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The Moroccan Personal Status Law and the Invention of Identity: A Case Study on the Relationship Between Islam, Women, and the State

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Abstract

This paper uses Muslim women's activism against Morocco's Personal Status code as a case study to challenge widely held notions about the relationship between Islam and women's rights, and to examine the production of religious knowledge in pursuit of political goals that directly affect women. Using women's activism against Morocco's Personal Status Code, I analyze the state's use of religious symbols and religious discourse to affect constructions of gender in a bid for cultural, as well as political, hegemony. In so doing, I challenge the positioning of gendered citizenship as "Islamic," and tease out the connections between Morocco's gendered citizenship framework, the political appropriation of religious discourse, and the construction of the "family" as a cultural phenomenon. Additionally, I explore women's forms of protest, arguing that women's use of Islamic discourse and jurisprudence was a successful strategy, problematizing the notion that Islam and progressivism are mutually exclusive frames. Finally, I link this particular case study to other examples of Islamic feminist activism in the Middle East in order to propose a lens for understanding the relationship between gender, the family, and the state in Muslim countries.

***Key Words**: Women, Gender, Islam, Morocco, Personal Status Law, Law, Religion*

Introduction: the Personal Status Code, Family, State, and Authority

Like other countries with a colonial past, Morocco's history and culture is highly politicized: the struggle against the perceived threat of Western hegemony includes an effort to shape the historical narrative to include or exclude certain actors, suggest a fixed construction of gender and family, glorify certain groups, and minimize various ruptures in pursuit of a unified national identity. Although some recent scholarship has framed the social, political, and economic dAlthough some recent scholarship has framed the social, political, and economic disenfranchisement of Moroccan women (and other women from the Middle East and North Africa) in terms of locally-held or tribal norms, the notion still persists that "Islam" or "Islamists" are synonymous with misogyny; however, I will demonstrate that the laws seeking to control women and women's sexuality, which often are referred to as "Shar'ia" law or "Islamic" laws, are in fact nothing of the kind. Rather, they are an example of the state's production of religious knowledge in pursuit of political

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goals.[1]   These goals include *inter alia* the creation of a unified religio-cultural identity and a bid to harness human resources. Muslim feminists' own production of religious knowledge, in response to state action, complicates the positioning of Islam as synonymous with the disempowerment of women. The use of religious symbols and discourse by both the state and women's rights activists furthermore obfuscates the boundary between "secular" and "religious."

Women seeking empowerment have also been challenged by the fact that Moroccan family law in general and the Personal Status Code in particular enshrines the notion of "self" as impossible to disarticulate from a patriarchal, patrilineal kinship network and embeds this sense of self within Islamic discourse, making use of the Shar'ia's power as a potent political symbol. This has been—and still is—accompanied by rhetoric asking women to stay in socially, culturally, and customarily sanctioned roles for the realization of nationalist enterprises, equating their reluctance to do so as compromising the spiritual, political, and financial health of the nation. Women asking for equality are therefore challenging not only "Islam," as it is locally understood; they are also challenging Moroccan nationalist conceptions of self, prevailing notions about Moroccan and North African tradition, and the impetus to resist Western cultural hegemony.

The *Moudawana* or *Droit de la famille au Maroc*, was passed in 1958 and legally articulated this conception of the self, given that it characterized the legal status of Muslim women as dependents of their fathers or husbands. It is not unusual that the Family Law, which sought to regulate women's behavior and solidify "traditional" family structure, was among the first items on the legislative agenda after the revolution. In this case, as in many others, women were used as pawns in the politics of identity, possessing the power of procreation ripe for appropriation by the nationalist agenda.[2]   The family, as a microcosm of patrilineal and patriarchal kinship, was the smallest social institution capable of acting as a "civilizing" and "ordering" body in society and was thus the perfect site for the recreation of the new national identity of the idealized Moroccan woman.

Morocco, unlike other Middle Eastern and North African states, had never been under Ottoman rule and thus lacked similar centralizing institutions and state apparatuses.[3]   In the eighteenth and nineteenth centuries, Morocco lacked a stable, centralized bureaucracy or military,[4] thereby making lineage the basic social, and therefore political unit, and marriage a powerful tool for building alliances. In other words, tribes, which are generally structured through kinship networks, have often been held responsible for maintaining social stability given that the government did not always have the means to do so. Kinship, and one's position in a kinship network, thus emerged as an important aspect of identity, selfhood, and citizenship.

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[1] Sondra Hale, *The Islamic State and Gendered Citizenship in Sudan*, in Gender and Citizenship in the Middle East 88-106, (Suad Joseph ed., 2000).

[2] Kesnic Vesa, *From Reverence to Rape*, in Frontline Feminisms: Women, War, and Resistance 24 (M.R. Waller and J Rycenga eds., 2000).

[3] Mounira Charrad, States and Women's Rights: the Making of Postcolonial Tunisia, Algeria, and Morocco (2001).

[4] *Id.* at 105.

Islam, Authority, and the State

The ability to credibly position the Personal Status Code as "Islamic" comes from a variety of political, social, and historical circumstances. During their occupation of Morocco, the French had avoided interference in domains that they deemed of little relevance to their hegemony. Thus, they created a dual system of governance: the French system, which controlled commercial life and penal law, and Shari'a law, which was more or less left to native control and rendered applicable solely to marriage and family.[5]

The *Moudawana* dealt with family law and was therefore presented as exclusively Islamic in contrast to the rest of Morocco's laws, a notion to which many scholars still subscribe. For example, Stephanie Bordat, the Maghreb Regional Director of the Global Rights office, writes: "in contrast to other laws derived from secular civil codes, the Family Code is the only law in Morocco still based on religious precepts—specifically on the Maliki school of Islam."[6] Similarly, anthropologist Ziba Mir-Hosseini characterizes the 1958 *Moudawana* as a codification of Maliki classical jurisprudence.[7]

To be sure, the *Moudawana* self-legitimates by drawing on various aspects of Islamic jurisprudence; however, it significantly deviates from *fiqh* by virtue of its codification. Put differently, Islamic jurisprudence is by its very nature a common law system of jurisprudence. Classical jurists regarded the Shar'ia less as a list of rules and more a system for interpreting the law as revealed by the Qur'an and *Hadith*. During the colonial period, however, this system and its accompanying epistemology was replaced with a French legal system. Any law made within the postcolonial framework, given its insistence on codification, inherently lacks (among other things) the flexibility required for Shar'ia law, no matter how many Qur'anic injunctions it attempts to include.

Codifying the law can, in fact, be regarded as an act of *ijtihad* by its very nature: the determination that codification is acceptable is in defiance of classical jurisprudential epistemology; similarly, as there is no unified set of "rulings" subject to all times and all places, selecting which rulings deserve codification is arguably an additional act of *ijtihad*.

The original *Moudawana*, put forth in 1958, was therefore no more or less "Islamic" or "Shar'ia-based" than the 2004 revision that followed. Assertions that women activists were "reforming" Shar'ia law therefore were also not entirely accurate given that the law *itself* was not in keeping with the Maliki tradition of jurisprudence, and that Muslim feminists' approach to interpreting religious texts was no more a deviation from the Maliki tradition than was the codification.

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[5] Wael B. Hallaq, Sharia: Theory, Practice, Transformations 438 (2009).

[6] Stephanie Willman Bordat, *Women as Agents of Grassroots Change: Illustrating Micro-Empowerment in Morocco*, 7 J. Middle East Women's Stud. 94, 90-119 (2011).

[7] Ziba Mir-Hosseini *How the Door of Ijtihad was Open and Closed: A Comparative Analysis of Recent Family Law Reforms in Iran and Morocco,* 64 Wash. & Lee L. Rev. 1500, 1499-1512 (2007).

Characterizations of Muslim feminists as deviating from classical Islam additionally imply that any liberalization of the law must be deviation from classical jurisprudence, even though classical jurisprudence often allowed women more rights than they presently enjoy in many Muslim countries. For example, the Hanafi school of Sunni jurisprudence allowed women to be judges in all disputes aside from *hudud* and *qisas* cases,[8] women in 18th century Iran were *mullahs* and published newspapers,[9] and Egyptian women in the Medieval period of Islam were often given access to co-ed educational institutions[10] and established salons or schools for girls. A traveler to 19th century Cairo in fact commented that there were female students at the most renowned center for Sunni jurisprudence, el-Azhar, and that "they mingled freely among the men."[11] Like most systems of Shar'ia, the Maliki school explicitly endorses the use of analogical reasoning (*qiyas*), opinion (*r'ay*), and public interest (*istihlah*) as possible sources of law, giving rise to laws that constantly change along with evolving perceptions of (for example) the "public interest" or "justice." Standardization not only effectively renders this impossible, but also robs the people of the ability to shape law through contributing to notions of consensus ('*ijma*) and *istihlah*. Furthermore, Maliki law has the potential to be among the most liberal schools of Shar'ia law given that it does not give absolute primacy to Qur'anic text, allowing for shifting definitions of such abstract issues of social justice and constructs of gender. It is therefore problematic to conclude that any restrictive or conservative law must inherently be in keeping with classical jurisprudence.

The idea that the state can even create or enforce laws set forth as "Shar'ia" presupposes acceptance of the idea of a sovereign, secular power from which all authority is derived, making the state-enforced Shar'ia a purely post-colonial, modern phenomenon. In fact, the jurist after whom the Maliki school was named twice refused requests from ruling Caliphs to make his treatise on *fiqh* (Islamic jurisprudence) into state law. He did so on the grounds that Muslims had a duty not to obey such laws if they found them "incorrect" or inconsistent with what their consciences might dictate. This incoherence between Maliki jurisprudence and the Personal Status Code that emerged in post-colonial Morocco, as well as in most of the post-colonial global south, can in part be explained by the fact that North African Muslim lawyers and jurists in the colonial period were largely cut off from access to works of jurisprudence, leaving them more or less estranged from the processes and nature of Shar'ia law.[12]

Upon Moroccan independence, the highly localized, flexible, and dynamic nature of Shar'ia law was seen as antithetical to the modern legal system, which by its nature requires a centralized government capable of providing a sole legitimate source of coercive authority. Family Law, like all modern law, thus required

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[8] MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 270 (2003).

[9] NIKKI R. KEDDIE, IRAN: RELIGION, POLITICS, AND SOCIETY: COLLECTED ESSAYS 150 (1980).

[10] LEILA AHMED, WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE 113-114 (1992).

[11] *Id.* at 114.

[12] Hallaq, *supra* note 5, at 440.

standardization, and codifying Family Law and referring to it as Shar'ia allowed the state to have a legal monopoly on the definition and articulation of the "family" without giving up the religious legitimacy associated with Shar'ia. The bifurcation of the legal system under French occupation, and indeed throughout the occupation of the global south by European powers, however, gave enormous currency to the notion that Family Law had "always" been the bastion of Shar'ia, as "Western" laws and a modern judicial system had been implemented in all other spheres. The result was to transform the Shar'ia into a symbol of identity that served to indicate the strength of the *umma* (Muslim community); however, this symbol is wielded within a context wherein the public, and even trained jurists, lack an appropriate level of religious education to assess laws promulgated as Shar'ia.

Still, in spite of all of these issues with *Moudawana*'s content, structure, and source of authority, the overwhelming perception was that this law—like Personal Status Codes throughout the Middle East and North Africa—was authentic Shar'ia. This meant that Moroccan women's rights advocates faced formidable challenges in striving to change it even though the law denied women some of the rights explicitly given to them in the Qur'an as well as in Maliki interpretations of Sha'ria law upon which it was supposedly based.[13]

The emergence of an educated, female middle class in the 1970s gave rise to feminist scholars who sought to produce religious knowledge, enabling arguments for increased women's rights on Islamic, rather than constitutionalist or nationalist grounds.[14] In spite of this, the idea of "feminism" and "women's rights" were—and still are—associated very strongly with Western (colonialists) culture.[15] Conservative forces were able to use essentialist, hyperbolic, anti-Western discourse to silence and delegitimize women's rights activists, and paralyze the left-leaning political parties into inaction on women's issues.[16]

Fatima Mernissi published what would come to be regarded as a foundational text called *Le Harem Politique*[17] in which she exposed poorly-sourced or unreliable *Hadith* (narratives about what the prophet did or said during his life), and challenged the religious authenticity of misogyny cloaked in Islamic rhetoric.[18] Islamic feminist activists increased their use of Arabic, called for new readings of Qur'anic texts,[19] and engaged in *ijtihad* (reasoning) to counter the effect of Islamic fundamentalism

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[13] Oriana Wuerth, *The Reform of the Moudawana: The Role of Women's Civil Society Organizations in Changing the Personal Status Code in Morocco*, 3 Hawwa 309, 310 (2005).

[14] Amy Freeman, *Re-locating Moroccan Women's Identities in a Transnational World: the 'Woman Question' in Question,* 11 Gender, Place & Culture 17, 21 (2004).

[15] Alison Baker, Voices of Resistance: Oral Histories of Moroccan Women 67 (1998); *see also* Freeman *supra* note 16 at 21.

[16] *Id*. at 32.

[17] Fatima Mernissi, *Le Harem Politique: Le Prophète et les femmes* (Albin Michel 1989).

[18] Margot Badran, *Understanding Islam, Islamism, and Islamic Feminism,* 31 J. Women's History 47, 50 (2001).

[19] Fatima Sadiqi, *The Feminization of Public Space: Women's Activism, the Family Law, and Social Change in Morocco*, 2 Journal of Middle East Women's Studies 86 (2006).

and actively participate in the production of religious knowledge.[20] Muslim feminists argued (and continue to argue) for a return to the original texts without turning to the (overwhelmingly male) process of juristic interpretation, and simply view correct readings of the Qur'an as those in keeping with a trajectory towards gender justice. The fact that the Qur'an addresses men more often than women, they argue, is not because men are preferred, but rather because men are the ones that most often wrong women and must change their views and practices.[21] In producing religious knowledge, therefore, Muslim feminists accomplished two things. First, they appropriated religious discourse by producing and disseminating religious knowledge. Second, they appropriated *political* discourse, giving them space to challenge the authority of the Personal Status Code.

The Gendering of Citizenship: Moroccan Wives, Moroccan Mothers

The constraints on women set forth by the Family Code meant that the notion of citizenship had implicitly been cast as a highly gendered set of privileges: the "default" Moroccan citizen who was able to exercise all the rights of citizenship was a male citizen. Although the text of the Constitution declared all women "égaux devant la loi,"[22] women's rights as citizens were in reality determined not by their independent personhood, but by their relationship to the male head of the family. In other words, rights were given not to women, but to wives, daughters, or mothers. Once married, women were obligated to submit to the cultural and religious preferences of their husbands, remain sexually and morally chaste, and breastfeed any infants if possible.[23]

The importance of patriarchy and its repercussions for citizenship and nationalist conceptions of self cannot be overemphasized: when this occurs, women's rights and privileges are expressed insofar as they occur as mother's rights and wives' rights, rather than *citizen's* rights.[24] In the idealized manifestation of patriarchal social organization, a father or grandfather sits at the top of the hierarchy, controlling property, dealing with outsiders, and expecting obedience and deference from women and younger men.[25] Thus, the choice to address women in a way that highlighted their position within this order, as well as delimited women's political identities as embedded therein, was not insignificant and informed the nature of the perceived struggle against Western depersonalization as well as religious fundamentalism.

In 1969, King Hassan II created the Union Nationale des Femmes Marocaines (UNFM) with the goal of improving the social and economic status of women in Morocco. According to the King's sister, who served as the honorary head of the UNFM, the goal of the organization was "to see to it that the reforms concerning

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[20] Fatima Sadiqi, Women, Gender, and Language in Morocco 35 (2003).

[21] *Id.* at 36.

[22] CONSTITUTION OF THE KINGDOM OF MOROCCO Article 5 (1962).

[23] Bruce Maddy-Weitzman, *Women, Islam, and the Moroccan State: The Struggle over the Personal Status Law,* 59 Middle East Journal 393,394 (2005).

[24] Suad Joseph, Gender and citizenship in the Middle East 16 (2000).

[25] Ghita El Khayat, Le Maghreb des Femmes: Les Femmes dans L'U.M.A. 48 (1992).

women remained within the framework of Islam and had the consent of [religious scholars]."[26] However, citizenship would continue to be framed as *wives'* duties and obligations (as opposed to *women's* duties and obligations): "I am counting on the mother, on the Moroccan woman, to be more than the father, an insurmountable rampart in the face of Westernization and depersonalization,"[27] the King said in a speech made that same year. Furthermore, in the same speech, the King claimed that an inverse relationship existed between Moroccan women's freedom and religious fundamentalism.[28] Addressing women in this manner was consistent with the state's constitutionally enshrined conception of "self," wherein one is not an individual, but a member of a kinship network which is rooted in the national community, and in turn is situated in the global Muslim community. The Personal Status Code functioned to sanction and protect the patrilineal kin group, which it identifies as a center of social solidarity.[29] As women's positions as "wives" and "mothers" defined their citizenship, women's citizenship became yoked to their positions in a kinship structure embedded in a larger religious identity that together formed the nation.

Activists' efforts were therefore additionally compromised by the fact that the state's interest in buttressing women's positions within a "traditional" family setting was presented in terms of nationalist and anti-colonialist enterprises. The law was not only regarded as religiously mandated, but also was part of a discourse in which the state expressed interest in strengthening a newly independent Morocco through strengthening families. The family that would be strengthened through state laws and initiatives, however, was the idealized family wherein women were at the center of the family and home in their "rightful" place,[30] women wishing to disarticulate themselves from being embedded in the home were therefore threatening the family, and by extension, the nation.

In the 1990s, pressure for political and economic liberalization resumed, partially due to a resurgence of grassroots activism[31] and partially due to international pressure. Women's groups, some acting alone and some in concert with left-wing political parties, engaged in a vigorous campaign for signatures to try to change the Personal Code.[32] This petition campaign was at the center of an overall plan for Morocco's development, which had been initiated at the United Nations Economic Commission for Africa in the late 1960s and early 1970s,[33] but took decades to come to fruition as anything other than discussion. In 1995, the UN had asked developing countries to submit a national plan to the UN's Commission on the Status of Women, which would explain what steps they were taking to achieve the goals outlined by

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[26]   Wuerth, *supra* note 15, at 314.

[27]   Freeman, *supra* note 16, at 25.

[28]   *Id.*

[29]   Mounira Charrad, *Lineage Versus Individual in Tunisia and Morocco, in* Gender and Citizenship in the Middle East 70-87 (Suad Joseph ed., 2000).

[30]   Baker, *supra* note 17, at 20.

[31]   Maddy-Weitzman, *supra* note 24, at 400.

[32]   Al-cheat *supra* note 23, at 197

[33]   Freeman, *supra* note 16, at 26.

the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Women's activists engaged in campaigns to pressure the government to include a modification of the Personal Status Code in Morocco's National Plan, basing their calls for action in part on petitions, and in part on international conventions signed by Moroccan leaders.[34]

Women's demands included: 1) equality (framed as complementarity) between a husband and wife, 2) full legal status of adulthood granted to women once they turned 18; 3) giving women the right to marry without a patron (*wali*), assuming the legal age for marriage was raised to 18 from 15; 4) equalizing the divorce process and putting the process into the hands of the courts; 5) outlawing polygamy; 6) giving equal rights of guardianship over children; 7) giving women the right to an education and a job outside the home regardless of her husband's position on the matter.[35]

A million signatures were gathered in support of these changes to the Code, and in 1992, King Hassan II assured the people of Morocco that women would be given justice, and, moreover, that they would receive it through Shar'ia Law.[36] During the year that followed, King Hassan II met with women's groups and appointed a twenty-man, one-woman committee to study the possibility of religious reforms within the context of *ijtihad*.[37] Although reforms followed in 1993, they were primarily cosmetic in nature. For example, a woman's father or husband could still block a woman's application for a passport, and women were only allowed to sign certain kinds of contracts.[38] In many senses, however, this was a spectacular victory for women: for the first time, the "sacred" Personal Status Code had become a matter of public debate, and it had been changed.

Little progressed until the death of King Hassan II five years later, and in 1998, the first Socialist government took over.[39] Two women were given visible government posts for the first time in the history of the country.[40] Together with the World Bank, women's groups, human rights groups, and liberal reformists drafted a plan to educate and empower women in a renewed effort to present the National Plan to the United Nations in accordance with CEDAW. The feminist movement was at the forefront of an effort to marshal popular support for the Plan, which would entail further modifications to the Code.[41] In response to these calls for action, the Ministry of Religious Affairs presented the Plan to the Official League of Religious Scholars, and the reforms to the Code were categorically rejected; there was no comment offered on any other aspects of the Plan.[42] Women's rights groups then assembled over

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[34] *Id.*

[35] Maddy-Weitzman, *supra* note 24, at 401.

[36] *Id.* at 402.

[37] *Id.*

[38] *Id.* at 403.

[39] Sadiqi, *supra* note 20, at 103.

[40] Nizta Berkovitch and Valentine M. Moghadam, *Middle East Politics and Women's Collective Action: Challenging the Status Quo,* 6 Social Politics 273, 277 (1999).

[41] Sadiqi, *supra* note 20, at 104.

[42] Freeman, *supra* note 16, at 27.

two hundred organizations to actively campaign for support of the National Plan, and created a coalition of politicians and union activists entitled A Front to Defend Women's Rights.[43]

Simultaneously, however, anti-reform groups created the National League to Protect the Family to openly denounce the Plan and the changes to the Personal Status Code.[44] Members of the League contained not only members of self-identified Islamist organizations, but politicians from the Left, who criticized the plan as being un-Islamic and even Zionist in its attempt to destroy the family and Muslim culture. In March of 2000, 30,000-50,000 people took to the streets in Rabat, expressing support for further reforms to the Code of Personal Status, as well as the World Bank's "National Strategy for the Integration of Women in Development." Approximately as many counter-protestors converged on the streets of Casablanca, including a great number of veiled women, who marched in separate rows from men.

For over a year longer, the debate raged. In many senses, however, the stalemate was broken with the coming of King Mohammed IV. Unlike his predecessor, he referred to women as *women*, rather than as "wives," "mothers," or "daughters."He asked, "How can society achieve progress, while women, who represent half the nation, see their rights violated and suffer as a result of injustice, violence, and marginalization, notwithstanding the dignity and justice granted them by our glorious religion?"[45]

In the months following his ascension, he appointed women to high-profile positions of power, including a Royal Counselor, the Head of the National Office of Tourism, and the Head of the National Office for Oil Research and Exploration. Women in governmental positions such as these were unprecedented, as was his approval of a proposal to set aside thirty parliamentary seats for women.[46] Finally, on October 10, 2003, King Mohammed IV presented to the Parliament a plan to replace the law with a new Family Code that would still be "consistent with Islam" (constamment à l'esprit les véritables desseins et finalités de l'*Islam* généreux et tolérant), protect the dignity of men and the rights of children ("à protéger les droits de l'enfant et à préserver la dignité de l'homme,") while respecting women's rights."[47] This new plan was submitted in the wake of the 2003 Casablanca bombings, carried out by so-called Islamic extremists, which gave feminists and women's rights activists more discursive space in which to challenge the construction of "Islam" and "Islamism" as put forth by religious conservatives.

Moroccan Women's Activism as a Case Study

Fatima Sadiqi characterizes the most recent instantiation of Moroccan feminism as a convergence of "liberal, i.e. secular" feminism on the one hand and

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[43] *Id.*

[44] Freeman *supra* note 16, at 27.

[45] Sadiqi *supra* note 20, at 105.

[46] *Id*. at 105.

[47] Loi N° 70-03 portant Code de la famille (1958).

"religious (conservative)" on the other.[48] Faegheh Shirazi similarly points out that "Islam, not Western secularism, has become the language North African women increasingly rely on to communicate their disapprobation and to secure their rights."[49]

This dialectic between the state, Islam, and activists, has played out in a similar manner throughout the Middle East and North Africa. In Iran, for instance, constitutionalist discourse was used to perpetuate a gendered notion of citizenship while women used and continue to use religious discourse to call for their rights.[50] In Kuwait, self-identified conservative Muslims supported women's right to vote (though opposed their right to be elected to Parliament) after Kuwait's liberation, while self-identified secularists did not for reasons of "propriety" and "culture."[51] In Sudan, a similarly restrictive Personal Code, operating with Islamic discourse, was accompanied by nationalist calls for women to serve Sudan (rather than Islam) "as only women can;" feminists, in return, continue to rely on Islamic discourse when calling for their rights.[52] In Egypt, Muslim women engaged projects of textual hermeneutics to "reclaim" Islam and challenge social and political inequality.[53]

Using religious discourse and even Islamic jurisprudence and Qur'anic hermeneutics to accomplish political goals complicates terms such as "secular" and "religious," challenging the notion that social progress and secular humanism reside neatly on two polarities. It is also worth noting that in challenging the Family Code, Moroccan women did not usually seek to transform many of the underlying assumptions of Moroccan society, but instead sought instead to integrate themselves into those assumptions. In other words, Muslim feminists' struggle to define that which is essentially "Moroccan" has thus ensued not in terms of revising Moroccan cultural identity to encompass a gender-neutral framework, but rather to incorporate women into a pre-existing narrative wherein the colonists, in many cases, continue to set the terms of the debate.

Moroccan feminists are increasingly working within the framework of Islamic feminism, some out of pragmatism and some out of enthusiasm for their faith.[54] The fact that feminists resort to Islamic rhetoric to argue for their rights could lead to the conclusion that Islam (as it is locally understood and practiced) is responsible for denying them their rights. As demonstrated, it is a combination of a highly patriarchal kinship structure, strong resistance to Western cultural hegemony, the collective memory of colonization, and political appropriation of religious discourse that has acted in concert to define women's citizenship rights. Note, for example, that the group wishing to keep the Personal Code unchanged was called the "National

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[48] Sadiqi *supra* note 20, at 21.

[49] Faegheh Shirazi, Muslim Women in War and Crisis: Representation and Reality 205 (2010).

[50] Asfsaneh Najmabadi, *Feminisim in an Islamic Republic: Years of Hardship, Years of Growth in* Islam, Gender, and Social Change 65 (Yvonne Haddad & John L. Esposito eds., 1998).

[51] Margot Badran, *Kuwaiti Women in Struggle, Pre-Invasion to Post Liberation,* Islam, Gender, and Social Change 202 (Yvonne Haddad & John L. Esposito eds., 1998).

[52] Hale *supra* note 1, at 96,100,101.

[53] Badran *supra* note 19.

[54] Freeman *supra* note 16, at 23.

League to Protect the Family" (famille), rather than, for example, the "National League to Protect *Women*" or the "*Islamic* League to Protect Family." Citizenship in Morocco has been defined not as an individual right, but one dependent on one's position in a family. Thus, laws that oppress women are often borne of nationalist, rather than religious, concerns.

Globalization, fundamentalism, and "western" notions of modernity continue to place women at the center of such debates, as national movements use women's legal, social, and political status as measures of progress in each of these respective arenas. The silencing of women who stray from their traditional roles as repositories of culture and protectors of the family is not a uniquely Moroccan phenomenon; nor is the appropriation of women's concerns by politicians who seek to placate and neutralize feminists' agenda. Women in Morocco, like others around the world, have found their interests placed in a false dichotomy wherein their autonomy is positioned as directly in conflict with national interests, children's welfare, and the overall health of the family.

For these and other reasons it is necessary to take into account the degree to which societal organization constrains the actions of Moroccan women, rendering certain alliances, labels, or constructions of identity meaningless. In Morocco's social milieu, terms associated with "secular humanism" or "secular feminism" are either associated with colonialism and Western neo-colonial cultural hegemony, or are meaningless. The necessity for women to work within the limits of the society in which they find themselves brings up questions of agency, which may best be resolved by thinking of marginalized groups as ultimately capable of making choices—but not necessarily from a selection that is of their own making. Women may elect to use existing systems of religion, kinship, government, and education to their own advantage rather than seeking to destroy them because destruction of these systems is not possible, not useful, or simply not desirable.

This is not to say that opportunities for feminism and improvement in women's lives cease to exist within the context of a gendered social order. As Judith Tucker[55] has pointed out, earlier Muslim jurists in the pre-colonial era indeed saw marriage and family as gendered settings, but took great pains to ensure that women entered into their marriages as empowered individuals (literally) with money and rooms of their own. Women choosing to demand their rights within this social framework are not by definition any less "feminist" than those wishing to challenge a patriarchal order, and it is not only important to acknowledge the validity of their choices, but also to refrain from casting them in light of a rejection of Islamic or nationalist conceptions of family and self.

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[55] JUDITH TUCKER, IN THE HOUSE OF THE LAW GENDER AND ISLAMIC LAW IN OTTOMAN SYRIA AND PALESTINE (2000).