Koranic law was developed in the Moroccan Family Code, named the Mudawwana, in its first version between 1957-58. The changes included in the 1990s and also in 2004 modify part of the apparent philosophy of the Islamic Text and give greater freedom of action to women. We shall see that the Family Code legislates for all the events and conflicts of family life: marriage, divorce, descent, adoption, inheritance, etc. This is why the analysis from a gender perspective of the kind of social influence it has had is of such interest:

- First, the influence of Koranic law in the Family Code (Mudawwana) will be examined,
- Second, an overview of the rights and duties of Moroccan people through their Family Code will be given, and
- Third, the way that it affects Moroccan women will be analysed, while at the same time, the different reforms that changed the Family Code will be considered.

This explanations are important in order to understand:

- How is the social reality of Moroccan women in their own country, and
- Which is the kind of law that will be applied to them in migration if would be impossible to apply the new country’s one.

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2 In the text I will used ethnographical data collected in my fieldwork in Morocco, finished in 1997. There are interviews made to women living in urban contexts that will illustrate the women negotiation of the divorce. Other ethnographical data are published in Aixelà (2000).
Koranic law

One of the interesting aspects of this subject is to analyse the continuity and discontinuity of Koranic law3 in the Mudawwana. A brief introduction to this Islamic source is therefore warranted.

Marriage in the Koran

The Koran argues that marriage gives people a better civil status. It urges Muslim men and women to get married, saying: "Marry unmarried people, and marry your servants too..." [sura XXIV, 32].

The Koran establishes the polygamous marriage (nikah) with a maximum of four spouses. It says: "Marry the women you like; two, three or four..." [sura IV, 3]. But the Koran, which obliges the husband to be equitable with all his wives, adds that it is in fact impossible for husbands to be even-handed in practice, and recommends marrying only one woman. It says: "If you are afraid that you might not be equitable, marry only one..." [sura IV, 3].

It must be added that husbands are obliged to maintain their wives and offspring (nafaqa), paying all the expenses of sustenance and accommodation. It says: "Men... must give part of their wealth to their wives" [sura IV, 38], while women do not have the same duty towards their husbands or families. The Koran proposes a clear gender construction: men must maintain their homes while women take care of the house and offspring.

On the other hand, the Koran offers a certain degree of legal protection to women, in that the future spouse must receive a dowry (sadaq) when she marries, whether or not the union is consummated. It says: "If you repudiate them before touching them, while having the promised dowry, give them half of the promised amount..." [sura II, 238]. The dowry establishes a pact between equals: without marriage compensation there is no family union. The dowry demonstrates the relevance of women in the social pact [Aixelà (2000)].

The Koran also upholds natural paternity and rejects the idea of child adoption, saying: "God does not regard your adopted child as being equal to your own child" [sura XXXIII, 4]. The Koran also requires, by extension,

3 The Koran text is the law given by Divinity to Mohamed, the prophet. Must be noted that when this truths disclosed to Mohamed contacted with the Aristotelic Greek philosophy appeared the conflict between faith and reason, between philosophy and theology. In fact, Tomás de Aquino (1225-1274) had pointed out the necessity to separate them. Nevertheless, in the Muslim
patrilineal descent. It says: "Name the adopted child according to the name of its father: this option is the better one before God" [sura XXXIII, 5].

**Repudiation in the Koran**

The Koran establishes a form of marriage dissolution known as *talaq* or repudiation, with an obligatory period of four months for reflection. It says: "He who wants to leave his spouse must wait for four months because he may wish to return to her" [sura II, 226-227].

Divorce as stipulated by the Koran is unidirectional: a man can separate from his wife but she cannot separate from him [sura LXV, 1]. Moreover, it is characterised by the fact that it does not require any justification because there are no causes or reasons which need be established in order to obtain it. It says: "Do not throw them out of your houses; they do not go out without an evident sadness" [sura LXV, 1].

**Inheritance in the Koran**

Women have the right to inherit after the death of a relative, father, husband, etc. -"A woman has a share of her parents’ and relatives’ wealth" [sura IV, 8]-. They receive half of what a man in the same degree of kinship (daughter and son, brother and sister, etc.) would receive. Thus the total amount she receives depends, for example, on whether or not she has other siblings. In the case of a polygamous marriage, all the legal spouses must share the inheritance of the husband equally between themselves.

It must be added that although women receive a share which is proportionally smaller than that allotted to men, the Koran imposes their patrimonial independence from men [sura IV, 36]. The property of a woman cannot be demanded or used by the husband or father, in the same way that the woman cannot make use of the man’s property. This fact gives marital independence to a couple, which is probably most notorious in the case of women because they do not have to use their patrimonial property to support the family, as men do. This is probably the reason that “justifies” the fact that a woman inherits half of a man’s share: the husband has to cover her daily expenses through the *nafaqa* or husband's obligation.

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philosophy the dominant position harmonize philosophy and religion, view defended by Al-Farabi or Avicena, among others.
The Family Code: the Mudawwana (1957-1958)

In August 1957, the Commission to draft the legal arrangements of Muslim law in family and inheritance matters, or Mudawwana, was established. The objective ordained by King Mohamed V was the returning to the spirit of the Koran [Moulay R'chid (1996:57-8)]. In 1958, the Family Code was finished [Blanc y Zeidguy (1996:5)].

Rights and duties of persons in the Mudawwana

The Mudawwana laid down that a woman was of an age to marry at 15, and a man at 18. This disposition was important because it established a system providing for early marriage.

It should be underlined that the Mudawwana authorised a marriage tutor, a kind of guardian for women, named the wali. His function was to supervise the marriage of a single woman, and his presence was regarded as woman’s right [art. 12.1 Mudawwana]. According to the maliki school, the wali would preferably be the father, but if he could not take on the role, then it could be one of the other agnatic consanguineous relatives. The wali could not force a woman to marry without her consent [art. 12.4 Mudawwana], but neither could she decide to marry by herself. It needs to be said that the wali could never be a woman.

The dowry was an essential element in the marriage [art. 5.2, 16, 24, 35 Mudawwana], and was owned exclusively by the woman. It constituted the woman’s wealth, which she could use when she had economic difficulties or in case of divorce. The dowry was used to seal the family pact and was given directly to the future wife. This is important because in other countries the dowry was given to her parents, but this was not the case in Morocco.

Other interesting legal questions that illustrate the gender differences were, primarily, the fact that a woman could not marry a non-Muslim man [art. 29º Mudawwana] if he was not converted to Islam (while there was no such ban if it was the other way round) and, secondly, that a woman could not transfer her nationality to her future husband while, on the contrary, he could [Moulay R'chid (1991:62)]. These two social realities were a clear reflection of patrilineal descent and, indirectly, of patrilocal residence: it was assumed that only a man could transfer kinship. By extension, it could be interpreted that
men were regarded as being more able to increase the *umma* or the Muslim community.

**Rights and obligations of married women**

The purpose of marriage was procreation [art. 1 *Mudawwana*]. This obligation was a woman’s responsibility, in accordance with Koranic law. The text implied a prior judgement about the acquisition of new roles by women in the economic sphere, because it appeared to suggest that theoretically all women had to marry, as this was their primary role. Also, any extra-domestic work could be seen as a distraction from their crucial activity in the family sphere.

Other points that affected the gender status of Arabic Muslim women as wives and mothers, as well as the position of women as "dependents" of men in these roles and as daughters, were:

- Firstly, those that based on *fiqh*, stated that fathers were the family heads [art. 1 *Mudawwana*] and,
- Secondly, those that expressed that wives must obey their husbands in their decisions [art. 36 *Mudawwana*].

It was particularly interesting to observe that the *Mudawwana* expressly established the rights and duties of husbands and wives.

The husband could demand of his wife:

- Faithfulness,
- Obedience,
- Breast-feeding of the baby,
- Organisation and care of the home, and
- Consideration and respect for his mother and father, and his other relatives [art. 36 *Mudawwana*].

The wife, however, did not have the same rights vis-à-vis her husband. These were as follows:

- Sustenance, accommodation, clothing and medical support (*nafaqa*),
- In the case of a polygamous marriage, to be treated with equity,
- Permission to visit her parents and the right to entertain them in her home,
Total freedom to dispose of her patrimonial property without her husband's control and without any right of his over it [art. 35 Mudawwana].

With this corpus of mutual rights and duties, we can see that the only thing that a wife could demand of her husband was patrimonial independence. It was clear that the mutual obligations in the Mudawwana Code were asymmetrical.

At the same time, another ambiguous and polemical clause which favoured the gender status of the woman as wife, and which was legitimated by this clear pattern of the man as husband and father, and by extension, the family head, was that which obliged the husband to pay all the expenses of the conjugal residence and meet all the woman's needs (nafaqa) until his death or their divorce.

The crucial importance of a husband's duty of nafaqa was highlighted by the fact that although the wife might leave the conjugal residence or refuse to have sex with him (a matter that could be regarded as grounds for divorce), the husband could not withdraw his economic support until the divorce was confirmed in the courts [art. 123 Mudawwana].

The implication of these rights and duties was that every person could work to maintain him/herself except a married woman [art. 115 Mudawwana]: if she wanted to work in the lawful economy with a lawful employment contract, an authorisation signed by her husband was necessary [art. 6 Commercial Code]. It would therefore appear that the nafaqa (a right that assured the wife's sustenance) worked against her when she wanted to have her own salary and economic independence.

It should also be noted that the form of polygamy proposed by the Koran, with a maximum of four wives, was legally accepted [arts. 29 to 31 of the Mudawwana]. Polygamy constituted a bad marriage solution for women and it had only a few relative advantages:

- First, the obligatory equity between wives: it implied that if one of them was richer than the others, the husband must raise the social level of all of them by spending more money on them.
- Second, the wife had the right to have an independent residence for herself and her offspring. It meant that the husband had to maintain a
house for each spouse if he did not have the express consent of the
wives to cohabit.

- Third, the husband could not take another wife without the consent of his
  existing wife or wives. Wives had a period of one year to denounce an
  illegal polygamous marriage and to obtain a divorce [Jan Dorph
  (1982:181)].

At the same time, divorced women had to wait to remarry; this period was
named "idda, and was an obligation that appeared in the Koranic text and that
the Mudawwana observed in identical fashion [arts. 72 and 73 of the
Mudawwana].

Finally, we need to mention an important fact: it was forbidden to adopt
children without family (orphans) in the way proposed by the Koran [art. 83 of
the Mudawwana].

Rights and duties of divorced or repudiated women

The maliki jurists accepted four kinds of divorce:

- The talaq or repudiation. It was unidirectional and only possible from the
  male side [art. 44-52 Mudawwana];

- The tamlik or divorce. Women could claim it with special powers
  granted contractually by husbands when they married [art. 152
  Mudawwana]. It is interesting because it depended directly on the legal
  freedom that a husband conferred on his wife;

- The jul, divorce. It could only be claimed by women [arts. 58 and 61
  Mudawwana], and

- The talaq hakim or judicial divorce. It was accessible by both sides
  (male and females).

The more common grounds recognised for women to obtain a divorce from
their husbands in the third type of separation, the jul, were:

- If the wife was subjected to violence [art. 56 Mudawwana],

- If the husband left her [art. 57 Mudawwana], or

- If he failed to sustain her –unpaid nafaqa [art. 53 Mudawwana].

There also appeared two grounds – which might be regarded as marginal
or secondary - that allowed women to obtain a divorce:

- If the husband was impotent [art. 154 Mudawwana], or
- If he did not satisfy her sexual needs for a period of four months [art. 58 Mudawwana].

However, the last word was in hands of the judge: if he considered that there was insufficient proof, the wife had to return to the conjugal home.

If divorce was granted, the patria potestas or legal guardianship was the father’s responsibility; but the custody of children was always granted to the mother. On the other hand, the property independence was real: women could use their patrimony without marital interference [art. 35 Mudawwana].

It must be emphasized that before it agreed to embark on the divorce procedure, the court always tried to reconcile both parties. Jadiya was an example of this: One year after the marriage, she petitioned for a divorce from her husband. She explained it thus: “I took refuge in my father’s house. The divorce was not immediate; people kept trying to persuade us to resolve our differences. In fact, the judge of the court where I presented my petition forced me to return to my conjugal home with my husband. Later, I remember an important conversation with the judge. I told him how my husband did not let me see my family, that I felt terribly alone, that he did not let me go out of our home, that I lived worse than in a prison. After this conversation, the Judge granted me the divorce”.

Another case was Malika. She was happy with her treatment by the tribunal, but she thought that divorce was an agreement between the judge and her husband. She explained it thus: “I petitioned against my husband in the court because he did not pay me the nafaqa. With it, I presented my marriage act and my son’s birth certificate, documents that were kept by my husband and that I had to steal. My husband did not want to give me the divorce and he agreed with the judge to pay me all the money he owed with the intention of avoiding the conjugal separation. Later, I received a visit from his family, asking me to return to him. They wanted to save our marriage, but I said no. After my reply, not before, the judge granted the divorce”.

But other Moroccan women did not share the positive experience of Malika. Jadiya, for example, was angry when she remembered the slow procedure of her divorce: “It is incredible! A man can say, ‘I divorce you’, and it is legal, it is ok. A woman wants a divorce and has to go to court twenty times with numerous
testimonies...”. Aysha was also angry: “It took me four years to obtain my divorce”.

The right of women to inherit

The right of the woman to inherit from her relatives and family, in general, was the same as that enshrined in the Koran. A woman had the right to inherit from her father and husband. She was entitled to half of a man’s share in the same degree of kinship and in the same role (brother, sister, etc.). Her share depended on the number of brothers she had, or on the number of legal wives, etc. If a wife died, her husband obtained half of their property if they had no children (a quarter if they did). If the husband died, the wife received half of the husband’s share: a quarter if they had no children, or an eighth if they did.

The legislative reform of the Mudawwana of 1993

The Mudawwana was reformed in September of 1993 on the initiative of Hassan II. The modification was insubstantial with regard to the rights and duties of married women. For example, the polygamous marriage and repudiation were not abolished. It was clear that the reform was aimed at silencing the feminist emancipatory associations (like Union of Feminine Action, founded in 1987) or certain political parties (the Organisation of Democratic and Popular Action or the Socialist Union of Popular Forces), which had organized public demonstrations in order to secure the revision of women’s rights in the Mudawwana.

Among the more important changes we could mention is the obligation of the future wife to sign the marriage contract herself – we must remember that formerly it was signed by her tutor or wali [art. 5 Mudawwana]. This modification gives a woman legal visibility, with social and family implications: she is now able to say no to the judge if she is being forced to marry. In connection with this, we need to mention the disappearance of the forced marriage, a kind of union decided by the woman’s father or tutor: under the reform the woman must give this right of free election to her tutor through a document signed by her, because otherwise, the last word remains with the future wife [art. 12 Mudawwana].
Likewise, wives can control the further marriages of their husbands if they make this desire explicit in the marriage contract: it means that women who do not wish to share their husbands can avoid this plural marriage legally [art. 30 Mudawwana]. Men that want a polygamous marriage are also forced to present the authorisation to the notary (cadl) [art. 41 Mudawwana]. It was also positive for women’s social recognition because the custody of children - in a divorce case - is granted to women in a preferential maternal line (difficult in a patrilineal society).

The second legislative reform of the Mudawwana of 2004

The Mudawwana was reformed in January of 2004 on the initiative of Mohamed VI, after four years of intensive work with different social structures. Certain political parties (those on the left) and different social groups of the middle classes supported the initiative of transforming the basis of the Mudawwana Code. Naturally, different groups close to Islam claimed that it was unnecessary, but King Mohammed finally changed the Family Code in January 2004.

The new Code (very similar to the Tunisian one of 1956) was approved in Parliament by all the political parties, and has shown the path that sex roles in Morocco will take in the coming decades: equity between sexes in the family sphere will be promoted.

The most important changes are:

- Equity between husband and wife in family responsibilities. The obedience of the wife to her husband is abolished
- The legal age to marry increases from 15 to 18 years of age
- Male legal supervision of marriage (the wali) is abolished and a guarantee of female autonomy is introduced
- Limitation of the need for permission of the first wife for a polygamous marriage (it existed previously); it being subjected to judicial supervision that implies that a man must demonstrate to the judge that inequity will not result and that he will be able to maintain his wives in the same material conditions
- The wife’s right to request divorce
• Repudiation is subjected to judicial authorisation. Divorce by mutual consent is recommended with judicial supervision. In the case of repudiation, the judge will try to conciliate the parties but if this is not possible, the payment of the husband’s debts to his wife is guaranteed.
• Right to property for wives in a divorce situation. It is for the judge to divide the goods if the couple has not reached agreement on it.
• The wife has right to forbid a polygamous union in the marriage contract.
• The custody of children is granted to women.
• At 15 years of age, the child is free to choose the person that will have its legal custody.
• Creation of Family Courts that will supervise the correct application of the Family Code. Everybody can go to these Courts to denounce an illegal situation that goes against the Mudawwana.
• Application of the legislation in marriage and divorce matters for migrants.
• Special international rights recognized for the Moroccan child.
• Women can retain the custody of children in case of remarriage or when they change their place of residence.
• The child has the right to have the name of the biological father if the woman can present proof of paternity. Marriage is not necessary.
• Guarantee of a home for the children in case of divorce of the parents.

**Conclusions**

There are a lot of similarities between the Koran and the Mudawwana drafted in 1957-1958 and reformed in 1993. The real differences between the Islamic sources and the Mudawwana Code emerged in 2004.

In fact, the Mudawwana reform of 1993 only modified divorce, the polygamous union and the wali partially. The divorce modification was highly superficial, and the polygamy amendment only protected the previous wife a little more, as she had the right to be informed by her husband if he wanted to marry another woman.
With the important changes included in the reform of 2004, it must be said that the Mudawwana Code – like the Tunisian *Madjala* – is most dissimilar to the rest of the Arab Family Codes of the Muslim-Arabic world. A look at some modern Muslim legislation regarding divorce and polygamy illustrates both the tension that exists between the duties of modern states to uphold women's rights and their alleged Islamic principles and the tension that exists between the State and religion. Morocco seems to have taken a clear position on this, with the only questionable decisions being those concerning the maintenance of the polygamous marriage.

Finally, a new possibility appears with the *Mudawwana* reform: all Moroccan women in migration could solution their family problems with the new country's code. It means that Moroccan women finally could change their social obligations in the new communities, transformation that could imply changes in their gender construction in the future.

**Bibliography**

ABU-LUGHOD, Lila  

AIXELÀ CABRÉ, Yolanda  


AL-WAHHÂB KHALL  

AMIRAUX, Valérie  

BADRAN, Margot  

BLANC, François-Paul y ZEIDGUY, Rabha (editores)  

BOTIVEAU, B.
DAOUD, Zaky
KILANI, Modher
2003  "Équivoques de la religion et politiques de la laïcité en Europe. Reflexions à partir de l'Islam". Archives de Sciences Sociales des Religions, 121, pp.69-86.
MARCOTTE, Roxanne
MOULAY R'CHID, Abderrazak
NASIR, Jamal
RAHIM OMRAN, Abdel
ROY, Oliver
2003  El Islam mundializado. Los musulmanes en la era de la globalización. Barcelona: Bellaterra