted against the Berber minority as it bans forming political parties based on linguistic, ethnic or regional principles. Arab Moroccans do not have a need to form parties based on linguistic and ethnic principles as they are already the majority. Berbers, however, might feel the need to form parties based on this principles as they are the minority.

The king of the Moroccan state according to the Article 41 of the draft to the new Constitution is the Commander of the Faithful, أمير المؤمنين (Amir al-Mou'meen), and he guarantees respect to Islam and freedom of worship. He is the head of the Supreme Council of Ulemas, المجلس العلمي الأعلى, which is the only officially approved body that can issue religious consultations, fatwas (الفتاوى). Along with the Supreme Council of Ulemas, Imarat al-Mouminine is another institution that regulates official religion in the Kingdom of Morocco.

³⁹ "The Draft to the 2011 Constitution of Morocco," Article 1, Section I.

⁴⁰ The nation is based upon permanent united federation, moderate Muslim religion, national unity of multiple constituencies, constitutional monarchy and democratic choice. (translation mine)

The national motto of Morocco is: الله، الوطن، الملك - God, Homeland, King. Lèse-majesté laws in Morocco (and also in some other monarchies) foresee imprisonment and fines for those who insult or criticize the King either verbally or in writing. For instance, a Moroccan blogger Muhammad ar-Ragi was arrested in 2008 for criticizing Muhammad VI. Later he was acquitted because of the public uproar about his case.⁴¹ Another Moroccan citizen, Fouad Mourtada, was convicted to three years in jail for creating a fake Facebook profile of Mohammad VI's brother.⁴² Mourtada was released in a month because of the public intervention in his case. In February 2012, a Moroccan college student, Abdelsamad Haydour, received a three-year prison sentence for insulting the king in an online video where he called Mohammad VI a “dog and dictator” in response to the protests against unemployment in town of Taza.⁴³ Walid Bahomane, a teenage boy, was detained in the beginning of 2012 for posting insulting images and videos of the king on Facebook.⁴⁴

United States Department of State 2007 Country Report on Morocco says that "The Ministry of Endowments and Islamic Affairs continued to monitor Friday mosque sermons and Koranic schools to ensure the teaching of approved doctrine."⁴⁵ It also adds that “The Government strictly controlled the construction of new mosques, requiring a

⁴¹ Jillian C. York, “Moroccan Blogger Mohammed Erraji Acquitted”, *Global Voices Online*, September 19, 2008, accessed February 17, 2012, <http://globalvoicesonline.org/2008/09/19/moroccan-blogger-mohammed-erraji-acquitted/>.

⁴² J. David Goodman, “In Morocco and Saudi Arabia, Limits Seen to Speech on Social Media”, *New York Times*, February 9, 2012, accessed February 19, 2012, <http://thelede.blogs.nytimes.com/2012/02/09/in-morocco-and-saudi-arabia-limits-seen-to-speech-on-social-media/?scp=4&sq=morocco&st=cse>.

⁴³ Azzouz Boukhallouch, “Morocco: Prison Term for Insult to King”, *New York Times by Associated Press*, February 14, 2012, accessed February 19, 2012, <http://www.nytimes.com/2012/02/15/world/africa/morocco-prison-term-for-insult-to-king.html?scp=2&sq=morocco&st=cse>.

⁴⁴ J. David Goodman, “In Morocco and Saudi Arabia, Limits Seen to Speech on Social Media”, *New York Times*, February 9, 2012, accessed February 19, 2012, <http://thelede.blogs.nytimes.com/2012/02/09/in-morocco-and-saudi-arabia-limits-seen-to-speech-on-social-media/?scp=4&sq=morocco&st=cse>.

⁴⁵ U.S. Department of State Country Report on Human Rights Practices in Morocco, 2007, p1983.

permit for construction.”⁴⁶ Moreover, mosques are closed during the prayers to avoid the rise and spread of Islamic extremism. The same report mentions the case of Driss Ksikes, and Sanaa Al Aji, journalists from Moroccan weekly Arabic magazine *Nichane*, who received suspended prison terms for defaming Islam with an article named "How Moroccans laugh about religion, sex, and politics" that contained jokes about Islam.⁴⁷

2.2. Morocco: Moudawana (Family Code)

Reform of the status of the Moroccan women, the revision of the family code, the Moudawana, in 2004 are among the positive changes in the Moroccan society along with a 2011 referendum that changed the Constitution. With a reform of the family code, King Mohammad VI reasserted his image of a fighter for woman's rights or *le Roi des femmes*⁴⁸ (king of the women). A lot of scholars on Morocco deem the reform of the family code revolutionary. Serida Lucrezia Catalano argues that Mohammad VI “has shown strong reformist commitment”⁴⁹ in his consent to reform and adapt Moudawana to a modernizing society. She also states that the king “launched substantive changes”⁵⁰ with reforming the family code. However, Catalano remains critical and suspicious of king's sincere intentions and eagerness to conduct reforms. She argues that the concept of

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Francesco Cavatorta & Emanuela Dalmasso, “Liberal Outcomes Through Undemocratic Means: The Reform of the Code de Statut Personnel in Morocco”, *Journal of Modern African Studies* 47:4 (2009): 489, accessed January 30, 2012, doi:10.1017/S0022278X09990164.

⁴⁹ Serida Lucrezia Catalano, “Shari'a Reforms and Power Maintenance: The Cases of Family Law Reforms in Morocco and Algeria”, *The Journal of North African Studies* 15:4 (2010): 535, accessed January 30, 2012, <http://dx.doi.org/10.1080/13629387.2010.496233> .

⁵⁰ Ibid.

'divide and rule' is hidden behind the prism of democratization and reforms in Morocco.⁵¹ Francesco Cavatorta and Emanuela Dalmasso argue that by liberalizing and democratizing the family code, Mohammad VI reaffirmed and strengthened his authoritarianism.⁵² By carrying out a liberal reform, the king reasserted his power not only in state affairs, but also in religious affairs, and showed ulama that he is the one who controls the religious realm. Aicha El Hajjami calls the reform of the family code an example of “an innovative ijihad achieved in compliance with the principles of equality and justice advocated by the sacred texts”.⁵³ If you take an old Moudawana and compare it with the new one, then indeed the reformed Moudawana brought immense changes. However, even the reformed twenty-first century family code is still conservative when it comes to certain things. For instance, the marriage of a Muslim woman to a non-Muslim is still temporarily⁵⁴ forbidden.⁵⁵ Although, the new Moudawana raised the marriage age to eighteen years for girls, it is still permissible to marry a minor with the consent of the guardian.⁵⁶ The Moudawana cannot contradict the Quran. Therefore a lot of its dispositions reflect the Quran. For instance, a woman has to wait after her divorce before she can get married again.⁵⁷ The Quran states that a woman has to wait three menstrual periods before she can get married again: *Divorced women remain in waiting for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if*

⁵¹ Ibid., 537.

⁵² Francesco Cavatorta & Emanuela Dalmasso, “Liberal Outcomes Through Undemocratic Means: The Reform of the Code de Statut Personnel in Morocco”, *Journal of Modern African Studies* 47:4 (2009): 488, accessed January 30, 2012, doi:10.1017/S0022278X09990164.

⁵³ Aicha El Hajjami, “Gender Equality and Islamic Law – The Case of Morocco”, in *New Directions in Islamic Thought*, ed. Kari Vogt et al. (London, New York: I.B. Taurus, 2009), 111.

⁵⁴ The word “temporarily” is used in the Moudawana. It might mean that the article that contains the word “temporarily” is still subject to change.

⁵⁵ The Moroccan Family Code, Article 39. February 5, 2004. <http://www.hrea.org/moudawana.html>

⁵⁶ Ibid., Article 21.

⁵⁷ Ibid., Article 130.

*they believe in Allah and the Last Day (2:228).*⁵⁸ This is done in order to minimize the number of divorces in the society and in case a couple changes their minds and wants to reconcile: ... *And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise.. Furthermore, she has to stay in a marital home during that period (2:228).*⁵⁹ As it is stated in the Quran, legalizing adoption is impossible under the Family Code: *Call them [orphans] by [the names of] their fathers; it is more just in the sight of Allah . But if you do not know their fathers - then they are [still] your brothers in religion and those entrusted to you. And there is no blame upon you for that in which you have erred but [only for] what your hearts intended. And ever is Allah Forgiving and Merciful (33:5).*⁶⁰ Women in Islam have a priority in taking a custody over their children. However, under some hadiths, if a woman remarries or leaves the family home, she loses the custody over her children that then will go to the maternal mother.

The issues raised in the Moudawana, if contested, would have to be taken up by judges who are trained in the Islamic law because family, children and marriage related cases are examined by judges trained in the Shari'a law, whereas all other cases like criminal, administrative, etc. are examined by judges trained in the French legal system.⁶¹ Questions that have not been touched upon in the Moudawana should be sought in the

⁵⁸ In some cases a woman who remarries may lose a custody over her child.

⁵⁹ Ibid., Article 131.

⁶⁰ Ibid., Article 149.

⁶¹ Jurist: Legal Intelligence, accessed February 18, 2012, <http://jurist.law.pitt.edu/world/morocco.htm>

Malikite School of Law and ijihad.^{62 63}

The preamble to the Family Code declares the words of the king about the Moudawana reform:

Ladies and gentlemen, honourable Members of Parliament, The reforms, of which we cited the most important, should not be considered as a victory of one group over another, but rather constitute achievements for all Moroccans, and we took care to ensure that they were consistent with the following principles and references:
- I cannot, as Commander of the Faithful, permit what God has forbidden and forbid what God has permitted
- Adopt the tolerant principles of Islam in advocating human dignity, and enhancing justice, equality and good amicable social relations, and with the cohesiveness of the Malekite School as well as ijihad (juridical reasoning), which makes Islam valid for any time and place, to implement a modern Moudawana for the family, consistent with the spirit of our glorious religion.⁶⁴

Although Muhammad VI's rule cannot be characterized as purely democratic and transparent, women have acquired more civil rights than they had under other rulers. The revision of the family code is one of the biggest achievements of Muhammad VI's regime. The Moudawana is a family code that regulates the family relation of Muslims only. Jewish citizens of Morocco are subject to Hebraic Moroccan Family Law. One of the most fundamental reforms that the new Moudawana brought was putting a ban on polygamy.

Concerning polygamy, we took into consideration the commitment to the tolerant principles of Islam in establishing justice, which the Almighty requires for polygamy to take place, as it is plainly stated in the Holy

⁶² Independent reasoning concerning legal Islamic issues.

⁶³ The Moroccan Family Code, Article 400, February 5, 2004. <http://www.hrea.org/moudawana.html>

⁶⁴ Ibid., Preamble

Koran: He said '...and if you fear that you cannot do justice (to so many) then one (only).' And since the Almighty ruled out the possibility for men to do justice in this particular case, He said: 'You will not be able to deal equally between (your) wives, however much you wish (to do so),' and he thus made polygamy quasi impossible under Sharia (religious law).

We further adhered to the distinguished wisdom of Islam in allowing men to legitimately take a second wife, but only under compelling circumstances and stringent restrictions, with the judge's authorization, instead of illegitimate polygamy occurring if we prohibit it entirely.⁶⁵

Although this reform has a few exceptions that allow men to have a second wife, polygamy is still not as easy and basically infeasible to achieve.

The Moudawana also regulated the age of marriage, increasing a new minimum for girls to eighteen years,⁶⁶ when previously it was fifteen. Article 39 of Moudawana temporarily prohibits “The marriage of a Muslim woman to a non-Muslim man, and the marriage of a Muslim man to a non-Muslim woman unless she is of the Christian or Jewish faith”. A Muslim man is allowed to marry a Christian or Jewish woman, because Article 145 obliges a child to take the religion of his father. Even if a wife is not Muslim, a child will be Muslim like his/her father. In case the couple files a divorce, the Moudawana states that the court may try to reconcile a couple. If the couple has children, the court may try to reconcile them twice.

Article 98 of the Family Code gives six grounds on which the wife may file for divorce:

1- Non respect by the husband of one of the conditions in the marriage contract;

⁶⁵ Ibid.

⁶⁶ Ibid.

- 2- Harm;
- 3- Non maintenance;
- 4- Absence;
- 5- Latent defect;
- 6- Abstinence and abandonment.⁶⁷

The issue of adultery has been addressed in the Moudawana in the sense that it determines the fatherhood of the child. However, the question of adultery has not been addressed any further, and the Moudawana does contain any punishment for adultery.

The conjugal bed is proven by the same means used to prove the marital relationship. The conjugal bed that meets the required conditions is irrefutable proof of paternity, only subject to disavowal by the husband through a sworn allegation of adultery committed by his spouse, or by means of an irrefutable expertise, upon two conditions:
- The husband must present solid proof of his allegations;
- Issuance of a judicial decision ordering the expertise.⁶⁸

Islam prohibits legal adoption.⁶⁹ Hence the Moudawana in Article 149 states: *“Adoption has no legal value and does not result in any of the effects of legitimate filiation. “Gratitude adoption” (jaza) or “testamentary adoption” (tanzil) cannot prove paternity, and are subject to the terms of the testament.”* The issue of adoption is not as relevant in the context of Islam as it is in the context of other religions, because orphans are a rare phenomenon in the Arab-Islamic world. The family ties are very tight and important, and an extended family can take care of their orphaned relative. There is a widespread explanation in fatwas and among the sheikhs that by forbidding adoption, the biological

⁶⁷ Ibid., Article 98.

⁶⁸ Ibid., Article 153.

⁶⁹ In Arabic there are two words used for verb 'to adopt': *kafala* and *tabanna*. The former implies to pay for expenses and provide for material needs, whereas the latter is a more general term that means to fulfill both material and psychological needs.

lineage of the family is preserved. In reality, only legal adoption is banned. One can still take care of an orphan without legally making an orphan his/her child. The main issue of adoption in Islam is the fact that the adopted child should know his/her biological parents and take their last name. This prevents from marrying one's kin, and helps to preserve progeny. Orphans in Islam also do not take the last name of their foster parents, and they do not inherit from their adoptive parents either, although the adoptive parents can give them an inheritance as a gift or make a bequest.

The reform of the Moudawana, even though not flawless and completely liberating, is still a good beginning and a great achievement for a conservative Islamic country that had been colonized for four decades, and had been under dictatorial rule for another three decades. The reforms that are described in the Moudawana will face challenges and will be hard to implement in practice as part of the society might not be ready for them or will deem these reforms not sufficient for the modernization of their country. The intentions of the king are also questionable. When he took the throne in 1999, he promised reforms, and he especially emphasized bringing in gender equality and maintaining woman's rights. However, his intentions might be regarded as insincere and driven only by his dislike of his political opposition and fear of Islamism and Islamist parties. By secularizing and reforming the Shari'a-based legislation, Muhammad VI might covertly intend to weaken the influence of the Islamist opposition to the regime. Nadia Yassine, leader of the Moroccan feminist movement and also a daughter of Abdesslam Yassine, the leader of Al Adl wa al Ihsan Party (Justice and Charity Party)⁷⁰, thinks that the main challenge for implementation of the Moudawana is not the text, but

⁷⁰ Al Adl wa al Ihsan Party is one of the largest parties in Morocco that is in opposition to the Moroccan government and monarchy.

the men in power and the society that is in large part anti-feministic and not ready to accept the changing status of women's rights.⁷¹ The reform of the Moudawana and granting more rights to women is one step in changing women's situation but it will take some time for situation to change drastically. The literacy rates among women in Morocco are still among the lowest in the Muslim world. According to the World Factbook, in 2004 the number of the Moroccans from age fifteen and above that was literate was 52.3 percent.⁷² The total literate male population was 65.7 percent, which is almost twice as high as literacy levels among female population that was 39.6 percent.⁷³ In Turkey 95.3 percent of men and 79.6 percent of women could read and write in 2004.⁷⁴ Literacy is a right. It is directly correlated with empowerment. Literacy is also a crucial aspect of making one's voice heard and becoming active in social and state affairs.

2.3. Morocco: Penal Code

The Moroccan Penal Code works under the jurisdiction of the Shari'a law and is in full compliance with the Quran. It cannot contradict the Quran and prescribes the actions that are forbidden in the Quran such as breaking fast in public, compulsion in religion, abortion, etc. Article 222 of the Moroccan Penal Code prohibits breaking fast in public during the Ramadan unless one has a condition mentioned in the Quran that allows him/her to break the fast. The article states, "*Celui qui, notoirement connu pour son appartenance à la religion musulmane, rompt ostensiblement le jeûne dans un lieu public*

⁷¹ Le Journal, October 7–13 2000 cited in Josep Lluís Mateo Dieste, "Demonstrating Islam: The Conflict of Text and the Mudawwana Reform in Morocco", *The Muslim World* 99:1 (2009): 136, accessed January 30, 2012, doi:10.1111/j.1478-1913.2009.01258.x.

⁷² <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html>

⁷³ Ibid.

⁷⁴ <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>

pendant le temps du ramadan, sans motif admis par cette religion, est puni de l'emprisonnement d'un à six mois et d'une amende de 12 à 120 dirhams".⁷⁵

Article 220 foresees punishment for compulsion in religion and interference with someone's religious practices. As it is also stated in the Quran: *There shall be no compulsion in the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing (2:256)*. It is forbidden to convert a Muslim and a non-Muslim to a different religion using the person's weakness and needs. It is also banned to convert a person to a different religion through educational establishments, health-related services and orphanages. This prohibition is targeted against non-Muslim missionaries that under the guise and excuse of medical charity or taking care of and those in need convert a Muslim to their faith.

Quiconque, par des violences ou des menaces, a contraint ou empêché une ou plusieurs personnes d'exercer un culte, ou d'assister à l'exercice de ce culte, est puni d'un emprisonnement de six mois à trois ans et d'une amende de 200 à 500 dirhams. Est puni de la même peine, quiconque emploie des moyens de séduction dans le but d'ébranler la foi d'un musulman ou de le convertir à une autre religion, soit en exploitant sa faiblesse ou ses besoins, soit en utilisant à ces fins des établissements d'enseignement, de santé, des asiles ou des orphelinats. En cas de condamnation, la fermeture de l'établissement qui a servi à commettre le délit peut être ordonnée, soit définitivement, soit pour une durée qui ne peut excéder trois années.

Abortion is another issues that is raised in the Quran and is thus reflected in the Moudawana as well. Abortion is haram or forbidden in Islam. The Holy Quran says: *You shall not kill your offspring for the fear of want (17:31)*. Article 449 foresees the prison

⁷⁵ A Muslim who breaks fast in a public place during the Ramadan without having any excuses that are allowed by Islam will be punished from one to six months of imprisonment and will be fined by twelve to one hundred-twenty dirhams.

sentence from one to five years for those who perform an abortion for a pregnant or supposedly pregnant woman, and according to the Article 454 a woman who agreed to get an abortion is imprisoned for six months to two years. Article 453 allows abortion in the cases when the pregnancy may cause danger to woman's life.

Part 3. Turkey: Background

This part of the thesis will be devoted to Turkey and to how religion is regulated there. The behavior of the Turkish political elite reflects Turkey's struggle between secularism and Islamism, between being a Muslim-majority country that is willing to share Western ideas and values and a conservative Muslim country that wants to become a pivotal in the Muslim world. For instance, Prime Minister Turgut Özal (1983-1989, later President 1989-1993)⁷⁶ would appear in public with his unveiled wife, and at the same time he would publicly attend mosques. Moreover, he was the first Turkish leader to undertake hajj to Mecca. His hajj was not only publicly announced but it also received a full media-coverage.⁷⁷ Turkish sources note that Özal was a pious Muslim and perhaps even an Islamist.⁷⁸ His other activities during his tenure included launching the government supported mosque building programs and policies aimed at increasing Islamic literacy (for example, mass opening of Imam Hatip schools – Turkish analogy to madrasahs)⁷⁹. At the same time, Özal combined his proclivity to Islamizing with his pro-European politics, support for a liberal economy and cooperation with the military. Historically the army in Turkey has been the main custodian of secularism since Mustafa Kemal's leadership of the Turkish revolution and war of independence in the early 1920s. Özal is a controversial political figure in Turkish history who on one hand did not express openly his support for Islamization of Turkey adoption of the Shari'a law but on the other hand

⁷⁶ The period when Özal was in power is commonly called Özalism.

⁷⁷ Gareth Jenkins, *Political Islam in Turkey* (New York: Palgrave Macmillan, 2008), 149.

⁷⁸ Sedat Laciner, "Turgut Özal Period in Turkish Foreign Policy: Özalism", *Turkish Weekly*, accessed February 4, 2012, <http://www.turkishweekly.net/article/333/turgut-ozal-period-in-turkish-foreign-policy-ozalism.html>.

⁷⁹ Madrasahs or medrese (in Turkish) were abolished after the demise of the Ottoman Empire.

implemented Islam-friendly policies during his tenure.

The current Turkish prime minister, Recep Tayyip Erdoğan, was arrested in 1997 after citing a nationalistic and religiously-driven verse from a poem by the nationalist poet Ziya Gökalp⁸⁰ at a political rally in the southeastern city of Siirt. The verse that he cited said: “*The mosques are our barracks,/the domes our helmets,/the minarets our bayonets,/ and the believers our soldiers*”.⁸¹ Erdoğan, who is now a member of Justice and Development Party, at that time was a member of an Islamist Welfare Party that was later banned.

Modern Turkey was one of the first countries that recognized the newly-emerged Soviet Union as an independent state.⁸² Mustafa Kemal had built good diplomatic relations with the Soviet Union, and Soviet atheism might have inspired his own policy of secularism. The French secularist model, *laïcité*, is said to also have inspired Atatürk. French *laïcité* as well as Turkish secularism, *laiklik*, are based on a tenet that the state regulates religion.

Turkey is perhaps one of the most fascinating Islamic countries in the Middle East region because of its combination of secularism, religiosity, successful attempts at democratic rule and prevalence of the rule of law. Modern Turkey is the descendant of the Ottoman Empire (1299-1923), one of the largest and longest-standing political entities ever. Mustafa Kemal turned Turkey rapidly from an Islamic state, heir of the Ottoman Empire, into a secular state, adopting Roman alphabet instead of the Arabic in 1928,

⁸⁰ Ziya Gökalp is considered a founder of the Turkish nationalism.

⁸¹ Deborah Sontag, “The Erdogan Experiment”, *New York Times*, May 11, 2003, accessed, March 8, 2012, <http://www.nytimes.com/2003/05/11/magazine/the-erdogan-experiment.html?pagewanted=all&src=pm>.

⁸² Turkey was also one of the first countries to recognize the newly independent Turkic states of the former Soviet Union after its collapse.

making Turks adopt last names in 1934⁸³ and implementing other secularizing policies. Mustafa Kemal chose a last name ‘Atatürk’ for himself, which means the father of the Turks. Mustafa Kemal laid foundations for what is today called Turkish secularism.

Mustafa Kemal Atatürk (in office 1923-1938), following the Soviet example, turned some places of worship into museums.⁸⁴ Hagia Sophia in Istanbul, a place that used to be a church during the Byzantine Empire (360-1453), and later during the Ottoman Empire was turned into a mosque (1453-1935), was closed for worship and opened as a museum instead in 1935. The museumization of mosques is a common phenomenon that usually takes place in the atheist or secular countries. However, in 2011 a small room in this museum-mosque has been reopened for prayers. Since the late 1980s, Turkish political circles have been debating over the construction of a mosque on the Taksim square in Istanbul. Some argue that the number of mosques in Turkey is already high enough and one does not need a mosque, and that the issue of building a mosque right in the heart of Istanbul has a political tinge to reassert the power of the Islamists. However, there are only around 80,000 mosques overall in Turkey, which means that the distribution of mosques per people is 1.1 mosque per 1000 people. In Morocco, for instance, there is 1 mosque per 645 people.

The Turkish government, the Grand National Assembly, regulates religious life in Turkey. The Turkish Constitution does not guarantee freedom *of* religion, rather it safeguards freedom *from* religion. The concept of 'freedom from religion' implies that

⁸³ Turks had to adopt last names under “Law on Family Names” that was implemented in 1934 as part of Mustafa Kemal’s reforms.

⁸⁴ Mustafa Akyol, “Let's just reopen Hagia Sophia as church/mosque”, *Hurriyet Daily News*, August 27, 2010, accessed March 10, 2012, <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=let8217s-just-reopen-hagia-sophia-as-churchmosque-2010-08-27>.

people are protected from religion, but religion is not protected. This freedom seems to be more advantageous for secular non-practicing believers. However, freedom from religion is not beneficial for people who wish to express their religious beliefs either in dress or practice.

3.1. Religious education⁸⁵

Imam Hatip schools or Imam Hatip lisesi are secondary education establishments that have replaced madrasahs in Turkey. Imam Hatip schools give a comprehensive secondary education along with the religious instruction, and they have to follow the national education curriculum. Schools that only give religious education do not exist in Turkey, as that would contradict the Turkish Constitution that laid foundation for secularism in Turkey. However, in order to become an imam, attending the Imam Hatip school is required. But the graduates of Imam Hatip schools do not necessarily become imams. One can go to college after attending an Imam Hatip school and train for any profession. During the mid-1990s the graduates of Imam Hatip schools had problems with enrolling into universities. However, the situation has changed after the Justice and Development Party, AKP, came to power. Current Prime Minister, Recep Tayyip Erdogan, is a graduate of an Imam Hatip School. It is believed that AKP favors the graduates of Imam Hatip Schools⁸⁶ when hiring officials into government offices.⁸⁷ The big wave of founding

⁸⁵ I thank Fatih Harpci for helping me to understand the differences between religious schools in Turkey.

⁸⁶ Columbia University World Leaders Forum, accessed March 4, 2012, <http://www.worldleaders.columbia.edu/participants/recep-tayyip-erdo%C4%9F>.

⁸⁷ Among others, see S Tavernise, 'Presidential pick in Turkey is sign of a rising Islamic middle class', New York Times, 25 April 2007 (cited in Murat Somer, "Moderate Islam and Secularist Opposition in

Imam Hatip schools happened during the rule of Turgut Özal. Imam Hatip schools offer religious education, and focus on the Quranic recitation and memorization, and for many religious families they are one of the best ways to educate their children about religion.

Anadolu⁸⁸ Imam Hatip schools have been founded recently. In these schools, students also study intensively foreign languages, mostly English and French. There are also Fethullahn Gülen schools that are private and give both religious and comprehensive education with intensive foreign language courses. Imam Hatip, Anadolu Imam Hatip and Fethullah Gülen schools are the only resort of the religious families to have their children acquire both religious education and comprehensive secular secondary education.

3.2. Turkey: The Constitution (Anayasa)

The Constitution is the main and highest source of law in Turkey. Turkey is described in its Constitution as a “democratic, secular and social state governed by the rule of law”.⁸⁹ Islam is not mentioned as a state or official religion or as a religion of the majority. Article 24 of the Constitution guarantees freedom of religion “Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.”⁹⁰ At the same time, Article 24 guarantees freedom

Turkey: Implications for the World, Muslims and Secular Democracy”, Third World Quarterly 28 - 7 (2007): 1278)

⁸⁸ Anadolu from Turkish means Anatolia in English.

⁸⁹ Constitution of the Republic of Turkey, article 2.

⁹⁰ Article 14: (As amended on October 17, 2001)

None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.

from religion, something that the Moroccan Constitution does not guarantee: “No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.” It also addresses religious education, stating that

Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual’s own desire, and in the case of minors, to the request of their legal representatives.

Men and women enjoy equal rights.⁹¹ Article 50 guarantees “special protection” in terms of working conditions to minors, women and people with physical or mental disabilities.⁹² The Turkish Constitution went through a number of amendments and reforms (1987, 1993, 1995, 2001, 2004). Many of these amendments have to do with liberalizing and democratizing the constitution from previous military regimes. Many of the reforms to the constitution were done because of Turkey's aspirations to join the European Union. For instance, the death penalty that was usually granted for terrorist activity and highest degrees of assault, was abolished in 2004. Islam prescribes the death penalty for a person who murdered a different person. However, compassion and peace are dominant constants in Islam that also should be acted upon: *And tell My servants to say that which is best. Indeed, Satan induces [dissension] among them. Indeed Satan is ever, to mankind, a clear enemy* (17:53).

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

⁹¹ Constitution of the Republic of Turkey, Article 10.

⁹² Ibid., Article 50.

Although Islam does not approve legal adoption, it is legal in Turkey. The adopted child can inherit from the adoptive parents, he/she takes their last name, and the responsibilities of the biological parents are transferred to the adoptive parents.⁹³ The Turkish civil code regulates many aspects that are touched upon in the Moroccan Moudawana. Many provisions of the Turkish civil code are similar to those of Moudawana. For instance, the age of marriage for both parties is 18 years; a child born out of wedlock is considered a legitimate child. Both husband and wife are considered equal parties in the conjugal union. However, in both Moroccan and Turkish culture, children born out of wedlock and mothers who gave birth out of wedlock are looked down upon. In Islam, the father's repudiation of child becomes a ground for an automatic divorce.

Since Turkey is a Muslim country, though secular, some Muslim customs and traditions have survived. For example, anyone can marry two people in the presence of two witnesses. The couple also has to announce the marriage beforehand. However, this kind of marriage does not have any legal consequences. In order to be married legally, the couple has to go to the municipal authorities to obtain the marriage certificate, *evlilik cuzdani*.⁹⁴

3.3. Turkey: Headscarf Ban

While in some Muslim countries women are fighting not to wear a hijab, the Turkish

⁹³ Turkish Civil Code, Section 314.

⁹⁴ A lot of Muslim countries tend to adopt rules requiring state documentation to legalize marriage.

women are fighting for their right to wear it.⁹⁵ In both cases, there is one similarity: women are fighting for the freedom of choice, for the right to choose whether or not to wear a veil.

Although, Mustafa Kemal founded a modern secular Turkish republic, the headscarf ban was only informally practiced during his rule with no distinct legislation that would ban wearing a hijab in the state institutions. However, for those who wanted to become promoted, it was encouraged not to wear a hijab. The ban was legally enacted only after the military coup of 1980 when General Kenan Evren took power. The headscarf ban implies that it is prohibited by law to wear a headscarf in universities and state offices. In February 2008, the ban was lifted for university students. However, later that year after the protests of secular parties, the lift on the ban was annulled by the Constitutional Court. Turkish courts as well as the military are the main custodians of secularism. Since 2010 some universities have been unofficially allowing their students to wear headscarves. Turkey is a secular country, but it is diverse and contains different regions and groups. There are still differences in people's mentality and culture in the West and East of Turkey. In big and touristic cities like Istanbul, Ankara, Bodrum and Antaliya people feel closer to Europe and the Western world, and fewer women are veiled, while in the eastern provinces of Turkey, people tend to have a more conservative mentality and more women wear headscarves. According to the 2008 Gallup Poll, 45% of Turkish women said that they wore a hijab in public.⁹⁶ According to the same survey in 2008, 7 percent of the Turkish people agreed that Shari'a should be the only source of

⁹⁵ Mustafa Kemal also prohibited the men to wear fez, imposing European hats on them.

⁹⁶ 2008 Gallup poll, accessed February 12, 2012, <http://www.gallup.com/poll/104257/Headscarves-Secularism-Voices-From-Turkish-Women.aspx>.

legislation, while 41 percent said it should not be a source of legislation at all.⁹⁷ So a big number of Turkish people do not want to have the Islamic law as the only source of legislation.

The Turkish legislation that regulates work in the public sector is available online in Turkish on the website of the Turkish ministry of education. This regulation, “On Clothing of Employees in the State Institutions,” was created first in 1982, then modified in 1991 and later in 2002 by the Council of Ministers. Section 5 of this law says “görev mahallinde baş daima açık”, which means that a woman's head should always be uncovered while she is at work.⁹⁸ This law is written in a way that it does not say that it bans wearing a headscarf. It says that the head should be always open, and it does not even contain the word hijab or headscarf.

Today in Morocco, wearing a headscarf or a burqa, an outer garment that covers both face and head, is becoming more and more associated with Islamism and Islamic fundamentalism. There is no strict policy on whether a woman should cover her head or not. In the big cities, covering the head is discouraged and looked down upon as either a backward outdated tradition or associated with excessive religiosity that results in Islamism. Even Queen Lalla Salma, the wife of Mohammad VI, who is Commander of the Faithful and who claims that his lineage goes back to the Prophet Mohammad, does not cover her head. Wearing a hijab is a more widespread practice in rural areas and small towns. However, there is also the feminist movement headed by Nadia Yassine, whose members wear hijab as a protest against the widespread notion that a veil is a symbol of

⁹⁷ 2008 Gallup poll, accessed February 12, 2012, <http://www.gallup.com/poll/104257/Headscarves-Secularism-Voices-From-Turkish-Women.aspx>.

⁹⁸ I thank Kenan Cetinkaya for helping me find this law and understand it.

repression and subordination of women and that Islam is a religion of extremism and terrorism. There are also conservative (so called hard-liner) and liberal Moroccan women who choose to veil themselves or not to veil based on their personal beliefs and worldview. Politics, political decisions and politicians also come into play and influence the hijab question, which becomes political as well as social and personal.

For some Muslims and non-Muslims a hijab means oppression. The hijab is thought to restrict women in doing certain things, and it is believed to take away their freedom. Saba Mahmood in *Politics of Piety* looks at a hijab as a symbol of modesty and piety.⁹⁹ Zakia Salime in *Between Feminism and Islam* has a different stance on this issue: "...the hijab (veil) is the subject of one separate course, in which the practice of veiling is made a potent symbol of the boundary between the male and female spheres, and between the 'true Muslim woman' and 'others'".¹⁰⁰ The headscarf is a powerful way to express one's outer religiosity without necessarily being truly religious. In other words, wearing a veil does not make one truly religious. Wearing a hijab does not mean that one has high levels of spirituality and religiosity. The veil is a powerful way to declare one as a Muslim without putting a deep meaning in what it means to be a Muslim. The fact that a woman is veiled or unveiled provides an easy way to tell whether a woman is a "true pious Muslim" or a "Westernized Muslim." It is important to remember that wearing hijab or not wearing it does not necessarily make you a worse or better Muslim, which unfortunately many people forget so that they judge others by whether one manifests religious symbols or not.

⁹⁹ Saba Mahmood, *Politics of Piety: The Islamic Revival and The Feminist Subject*, (Princeton: Princeton University Press, 2005), 43.

¹⁰⁰ Zakia Salime, *Between Feminism and Islam: Human Rights and Sharia Law in Morocco*, (Minneapolis: University of Minnesota Press, 2011), 13.

3.4. Turkey: Presidency of Religious Affairs (Diyanet İşleri Başkanlığı)

The Presidency of Religious Affairs or Diyanet İşleri Başkanlığı, established in 1924, is a department responsible for regulating religious life in Turkey and “freedom *with* religion”¹⁰¹. In Ottoman Turkey, religion was regulated by the Şeyhülislâmlık that was replaced by the modern Presidency of Religious Affairs. The Presidency of Religious Affairs characterizes itself as being of “*public, free and civilian*”¹⁰² nature but not as having religious attributes. The state institutions in Turkey cannot associate themselves with religion or position themselves as religious entities, even if it is the Presidency of Religious Affairs. It respects the state policy of secularism and that religion cannot interfere with the state affairs or affect state decisions.¹⁰³ At the same time, the Presidency can control the myriad of interpretations of the Quran, especially curbing the extreme ones.

Prof. Mehmet Görmez is the current head of the Presidency of Religious Affairs. Prof. Görmez is a former professor of theology at Ahmet Yesevi University in Ankara.¹⁰⁴ His predecessor Prof. Ali Bardakoğlu was known for increasing the influence of the Presidency of Religious Affairs, fighting for freedom of religion and women's rights. Prof. Bardakoğlu for the first time in the history of Islam selected two women as

¹⁰¹ The expression “freedom *with* religion” is used on the official website of the Presidency of Religious Affairs, accessed February 9, 2012, <http://www.diyamet.gov.tr/english>.

¹⁰² Presidency of Religious Affairs, accessed February 9, 2012, <http://www.diyamet.gov.tr/english/weboku.asp?id=787&yid=31&sayfa=2>.

¹⁰³ Ibid.

¹⁰⁴ Berivan Tapan, “Prof. Mehmet Görmez New Head of Religious Affairs”, *Bianet*, November 15, 2010, accessed March 10, 2012, <http://bianet.org/english/religion/126077-prof-mehmet-gormez-new-head-of-religious-affairs>.

counselors for the mosques in Istanbul and Kayseri.¹⁰⁵

Part 4. Conclusion

It is a widespread concept that Islam is not centralized and there is no central authority in Islam. Central authority exists in Islam. However, this authority is portrayed in a different way than the central authority that one is used to observing in Catholicism. The Quran plays the role of the central authority with the decentralized scholars who interpret it and whose position is difficult to determine sometimes. Islam is, however, decentralized in the sense that one does not need to go to church to pray and one does not need a priest to access God. A believer has a direct access to God.

Morocco and Turkey have a large population of young people and people of working age. People from age fifteen to sixty-four make almost 70 percent of the Moroccan and Turkish societies.^{106 107} For young Moroccans and Turks, who use internet, travel abroad, and learn English, it will be difficult and unacceptable to live in a conservative state with a legislation that is based on a literal interpretation of Quran and Shari'a. Morocco and Turkey with their religious and secular laws have to adjust their state doctrine and official interpretation of Islam to be able to attract and co-exist with young globalized Muslims. In a changing world, both the Moroccan and Turkish governments and religious scholars have to deal with the challenges of modernity such as

¹⁰⁵ Mustafa Akyol, "Let's just reopen Hagia Sophia as church/mosque", *Hurriyet Daily News*, August 27, 2010, accessed March 10, 2012, <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=let8217s-just-reopen-hagia-sophia-as-churchmosque-2010-08-27>.

¹⁰⁶ CIA World Factbook – Morocco. Accessed February 3, 2012. <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html>.

¹⁰⁷ CIA World Factbook – Turkey. Accessed February 3, 2012. <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

democratization and modernization, and they have to modify and adjust the Muslim norms and traditions in accordance with the new order and changing identities of their citizens.

The Moroccan Penal Code will most likely be the next one to be reformed after the reform of the Moudawana. Some of the Penal Code's rulings are non-democratic. Moroccan civil movements like MALI (Mouvement Alternatif des Libertés Individuelles)¹⁰⁸ stand against some of the articles of the code like Article 222 that forbids a Muslim to break fast in public during the Ramadan.

Do Moroccans and Turks want Shari'a to be one of the sources of legislation? Do they want it to be the only source of legislation? Do they want Shari'a at all? Answering these question will determine whether Moroccans and Turks want to live in an Islamic or secular state or some kind of mixture of the two.

Such a phenomenon as judicialization of politics is taking place in Turkey, and to a lesser extent in Morocco. Courts more and more influence the political decision in the religion domain, and they have their own agenda that is controlled by the king in Morocco and by the government in Turkey. Courts influence the direction Turkish politics takes. For instance, the Constitutional Court has not allowed lifting the ban on wearing a hijab in the state institutions. In Turkey, the court strongly opposes Islamization fighting for secularism. Thus, practicing Muslims and Islamists might feel that their rights are abrogated under the current Turkish Constitution and judicial system. In Morocco the situation is somewhat different. The Moroccan courts on the contrary

¹⁰⁸ MALI (Mouvement Alternatif pour les Libertés Individuelles) was created in 2009 as a response to the arrest of fifteen Moroccans who were detained on charges of breaking fast in public during the month of Ramadan.

favor Islamization and oppose secularism. The courts are submitted to and dependent on the king of Morocco. The judges have to comply with the Moroccan royalty in making the decisions. The Royal and Supreme Courts of Morocco were involved in reforming the Family Code using ijthihad.

Mohammad VI wants to control not only the religious life but also the construction of religion. The Moroccan government and the king, in the next few years, will be liberalizing their legislation that deals with the matters of religion in order for the king to maintain even greater control over religion and show the ulama that religion and religious life are submitted to him. The Turkish government, on the other hand, will be strengthening its religious laws and legislation because this will assure European Community, part of which Turkey strives to be, that Turkey does not pose a radical Islamic threat to Europe. Right now Turkey wants to be part of the European Union (EU) and maintain good relations with the European Community. Turkey's relations with the United States and its role of being an American ally in the Middle Eastern region is also of big importance to Turkey, and to preserve all of this, Turkey needs to guarantee the Western community that it can curb the radical Islamist threat and does not pose this threat itself. Secularism is also safeguarded by the Turkish Constitution, the military and the middle class. Thus, for any Turkish head of state and government it will be difficult to violate secularism. However, the tenser and more complicated the EU-Turkey relations become, the higher the likelihood that the Turkish government will choose to go away from secularism.

Islam has infiltrated the Turkish society while at the same time letting the society function independently and not affecting the people's daily lives too overtly. In Morocco,

on the other hand, Islam has infiltrated the society so deeply that it controls the society through Islamic personal status law and the monarchy's legend about its prophetic lineage, which many Moroccans believe in due to low levels of Islamic literacy.

Islamic laws were established during the times of the collective society. The society has changed since then. This creates a situation where some aspects of the Islamic law become irrelevant and hard to adjust to the modern world. The Islamic law should undergo some changes to face the challenges of the modern time in order to adapt to the modern, changing society. The clash of the communal with the individual has occurred. This clash is illustrated by the interaction of the Islamic law with the modern society and modern secular law. One understands Shari'a by looking at it with modern lenses, which creates a clash of modernity with the older forms of existence.

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Appendix I

Table 1.

Where is religion regulated in Turkey and Morocco?

Turkey	Morocco
Constitution	Constitution
Civil Code	Family Code (the Moudawana)
Ministry of Islamic Affairs	Ministry of Endowments and Religious Affairs (Habus)
Regulations (i.e. regulation on clothing of the state employees)	Courts and judges that specialize on Islamic family law
Secular Courts	Royal decrees (dahir)

Appendix II

Table 2.

Country Profiles^{109 110}

Categories	Morocco	Turkey
Independence	1956 (from France and Spain)	1923 (the collapse of the Ottoman Empire)
Population	31 million	78 million
Ethnic groups	Arab-Berber 99%, ¹¹¹ other 1%	Turkish 70-75%, ¹¹² Kurdish 18%, other 7-12%
Languages	Arabic (official), French, dialects of Berber language.	Turkish (official), Kurdish (for a long time, teaching of Kurdish and having media in Kurdish was forbidden)
Religion	Muslim 99.9%, Christian 0.1%, Jewish 6,000.	Muslim 99.8%, Christian and Jew 0.2%
Area	446,550 sq km	783,562 sq km
GDP per capita	\$5,100.00	\$14,600.00
Literacy rates	Male and female population over the age 15 - 52.30%, male 65.7%, female 39.6%	Male and female population over the age of 15 – 87.40%, male 95.3%, female 79.6%
Legal system	Mixed legal system based on French civil law and Shari'a law	Civil law system based on Swiss civil code
Number of mosques	48000	Around 80,000

¹⁰⁹ CIA, The World Factbook, accessed February 12, 2012, <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html>.

¹¹⁰ Ibid., <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>.

¹¹¹ In Moroccan censuses, the number of the Berber population is often decreased for political reasons, and it is difficult to know the real number.

¹¹² It is hard to determine what a real number of the Kurdish population in Turkey is because of the bias of the Turkish censuses. To that, Turkey has a tradition of not recognizing ethnic minorities that inhabit it, and everybody who lives in the Turkish land is Turkish.

Appendix III

Important dates in the history of Morocco

788 – Idris dynasty rules Morocco.

1500-s – Sa'adi dynasty rules Morocco.

1860 — Spanish invasion of northern Morocco.

1912 – France and Spain formed a protectorate over Morocco.

1956 – French and Spanish occupation ended, and Morocco received its independence.

1957 – Mohammad V became the King of Morocco.

1961 – King Hassan II, the father of the current king, took power.

1997 – establishment of bicameral legislative house.

1979 – Morocco annexed Western Sahara.

1994 – 2000 Morocco and Israel opened bilateral diplomatic offices.

1999 – Mohammad VI succeeded his father on the throne and promises democratization of the country.

2004 – Family code, Moudawana, is changed. It becomes one of the major achievements of Mohammad VI's rule.

2011 – after demonstrations, Morocco holds a major referendum to cut the powers of the King and change the Constitution.

Appendix IV

Important dates in the history of Turkey

1071-1243 – Selcuk dynasty controls Anatolia, around the same time part of Turkey is under the Byzantine Empire.

1299 – the beginning of the Ottoman Empire.

1520-1566 – the Rule of Suleiman the Magnificent, Golden Age of the Ottoman Empire.

1914 – Turkey takes part in World War II as an Axis ally.

1923 – the demise of the Ottoman Empire and formation of modern Turkey. Mustafa Kemal starts secularization of Turkey. He changes the script from Arabic to Roman, adopts last names.

1950 – first time in the Turkish political party an opposition party, Democratic Party, wins the elections.

1960 – coup d'état against that overthrew the government formed by the Democratic Party. General Cemal Gürsel with National Unity Committee led the coup.

1971 – a second coup d'état that overthrew Süleyman Demirel's government.

1974 – Turkey's occupation of Northern Cyprus.

1980 – a third military coup that ousted Süleyman Demirel's government.

1983-1989 – Turgut Özal becomes the prime-minister of Turkey. The period of his rule is also known as “Özalism”.

1989-1993 - Turgut Özal becomes the president. The period of his rule is also known as “Özalism”.

1991 – the Islamist Welfare Party (Refah Partisi) wins almost 17 percent in the

Parliamentary elections.

1996-1997 – Necmettin Erbakan, the leader of the Welfare Party, becomes the prime-minister. He is the first prime-minister who also heads an Islamist Party.

1997 – the Turkish military made Erbakan step down. Virtue Party emerged as an offspring of the Welfare Party.

1997-1999 - Ahmet Mesut Yılmaz, the leader of Motherland Party (Anavatan Partisi) became the prime-minister.

1998 – Welfare Party was banned by court due to violating secularism policies of the Constitution.

2001 – Virtue Party was banned. Erbakan founded Felicity Party.

2003 – Recep Tayyip Erdoğan became the prime-minister.

2007 – Abdullah Gül became the president.

Appendix V

Figure 1.

Map of Morocco¹¹³



¹¹³ Britannica Concise Encyclopedia

Figure 2.

Map of Turkey¹¹⁴



¹¹⁴ Ibid.