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THE OPPOSITION EFFECT: ISLAMISM AND WOMEN'S RIGHTS IN THE MIDST OF MOROCCO'S FAMILY CODE REFORM

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At the end of March 2024, a committee of Moroccan political officials and legal experts submitted a set of proposals for reforming the country's Family Code, known as the *Mudawwana*, to the head of government, Prime Minister 'Aziz Akhannouch.¹ Sometimes glossed as the "women's" status code for the way it adjudicates the rights of women within family law, the Code was last reformed in 2004 and initially hailed as a victory for women's rights, but has since been deemed a failure by much of Moroccan society, owing to lingering ambiguities in the Code's content, difficulties in its implementation, and seemingly unintended social consequences. Responding to that public pressure, King Mohammed VI appointed the committee, made up of government ministers and members of the judiciary, to draft a new *Mudawwana* with input from political parties, NGOs, and civil society stakeholders.

The recent downfall of the Islamist Justice and Development Party (*al-'Adala wal-Tanmiya*, hereinafter the PJD) has loomed large in many of the public discussions around the new *Mudawwana*. Once an Islamist success story and Morocco's

ruling party for a decade (2012–21), the PJD suffered a crushing electoral defeat at the hands of the National Rally of Independents (NRI) in September 2021, a moment that many commentators marked as a final blow to Islamism across the Middle East and North Africa.² And with the PJD out of office, women's rights activists argued, the time was now ripe to reform the 2004 Family Code and correct some of its shortcomings.

That response to its defeat cast the PJD in a familiar mold: not only as the Monarchy's primary opposition party but also as an obstacle to women's rights, based on its appeals to "Islamic principles" and consequent opposition to any reforms that went beyond the supposed limits of divine law (*hudud Allah*). Rather than opposing family law reform as it had in the past, however, the PJD offered fairly detailed proposals addressing some of the 2004 Code's widely criticized shortcomings. What is different about the reforms of 2004 and those of 2024? Has the PJD changed its position, or is something else going on?

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This Brief argues that the appearance of political competition between the PJD and the Palace actually masks a deeper ideological alignment on matters of religion and governance that reflects the Monarchy's ability to shape political matters even in the midst of liberalization—evident both in the PJD's recent history and from a more detailed look at the current *Mudawwana* reform process. Note first that the 2004 Code was itself a compromise, a top-down reform in accordance with "moderate Islam" that allowed the King to reassert his authority. Furthermore, the PJD's shift in focus, from seeking to Islamize society "from below" to working within the limits of electoral power structures, is reflective of an uneasy but enduring collaboration between the Palace and the PJD—even as the former seeks to undermine the latter. This convergence is evident, ideologically, in some of the PJD's own current suggestions for reform, largely ignored in the mainstream Moroccan press, which reveal the party's increasing alignment with indigenous "third way" feminist trends that attempt to contrive women's rights from Islamic sources. Stoking the appearance of such oppositions—between Islam and women's rights, between political parties and the Palace—allows the Monarchy to maintain its power through an illusion of political competition. Yet the current situation may nonetheless hold the potential for deeper change.

REFORM 2024: POLITICAL OPENING, OR MORE OF THE SAME?

Although the 2004 *Mudawwana* reform was hailed as a victory for women's rights, calls for further reform had been growing in recent years. This was a result, in part, of difficulties with respect to the Code's implementation over the past two decades, along with what some consider unintended consequences of some of its reforms. But critics have also argued that the Code had become outdated under the revised 2011 Constitution, Article 76 of which places the "family code and civil status" under the jurisdiction of Parliament.³ With the PJD losing power in 2021, women's rights advocates saw the time as ripe for more sweeping changes—"an opportunity not to be missed," as reported by *The New Arab*.⁴

In the face of this mounting social pressure, the King offered a proposal for reform during his 2022 "Throne Day" speech, celebrating the anniversary of his coronation, before issuing the official instructions to Prime Minister Akhannouch in September 2023. Beginning that October, a drafting committee made up of representatives from the Ministry of Justice, the Public Prosecutor's Office, and the Supreme Council of the Judiciary began hearing testimony and recommendations from dozens of political parties (including the PJD), NGOs, and other civil society organizations.⁵ Many women's rights activists are pushing for inheritance law reform, omission of exceptions to the marriage age law, equal rights to child custody, and outlawing of polygyny—men marrying multiple wives—which is still legal under the 2004 Code; the PJD, for its part, has argued that polygyny is allowable under God's law (*hudud Allah*), and the party's secretary-general, Abdelilah Benkirane, has even threatened another "million person march" should reforms go too far.⁶

But Morocco's election to the presidency of the UN Council on Human Rights in January suggested to some that the country might be primed for sweeping reforms.⁷

Early signs indicating the potential extent of the reforms are mixed, however. Soon after the submission in March 2024 of the *Mudawwana* draft to Akhannouch, the text of some of the amendments was leaked to members of the Moroccan press. Although those amendments included key changes to inheritance law, there was no mention of polygyny or divorce reform, and the government's religious authorities (*'ulama'*) responded by urging "moderation." Even in his 2022 speech announcing the reforms, the King stated that he would not support any reform that "forbids what God has permitted"⁸—an echo of the PJD party line—even as the current process relegates the high council of religious scholars (*al-Majlis al-'ilmi al-a'hi*)—key players in the 2004 reform—to a more advisory role.⁹ Though seemingly contradictory, these moves actually underscore the religious authority of the King himself, a legacy in Morocco that has shaped, and been shaped by, the 2004 *Mudawwana* reform and the Palace's relationship to Islamist parties.

THE 2004 MUDAWWANA AND ITS PROBLEMATICS

The PJD's appeals to defending Islamic and Moroccan cultural values have deep legacies in postcolonial Morocco. The first *Mudawwana*, instituted just two years after Moroccan independence (1956), codified various proscriptions drawn from the Maliki school of Sunni Islamic law, the favored Islamic legal tradition across North Africa, which is distinguished in part by the weight it gives to social "custom" (*'urf*) as a source of jurisprudence alongside the Quran and prophetic hadith. Many women's rights activists as well as social scientists regarded this *Mudawwana* as relatively conservative compared with those governing Morocco's North African neighbors, whose personal status codes were also based on Maliki sources. Within the context of decolonization, however, deference to pre-colonial tradition also carried broad appeal as an aspect of cultural renewal following the French Protectorate (1912–56).¹⁰

By the end of the century, criticism of the *Mudawwana*'s conservatism with respect to gender politics began to grow. This was inspired in part by international developments like the UN's adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, but also by the general political liberalization or "opening" (*infitah*) during the last years of King Hassan II's reign (1962–99). Unsatisfied with superficial changes made to the Code by Hassan II in September 1993, the Moroccan civil society group Union for Female Action

(UAF) issued a 1998 "Action plan" comprising two hundred practical measures for integrating women into the country's development.¹¹ This was followed, in 2000, by a series of protests in Rabat organized by the UAF and other women's rights NGOs, calling for implementation of the Action plan and reform of the *Mudawwana* according to CEDAW principles and other international human rights standards. Just down the coast in Casablanca, meanwhile, female Islamists, including members of the PJD predecessor Movement for Unity and Reform (MUR), protested against capitulation to what it saw as "foreign," or more specifically "Western," feminist ideologies.¹²

These competing protests helped frame the eventual 2004 reform in binary terms as a battle between liberal, secular forces and Islamist conservatism. Seeking to present himself as a more benevolent monarch than his father, the newly enthroned Mohammed VI (1999–present) took advantage of this polarization and stepped in to voice his support for Family Code reform as crucial to the advancement of women's rights. Then in 2003, members of Islamiyya Jihadiyya, a Moroccan offshoot of Al-Qaeda, orchestrated a suicide bombing of multiple hotels in Casablanca, killing 45 people and injuring scores of others.¹³ The event turned Moroccan public opinion against Islamists, broadly speaking; but from the state's perspective it also incentivized a Code that would head off this perceived religious threat by appealing to "moderate" Islamic principles. The reform process thus further entwined the Monarchy and Islamists as mutually beneficial foes: Though protesting the reform gave the PJD credibility as a party that could stand up to the Palace, the 2004 Code also helped the King reinforce his political authority and present himself to liberals as a protector against the Islamist "threat."

Though presented as a major step in advancing women's rights in Morocco, the text of the 2004 *Mudawwana* as well as its legacies have been more mixed. On paper, the Code reenvisioned the family as a joint responsibility and eliminated language about women's "duties" toward their husbands. Some of its more concrete changes addressed CEDAW provisions directly, like the elevation of marriageable age from 15 to 18 and the elimination of a requirement that women enter into marriage through her father or other legal "guardian," known as a *wali*. The contentious issue of polygyny was not altogether abolished but (at least in theory) curtailed, now requiring the husband to obtain the consent of his other wife (or wives).

The 2004 *Mudawwana* also grants women more equal rights in divorce cases, arguably the area of most drastic reform. Whereas women could previously initiate divorce proceedings only by proving significant abuse and neglect,

various divorce options are now equally available to both parties, and the financial aspects of a divorce settlement were significantly changed as well. In the case of divorces initiated by the husband, for example, the husband must pay the entire amount of “maintenance” money—an amount often stipulated in the marriage contract, in accordance with longstanding *sharia* practices—before the divorce will be finalized. This reform was intended to deter husbands from impulsive divorces, but was also a crucial step for married women who had borne no children, since husbands were previously only responsible for child support.

Over the course of the Code’s implementation, however, and especially since the 2011 Constitutional reform, the 2004 *Mudawwana* has drawn increasing criticism. Some critics simply maintained that the reforms did not go far enough, pointing out the persistence of traditional laws of inheritance, which basically grant female heirs half the share of their male siblings. Part of this criticism is attributable to how the 2004 Code aimed to underscore the King’s religious authority by grounding family law in “Islamic principles,” which ultimately allowed the PJD to sign on to the Code in 2005. Given that the Code as a whole affects only *family* law, activists also point out that the Code unwittingly underscores a social bias against single women.

In addition to which, social attitudes are often much slower to change than law, and critics point out ambiguities in the text of the *Mudawwana* that give local judges wide leeway to exercise personal authority and grant exceptions. Many local judges, for example, use their personal authority to grant exceptions to the marriage age requirement, meaning that young women—sometimes now *younger* than 15—are still pressured into marriages by family members. Informal “religious notaries” known as *’adul* appear to also play a key role in social resistance to legal change, particularly in nonurban regions where state-controlled family courts are absent. Many *’adul*, for example, continue to require young women to seek the sponsorship of a *wali*, in contravention of the 2004 Code.¹⁴

Finally, there is a growing sense that reforms have had lamentable, unintended consequences. On the one hand, divorces initiated by men have declined, suggesting that the 2004 reforms did fulfill the goal of curtailing unilateral divorce by husbands. But the 2004 Code also introduced the new category for Morocco of divorce based on irreconcilable differences or “discord” (*shiqaaq*). Though the statistics are questionable, Moroccan news outlets have reported widely on “skyrocketing” divorce rates and declining appeals to marital reconciliation,¹⁵ and the addition of *shiqaaq* to the 2004 Code has been held widely accountable. The need for reform, then, goes

beyond simply granting women greater rights with respect to the letter of the law; rather, issues of judicial *procedure* and implementation of the law are equally at issue. And widespread concern about *shiqaaq* suggests that protecting family structures is a widely held social desire, not just a hallmark of Islamist or other “conservative” ideologies.

THE PJD: FROM GRASSROOTS ISLAMIZATION TO POLITICAL CO-OPTATION?

Though the PJD could reasonably be seen as constituting the initial opposition to the 2004 reform process, much has changed in Morocco’s political landscape since then, even bringing the Monarchy and Islamists into closer alignment. To begin with, Moroccan electoral politics has long functioned as “a system that generates and exploits unruly party politics to fragment and discredit the political class, helping the king to cement his monopoly over power.”¹⁶ Though some Islamists of the 1970s and 1980s opposed this system through radical groups like the Association of Islamic Youth (*Jama’iat al-Shabiba al-Islamiya*) and Justice and Spirituality (*al-’Adl wal-Ihsan*), others focused on promoting Islamic ethics and principles of governance through informal student networks and, in more formalized fashion, through the Reform and Renewal movement (*al-Islah wal-tajdid*), founded in 1992. Young women were central to these social trends from the start: Female public school and university students in the 1980s, for example, used private rituals like weddings and funerals to urge reflection on Islamic ethical norms and to encourage Islamic standards of dress like the *hijab*.¹⁷

Since those early beginnings, electoral participation has greatly transformed both the ideology and the political tactics of such Islamists. After changing its name from Reform and Renewal in 1996, the new Movement for Unity and Renewal (MUR) fielded the PJD as its first political party in 1998.¹⁸ With other Islamist groups like Justice and Spirituality barred from political participation, the PJD was able to capitalize on the growing popularity of Islamism generally, and managed to win 42 of 295 seats in the 2002 legislative elections.¹⁹ Although the PJD lost some ground in the immediate aftermath of the 2003 bombings and the 2004 *Mudawwana* reform—which it eventually signed onto in 2005—it regained an edge in the 2011 elections with 27 percent of the vote, enough to form a coalition government and earn its secretary-general, Abdelilah Benkirane, the post of prime minister.²⁰

Electoral participation required significant compromises with respect to some of the more overtly religious aspects of the PJD’s platform, however. This included complying with state rules prohibiting political campaigning in mosque spaces and barring religious figures like imams from

running for political office.²¹ The PJD has also relinquished the goal of an Islamic state on the basis that Morocco, under the King's leadership, "already [was] one."²² Religious rhetoric was also toned down. As the prime minister-designate in 2011, Benkirane stated that once in office, "I will never be interested in the private life of people. Allah created mankind free."²³ Although more staunch Islamists maligned these moves as major capitulations, the electoral losses of the Tunisian Ennahda and the 2013 coup that brought down the Egyptian Muslim Brotherhood helped the PJD sell this survival strategy as a success: a model that has been described as "different from the Brotherhood, a better version of it, Islamism 2.0."²⁴

With more power accorded elected governments under the revised 2011 Constitution, the PJD government during its two terms (2012–16 and 2016–21) put forth an ambitious reform agenda focused on fighting corruption, judicial reforms, and economic improvement: policy areas that allowed party leaders to recast Islamic principles in more general terms of public "morality." Although the reforms in these areas had little concrete impact on people's everyday lives, in subsequent campaigns the PJD pointed to these limited successes as promises of further reform, and the party rode its increasing popularity to victory in 2015 local elections and a clear advantage in the 2016 parliamentary elections.²⁵ In the international arena, however, the PJD was more or less limited to following the agenda of the Palace, maintaining Morocco's commitment to CEDAW and eventually signing the Abraham Accords in 2020 that normalized relations with Israel.

These successes put the Palace on high alert, however, and the PJD's second term in power was significantly hampered by conflict with Palace-aligned parties. The relatively new Party of Authenticity and Modernity (*Hizb al-Asala wal-Mu'asara* or PAM), founded in 2008 by the King's close friend Fouad Ali El Himma, proved instrumental in that regard. Publicly, the party has taken an overtly "anti-Islamist" stance, casting the PJD's ideology as an "import" and a threat to "Moroccan" Islam.²⁶ The PAM also played a key role in mitigating the PJD's success in the 2016 parliamentary elections, winning the second-most seats largely at the expense of the PJD's coalition partners from 2012–16. With those parties not holding enough seats to form a coalition with the PJD, the King pushed for Benkirane's removal in 2017, and his PJD successor, Saadeddine Othmani, capitulated to the Monarchy, forming a coalition of smaller parties aligned with the Palace that ultimately hampered the PJD's ability to carry out its reform promises.²⁷ Although Morocco's post-2017 economic downturn and the PJD's signing of the Abraham Accords both hurt the party's credibility, the outcome for 2021 was largely already in the cards.²⁸

Meanwhile, Mohammed VI, though cast as a liberal reformer, has overseen an expansive bureaucratization of Islam through state-funded religious institutions²⁹—by, for example, establishing training institutions for imams and Islamic legal scholars; founding a new Supreme Religious Council for delivering Islamic legal opinions (*fatwas*); and bringing the formerly independent Ministry of Islamic Affairs (*Wizarat al-Awqaf wal-Shu'un al-Islamiyya*) as well as local and regional religious councils under direct palace control.³⁰ Other initiatives reflect a specific mandate of women's inclusion, like a new training program for female religious "guides" (*murshidat*), which graduated its first class in 2006.³¹ All of these efforts served the Monarchy's goal of promoting "moderate" Islam following the 2003 Casablanca attacks, and also helped neutralize some of the PJD's appeal on explicitly religious grounds.

Within this larger ideological and institutional context, then, it is difficult to categorize the PJD solely as an "opposition" party, on the one hand, or an Islamist party that has "capitulated" to the Monarchy, on the other. Rather, the Monarchy has built on its legacy of playing political parties off one another to help cement its power, adopting some of the PJD's religious rhetoric to suit its agenda even as it undermined the party's governing power. Accordingly, some of the PJD's proposals for this latest round of *Mudawwana* reforms—examined below—are less an affront either to the Palace or to liberal feminists and more a circumscribed attempt to address the Code's flaws within the Monarchy's own limits.

THE PJD'S MUDAWWANA PROPOSALS: A CLOSER LOOK

Given the oppositional context of the 2004 reforms and the polarizing commentary in 2024, it is easy to see this latest reform as a rematch, with the PJD reprising its role as the Islamist opposition to secular liberals and the Monarchy. But although the Monarchy has clearly taken steps to delegitimize the PJD in the realms of electoral politics and governance, their respective positions on the role of Islam in law and governance have actually come closer into alignment. This alignment, moreover, is often expressed in the language of indigenous "third way" feminist trends that eschew secular/Islamist and liberal/conservative binaries and attempt, instead, to articulate a women's rights agenda rooted in appeals to Islamic values, national sovereignty, and activist partnerships forged across communal lines.³²

This "third way" approach is particularly evident in the way some of the PJD's proposed amendments to the Code seek to address the *Mudawwana*'s weaknesses while maintaining the sanctity of the family (*al-usra*). Although this principle is often attributed to PJD thinkers and other Islamists, it is

also enshrined in Article 32 of Morocco's 2011 Constitution, which identifies the family as the "basic cell" (*al-khaliya al-asassiyya*) of society and commits the government to its legal, social, and economic protection.³³

At a press conference in Rabat on December 1, 2023, the president of the PJD's women's association, Sa'ada Busayf, discussed the party's proposals for the 2024 reform in terms that downplayed religion and emphasized, instead, balancing international commitments (like CEDAW) with national ones. The Constitution, she argued, is the text that "authenticates" those international commitments, and to that end she pointed to the PJD's proposal to add a clause to the *Mudawwana*'s introduction, framing the purpose of the Code in light of Article 32 of the Constitution.³⁴ Busayf's language thus echoes "third way" feminism's commitment to the importance of local and national aspirations vis-à-vis international ideals.

This commitment to the sanctity of the family unit might also help contextualize the PJD's controversial position on polygyny, a practice that many feminist activists argue should be outlawed in accordance with CEDAW. In an article titled "Women of the PJD Cling to Polygyny and Guardianship of the Father and Refuse the Negation of Tribal Inheritance Law,"³⁵ the Moroccan newspaper *Hespress* reported on the PJD's regional party meeting on December 2, 2023, quoting Busayf as saying that polygyny is not only "permitted" (*mubah*) according to Islamic law (*sharia*) but also "codified" (*muqannin*). This statement reiterates the PJD precept that the party categorically rejects any reform that contradicts "God's law" (*hudud Allah*).

But Busayf's statements at the Rabat press conference presented the matter differently. There, Busayf argued that in the case of a woman refusing her husband's request to take another wife, the court "does not have the right to choose *shiqaq* divorce proceedings on the woman's account," and that "divorce must remain her prerogative (*b-yadiha*)." Elsewhere, Busayf clarified the PJD's position as taking issue with the court's "automatic" recourse to *shiqaq* divorce proceedings, which might foreclose other options for dealing with marital discord that a woman might prefer.³⁶ In substance, then, this proposal was presented as less concerned with defending polygyny than with protecting the rights of married women versus the power of the courts. While polygyny itself may remain a sticking point, the proposal uses "third way" language of Islamically grounded women's rights to bring the PJD into alignment with more widespread critiques of *shiqaq* and its unintended consequences.

Even the PJD's controversial proposal to lower the minimum marriage age for women was treated by Busayf

as a tactic to address "loopholes" in the *Mudawwana* text. Although the 2004 *Mudawwana* raised the marriage age to 18, it also left significant room for judges to grant exceptions, a loophole that had been widely exploited. As Busayf outlined at the Rabat press conference, the PJD's proposal to lower the minimum age would actually set 15 as a strict limit, without any room for granting exceptions. Furthermore, their proposed amendment would require a meeting between a judge and the proposed bride without her father or other guardian (*wali*) present—presumably to curtail coercion on the part of patriarchal family structures.³⁷ Implicitly, this proposal thus moves beyond a family-based concept of rights in an attempt to safeguard the rights of women and girls *within* family structures, a move that reflects "third way" aspirations of women's *individual* agency and autonomy.

On all of these points, then, the PJD's position does not present a clear-cut affront to gender reform. Rather, a closer look at their proposals reveals how they are leveraging Islamic language and legal principles to address some of the 2004 Code's most glaring shortcomings. There are, of course, limits to such an approach. As numerous scholars and activists have pointed out, the focus on addressing "women's rights" through family law reform betrays a bias against unmarried women. Consequently, unmarried women continue to face not only societal pressure but significant legal challenges when trying to prosecute more extreme abuses like rape.

Moreover, because past reforms have been largely state-driven, the *Mudawwana* leaves the fundamental problem of authoritarianism unchallenged; in fact, it *legitimizes* the Monarchy and its larger power structures. But such critiques are not unique to secular feminists. Female Islamists like Nadia Yassine, daughter of Justice and Spirituality founder Abderrahman Yassine and leader of the movement since her father's death, has leveled this critique at Islamists as well as at secular feminists who capitulate to the Monarchy to serve their own agendas. The PJD is thus defined less by its Islamic orientation than by a more pragmatic approach to solving women's rights issues from within existing political power structures.

CONCLUSION

As of this writing, the arrival of a 2024 *Mudawwana* seems both imminent and elusive. Although both Moroccan and international news outlets and commentators continue to report that the King will announce a decision on the Code "in the coming days," leakage of the draft amendments has continued to stoke intense public debate. Meanwhile, the government's religious scholars (*'ulama*)—though relegated to a lesser role—have responded to the leaks by

reiterating that the *Mudawwana* must be based on “Islamic sources,”³⁸ suggesting that the King might consider kicking the new Code back to the drafting committee for further changes before giving it his blessing. This carefully curated secrecy, along with the seemingly meteoric rise and fall of the PJD over the last two decades, has intensified an already polarized political atmosphere, in which secular, liberal voices of reform wage battle against a conservative Islamist party eager to regain power.

This Brief has demonstrated the limits of thinking in such terms, however. Though protesting the 2004 *Mudawwana* reform gave the PJD a key boost at the outset of its electoral career, their overall contributions to the current reform discussions reflect a growing alignment between the Monarchy’s gender reform politics and the seeming opposition of other religious elements in society. This alignment is rooted in the 2004 Code itself, many of whose problems stem from the Monarchy’s attempt to offset the rising popularity of the PJD and other Islamist groups through an appeal to “moderate” Islamic principles. Moreover, electoral participation has forced the PJD to tone down some of its religious rhetoric as well as its opposition to the Palace, even as the Palace creates an “opposition effect” by undercutting the party’s legitimacy. Under such conditions, the PJD’s echoing of state religious ideology and “third way” feminist ideas have a much wider appeal than does the party itself. The PJD’s evolution in these respects speaks to broader developments in Moroccan politics, in which the “opposition effect” of political parties has served to buttress the Palace’s power.

All of this calls into question not only binary understandings of Islamist trends and women’s rights advocacy, but also the potential more generally for radical change through the 2024 *Mudawwana* reform. As with electoral politics, the Monarchy may be reprising its 2004 role, capitalizing on the illusion of political competition to legitimize its own authority as the arbiter of a reform agenda—which, in the end, may once again be rather limited. But some analysts have suggested that the rise and fall of the PJD has made the Palace’s control over electoral politics more visible to the public, some of whom may be growing weary of such meddling.³⁹

At a deeper level, decades of public debate and two major reforms have made women’s rights a central—if not *the* central—issue in Morocco, not just for secular feminists but for the Monarchy, and even for Islamist groups like the PJD. This may be the biggest victory for Moroccan female activists across the spectrum—from self-avowed secularists to “third way” Islamic feminists—and one that will outlast the current, polarized climate. That’s a legacy that may carry the seeds of more radical change, whatever the outcome of the current reform.

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