Islamic Law and Human Rights: Doctrinal Controversies in Sunni and Shia Islam Since The 1948 Universal Declaration

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Abstract

From a comparative perspective, this article analyses the doctrinal debate that arose in Sunni and Shia Islam after adopting the Universal Declaration of Human Rights in 1948. This research method is a descriptive comparative prospective study carried out by comparing and explaining the object of research objectively and factually based on the data sources obtained. In this case, the benchmark for comparative data is Islamic law and human rights studies from the perspective of Islamic teachings and Shia Islam. For decades, this text has produced almost no response in Islam. In its final recommendations, the Congress of the Sixth Academy called for uniting the Muslim community, respecting human dignity and human rights, condemning racial discrimination by certain States that believe they are civilized, as well as only publishing works that expose the position of his arguments correspond to the thesis outlined by Abū al-Aʿlā Maudūdī in his texts on the Islamic State and a booklet on human rights in Islam. Certain are confident they are civilized and only publish works that expose the Islamic position on human rights. In November 1975, Mawdūdī gave a lecture in Lahore on the question which arose in response to this recommendation. From the 1980s onwards, more prominent thinkers began to confront their legal traditions with those that became the source of human rights. While comparing the two legal systems contributes to major developments and contrasts in the con-thought of temporary Islamic law.

Keywords: Human rights, Islamic Law, Theology, Sunning, Shia

INTRODUCTION

Human rights are a set of rights inherent in the essence and existence of man as a creature of God Almighty and are His grace that must be respected and upheld. Almost simultaneously with the publication of the first texts on human rights in the name of Islam, academic work on Islam and human rights has multiplied since the mid-1990s (Imran, 2019). First, this study has been devoted on the one hand to the State of law in some Islamic countries, and the Islamic Declaration on human rights proclaimed in the 1970 (Peykani and Khalili, 2020). Which is not always dealing with their conception of human rights. Several other works have discussed the development of Islamic law or the philosophy of Islamic law in a broader context. The State of law in Muslim-majority countries, Islamic declarations on human rights and legal doctrines are rarely analyzed together and in the same duration. Moreover, whether Sunni or Shia Islam Twelve, the lead author, has been ignored if not adequately studied. Also, the synchronous plurality of conceptions of human rights and legal doctrines is rarely considered in each of the two main principles of the branches of Islam (Vakulenko, 2007).

However, despite the differences in national and denominational contexts, the debate on human rights takes place in the same temporality among Sunnis and Shiites. Although Muslim

countries belonging to the United Nations (UN) almost acclamationally adopted the Universal Declaration of Human Rights in 1948, this did not necessarily provoke doctrinal controversy (Ebrahim, 1995). In the 1970s and 1980s, international human rights law mainly inspired the apologetic reaction that culminated in the Cairo Declaration on Human Rights in Islam proclamation in 1990. Since then, more and more secular scholars and writers have explicitly questioned the agreement between the laws (Philpott Daniel, 2015).

Islam is sometimes appointed by *fiqh* and sometimes by *sharīʿa*, and human rights are regulated within the framework of the UN (Vakulenko, 2007). Most ignore the historicity of legal traditions and refrain from distinguishing between educated Islamic law and state law. However, in addition to the evolution that took place in the long term, the history of law in Islam experienced a decisive turning point from the middle of the 19th century: since then, the laws of most Islamic countries have been developed by European law, and in particular continental European law, while scientific law has been periodically reformulated. Despite this transformation, almost all religious and secular jurists attest to the heterogeneity of Islamic traditions and where the UN conventions originated (Nurmohamed, 2020).

Although they have never ceased to be reformulated throughout history, legal traditions have been developed concerning the principles of durable structuring. Beyond the redefinition of precepts, the science of Islamic law is built based on the legal theory of revelation. Until the middle of the 19th century, Sunni Assyrian theologians opposed the idea of natural law, even if some considered that sharia corresponded to the requirements of creation. Some contemporary writers have taken up the latter conception. Since the end of the tenth century, Shia religious jurists relied on gnoseological postulates of conformity of the judgment of reason *(ʿaql)* and the Revealed Law *(shar)*. Among the Shi'a, philosophers are some of his current scholars. Claiming to be the one the author studied refers to it explicitly. On the other hand, since the first Declaration was established in the 18th century and to the present, human rights have been based on the conception of subjective natural rights. Finally, the laws of modern states are based on the principle of territorial law (Grabus, 2012).

Sunni and Shia writers established a contrasting relationship with their respective legal legacies on the principles of structuring jurisprudence and international human rights law. Comparable contrasts can be observed in any branch of Islam beyond the boundaries of denominations, which is possible to detect the convergence that Sunnis and Shiites differ in the methods they follow to confront their traditions with human rights traditions. Within the limited framework of this article, it is certainly not possible to examine the contemporary history of the laws of Islamic countries. However, it can identify contemporary trends in the rights of the State and the elaboration of texts on human rights in the name of Islam.

RESEARCH METHODS

The method used in this study is a comparative descriptive method with a qualitative approach. Descriptive studies describe and explain the object of study objectively and factually based on the data sources obtained. In this case, the benchmark for the comparison data is Islamic law and human rights studies, the perspectives of Sunni and Shia (Creswell, 2006).

RESULT AND DISCUSSION

A. 1980 UN Universal Declaration

Apart from Saudi Arabia, which abstained, Yemen did not participate in a single vote from Muslim countries. The voice of Muslim countries when the Declaration is adopted does not mean that they fully adhere to the principles set out in the text. Although it is difficult to explain the absence of debate, it is important to note that the proclamation of the UN Declaration was only commented on from a terrible and corcorditional perspective by some jurists. Such is the case with the Maḥmūd Azmī of Egypt, a member of the institutions of the United Nations (Sliti, 2014).

To commemorate the proclamation of the Universal Declaration, Azmī delivered a lecture at the Cultural Center in Cairo on December 10, 1949, the first anniversary of the Declaration of Human Rights. The text of his speech was published in 1950 under the title Human Rights one sees the UN only through the prism of the issues addressed by the Security Council and the resolutions adopted by the Security Council. The rejection of Christian proselytism, considered an attempt to subvert the Islamic conception of religious freedom and the relationship between law and religion, is an apologetic and even Concordia literary hypothesis. Azmī concluded by announcing that the text of the Declaration paved the way for the reforms being promoted in Egypt. In the same year, the leader of the Iranian Shia Sufi fraternity Neʿmatollāhī, Solṭānḥosayn Tābande, was one of the first scholars to publicise his position on the Universal Declaration of Human Rights. According to Mayer, tābande drafted his Religious Views on the Declaration of Human Rights for representatives of Muslim countries who would attend Tehran's International Conference on Human Rights held in 1968. In his book, the cleric asserts unequivocally that the UN text is in no way announcing something new (Hajatpour, 2011).

According to him, the laws humanity needs are more perfect in Islam, and nothing exceeds Islam. Sunni thinkers developed this apologetic view of Islamic law during the 1970s and 1980s. Founded in 1961 under the al-Azhar Organizations Act, the Islamic Research Academy decided to organize a Congress to address the world's problems regarding Muslim consciousness. The topics discussed in successive Congresses reflected the concerns of Egyptian religious institutions and religious circles in the Muslim world. Members of Congress approached human rights with an apology expressed early in the preamble (Vakulenko, 2007).

The grand speech of the imam and sheikh of al-Azhar, muḥammad al-faḥḥām, who is also the President of the Academy of Islamic Research. It is legitimate to compare the principles that Islam recognizes and applies with the principles proclaimed in modern declarations. He then brought up the rights of individuals in the Islamic State, arguing that it is natural that there are differences between Muslim and non-Muslim citizens and that the latter should pay special taxes. His arguments correspond to the thesis outlined by Abū Al-Aʿlā Maudūdī in his texts on the Islamic State and a booklet on human rights in Islam.

In its final recommendations, the Congress of the Sixth Academy called for uniting the Muslim community, respecting human dignity and human rights, condemning racial discrimination by certain States that believe they are civilized, as well as only publishing works that expose the position of his arguments correspond to the thesis outlined by Abū Al-Aʿlā Maudūdī in his texts on the Islamic State and a booklet on human rights in Islam. Certain are

confident they are civilized and only publish works that expose the Islamic position on human rights. In November 1975, Mawdūdī gave a lecture in Lahore on the question which arose in response to this recommendation.

When dealing with the contemporary period, he debated the validity of the Declaration of universal human rights, arguing that no UN resolution or regulation could be applied. Like the Iranian theologian Jawādī Molī afterwards, the Sunni theorist of the Islamic State doubts the resilience of the rights declared by human bodies such as parliament. While the UN Declaration is unenforceable, the rights established by God are permanent, and eternal. In the enumeration of basic rights, the author presents a heterogeneous list of rights by constantly contrasting the abstract rights expressed in Islam on the one hand and the practices practiced by Europeans or westerners.

In closing his little book, he assured that he summarized the rights that Islam gave to Man 1400 years ago. While the modern era claims to bring progress and enlightenment, the world has not been able to produce more just and equal laws than those given 1400 years ago. A second manuscript was proposed at the organization's summit in Ā'if in January 1981, but its examination was postponed until the fourth summit planned by the OCI was held in Morocco in 1984. Founded in 1965 and based in London, the Council is a private body with observer status with the OCI. The movement was completed in 1990 when the OCI promulged the Cairo Declaration on Human Rights in Islam, before and after substantial doctrinal works were drafted to preserve the legacy of Islamic law.

B. Reaffirming the Place of Islamic Law: Between Apologetics and Concordism

Proclaimed on August 5, 1990, in the Egyptian capital, the Cairo Declaration was presented to the UN Human Rights Commission as a contribution to human rights efforts. According to Ch. Mallat, the Organization of the Islamic Conference, met »irregularly, and its decisions were taken even less seriously than with the Arab League. However, the Declaration presents a strong analogy with the work of some Sunni and Shia writers; it should be interpreted as the legal doctrine formulated by the latter and given the development of the internal laws of the member states of the Organization of the Islamic Conference. In Sunni Islam, doctrinal works devoted to this question have been published mainly in two countries, Egypt and Tunisia. The apologetic conception of Islamic law has been conveyed by scholars and secular authors in the legal and original sense of the word. In the Muslim world, secularism is often connoted and means partisan separation of states.

Moreover, punish the State on the one hand and religion and religious law on the other. Sunni and Shia writers have adopted two approaches to promote their traditions in the face of human rights, which can be described as apologetic and concordist. Using various argumentative methods, the apological author defended the theological and philosophical basis of classical scientific law and the teachings of substantive laws relating to man's personal rights. In this area, they mainly deal with family law and criminal law.

C. Apologetics of Islamic Law

The first apologetic doctrine of Islamic law was published in the mid-1980s in Egypt. Two of them specifically represent a desire to affirm the specificity of Islamic law in the spirit

of controversy. An al-Azhar cleric, Muhammad al-Ghazālī, wrote one; the other was by a secular intellectual member of the institution. Scholars trained by the institute were again religious; Ghazālī became closer to the Muslim Brotherhood in the 1940 (Grabus, 2012).

Published in 1984 and republished several times, his work on human rights demonstrates a polemical perception of the question and an apologetic vision of Islamic law. In terms of human rights, he emphasised the virtues of Islam. Tābande and Maudūdī had made the same argument before. It aims to define the Islamic conception of the right to respond to suspicions of Islam (Ferrari and Toronto, 2016).

The humanity of the world forms a single family that has one origin. Despite the diversity of languages and colors, there is essential humanity. Based on the Qur'an and the words spoken by Muḥammad during the Farewell Hajj, the author asserts that Islam categorically rejects that language and skin color are grounds for discrimination. Anyone who tries to rebel against this condition must be oppressed.

With numerous quotations from the Qur'an and hadith, and by resurrecting the first caliph, he asserted that Islam upheld equality of all before the law and that it had distinguished itself from other traditions by respecting religious differences. Ghazālī disregarded Islamic criminal law, which includes unequal acts for murder according to denominational and gender criteria. Although he emphasized Islamic egalitarianism, he reminded and recognized the unequal principles of Islamic public law. As for national law, Muslims should not be expected to establish for non-Muslims in Islamic countries the same rights as Muslims. Ghazālī justifies this distinction by weighing it with the fact that modern states do not give foreigners living on their land the same rights as the rights of their citizens. We know that religious differences in the Islamic State are like the differences in nationality in our time. Islam is a nationality for all Muslims in the land of Islam. Egyptian scholars here express the same conception of citizenship as the Indian clerics, Mawdūdī and Aḥmad Madan. More generally, he recalled, in modern terms, the principle of legal personality that informs Islamic law and part of the rights of the states of the Middle East. Having defined political freedom as the right to perform administrative functions according to one's qualifications and as the right of expression, Ghazālī reminded us that it is up to Muslims to choose the most suitable person. Then he discussed issues related to religious freedom. He reassured unequivocally that the freedom of religion that Islam guarantees to the people of the earth is incomparable on the five continents.

It does not happen that religion with the power to let its enemies live and prosper with faith, as does Islam. On apostasy, still following the same method, Ghazālī establishes a point of dogma about the nature of belief. In the shadow of the Islamic order, apostasy looks like a condemned perversion. Like many religious jurists, he was not concerned with defining apostasy but with the recall of the dangers represented by apostates in Muslim society.

Conventionally, Ghazālī justifies inegalitarian teachings with objective laws of nature, which he summarizes by the term *qadim* characteristic of physical nature. Returning to criminal law, Ghazālī justifies the sanctions in Islamic law to punish sexual relations that are considered haram. Followed the order of the Universal Declaration of 1948, but without ever referring to this text, Egyptian scholars successively discussed economic and social rights, then rights related to education and culture. According to him, contemporary Muslim culture has been

perverted by governments that have moved away from Islam, by greek mythical thinking and the lies of the scribes, and finally by Sufism.

Farsighted scholars have decided to fight relentlessly against intellectual evils that have undermined the truth and dignity of Islam and that have been exploited by the enemies of God and the materialists. Farsighted scholars have decided to fight relentlessly against intellectual evils that have undermined the truth and dignity of Islam and that have been exploited by the enemies of God and the materialists. To believe in it, the Muslim world does not need art because it possesses it, which has been exploited by the enemies of God and the materialists. To believe in it, the Muslim world does not need art because it possesses it, which has been exploited by the enemies of God and the materialists. To believe in it, the Muslim world does not need art because it has a religion that satisfies it. With this singular elliptical statement, the author evokes the Islamic doctrine of heteronomy. Contrary to what his book's title suggests – Human Rights between Islamic Teachings and the United Nations Declaration – the author does not compare the two legal systems. Ignoring the theoretical foundations and methodology of Islamic law, he focused on substantive law, which he approached from an ahistorical, apologetic, and more moral perspective than specific law.

Born in 1931 and graduating from Dār al-ʿUlm – in Cairo – where he obtained a magisterium and then a doctorate in Islamic sciences, Muhammad Imāra was a supporter of secular and socialist interpretations of Islam in the 1960s before becoming a political supporter. A prolific writer, he has published works on Islamic law and Western secularism, the rise of Islam, the defense of Islam, and certain founding figures of Islam. As indicated by the title of his book published in 1985 – Islam and Human Rights. He was discussing various political and moral understandings of Islam, emphasizing that it is an obligation and not just a right.

Moreover, Islam is the religion by which God created us. Therefore, it is necessary to clarify Islam's correct position on human rights. Imāra intends to show the hallmarks of Islam in this regard, to show justice to Islam against its enemies. No religion respects Humanity as Islam does because there is no divine law or other positive law that elevates human rights to the level of religious law imperative. During the same decade, the President of the Tunisian Renaissance movement, Rāshid al-Ghannūsh, placed his apology for Muslim law within the framework of reflections on the Islamic State. In a polemical tone, Ghannūsh opposes Western human rights, the fruit of materialist thought, against Islamic human rights, defined by God according to human nature. In 1981, he founded an opposition party called the Islamic Tendency Movement which became the Renaissance Movement in 1988. Civil liberties in the Islamic State, published in 1993. He has published about ten books, most of which concern the Islamic movement-the other two deal with human rights, including Civil Liberties in the Islamic State. The first consists of two Sections, aimed at Human Rights and Freedoms in Islam» and for Political Rights and Freedoms, respectively. The second volume includes the third part entitled Guarantees against injustice, or public freedom in Islamic regimes». According to the author, the study of public freedom in Islam must deal with the idea of man and freedom in Islam. Since human beings are social beings, it is necessary to be approached the question of freedom in Islam within the framework of the Islamic conception of the State. To clarify the concept of Islamic law, he constantly contrasts it polemically with Western thought.

According to the author, the first thinkers who defined Islam in this way may be that humanity is a storehouse of freedom and responsibility and must free itself from any form of domination. According to the author, the first thinkers who defined Islam this way were probably Maudūdī and Sayyid Quṭb. If so, he marked the lineage in which he placed himself. The Tunisian writer mistakenly considered these two authors to be the main formulations of the cardinal theology of Islamic law. After remembering theological underpinnings, Ghannūsh established Islam's general human rights framework. Shāṭibī conceptualises rights and freedoms within the framework of the objectives of Islamic law, which he prioritises at three levels. With the aim of comparison, Ghannūsh considers certain freedoms in Islam and those provided for in the Universal Declaration of Human Rights. The author is puzzled by the classification criteria of Islamic criminal law. They are permanent sanctions that have been explicitly mentioned in Islamic scripture texts. The author then expounds on the basic principles of power in Islam. Sheikh Alī Abd al-Rāziq's work on Islam and the Foundations of Power describes this detrimental influence par excellence. The Muslim power conceptualized in the Islamic middle ground as understood by Ghannūsh is a civil power that differs from contemporary democracy only in terms of reference and sovereignty of Islamic law.

The author adds, however, that the Islamic State is an indispensable means if human beings remain social beings. Islam is a global system of life. To believe that Islam can do without the power of Islam is to force Islam to Christianize and surrender to the enemies of Islam. The President of the Islamic State must have the main function of defending the religion and enforcing Islamic precepts, including the endless criminal law punishment. He must further inflame jihad against those who oppose Islam until they become Muslims or dhimmi.

In conclusion, Ghannūsh asserts that Islam can 'assimilate democracy and direct it in the direction in which the power of the people is located. It is to force Islam to Christianize and surrender to the enemies of Islam. The main function of the President of the Islamic State should be to defend the religion and uphold the teachings of Islam, including the criminal penalty of the law.

He must further inflame jihad against those who oppose Islam until they become Muslims. The President of the Islamic State must have the primary function of defending the religion, upholding the teachings of Islam, and including the endless punishment of the criminal law. In conclusion, Ghannūsh asserts that Islam has 'to assimilate democracy and steer it in a direction where the power of the people is illuminated by divine law. His instrumental vision of democracy is completely contrary to the authors' views, who call for rebuilding the law and invoking the rule of law. The President of the Islamic State must have the primary function of defending the religion, upholding the teachings of Islam, and including the endless punishment of the criminal law. However, he did not compare the UN legal system to the Islamic legal system. In the 1980s, when he became the leader of the Islamic Republic of Iran, Ayatollah Khomaynī repeatedly made controversial statements about legal principles and the institutions of international law. However, the issue of agreement between Islamic law and human rights is only the object of discussion (Peykani and Khalili, 2020). While the 2005 Iraq Constitution conditions the connoisseurship of human rights prescribed by international law to respect constitutional principles and stipulates that no law should conflict with Islamic rules, In the publication of Universal Human Rights from an Islamic and Western Perspective in 1991,

Moḥammad Taqī Jaʿfarī Tabrīzī was the first Shia cleric to develop a doctrinal comparison between Islamic law and human rights (Peykani and Khalili, 2020).

In this book, the Iranian Ayatollah is the guarantor of the principles underlying the Cairo Declaration on Human Rights in Islam. Having performed important state functions during the first two decades of the Islamic Iranian Republic, he became one of the most prominent representatives of the philosophical current defending theological metaphysics. He says the antinomy between the Islamic legal system and human rights comes from intelligent choices. Against the inconsistency of the principle of autonomy that underlies the rights of human beings that have been proclaimed for two centuries, scholars oppose the permanent validity of the heteronomous principle that composes Islamic law in general and Shia (Pirsoul, 2018).

Ambiguity of Concordism

Jābir was born in Figuig in southeastern Morocco in a family that supported the Independence Party, he was influenced in his youth by Mehdī Ben Barka, a member of this party, before founding the Union of National Forces in 1959. In 1958, Jābir began studying philosophy in Damascus. He returned to Morocco the following year and continued his studies at Rabat's newly established Muhammad V University. He began teaching philosophy at this university in 1967.

At the same time, he remained active in political life and, in 1975, became a member of the Political Bureau of the Union of Socialist People's Forces. In 1981, he gave up this function to devote himself to his intellectual work. Subsequently, he wrote works on Arab Islamic thought and democracy and human rights. At the same time, he remained active in political life and, in 1975, became a member of the Political Bureau of the Union of Socialist Popular Forces.

Subsequently, he wrote works on Arab Islamic thought and democracy and human rights. When Jābir wrote Democracy and Human Rights, democracy, in his words, was the most widespread motto in the political sphere of Arab states. The Arab world is the author's frame of reflection throughout this work. Nevertheless, most of the masses do not ask for democracy. It, therefore, requires a long breath, continuous work, and Job's chasteness. "After formulating the definition of democracy, he considered "the issue of transition to democracy, judging that this issue is theoretical and practical. Jābir himself was convinced that democracy was necessary in the Arab world. He justified this belief by analyzing the international political situation and the Arab world. This is interpreted in countries that became independent after the Second World War and in Arab countries. In short, "objective conditions, both internal and external, from the transition to democracy" He justified this belief with an analysis of the political situation of the international and the Arab world.

In short, "objective conditions, both internal and external, from transition to democracy" is interpreted in independent countries after the Second World War and in the Arab countries. In short, "the objective conditions, both internal and external, from the transition to democracy" in the Arab countries are already met, if not in the process of being met. The essential condition for establishing democracy is "the desire for democracy". However, contemporary Arab political discourse is hostile to democracy, both openly and implicitly. In the second part of the book, Jābir talks about human rights. To compare the "Muslim" and "Western" conceptions of human rights, he considered it appropriate to expose the underlying philosophy.

At this point, the author is ambiguous. While considering that the UN Declaration has roots in Western history, it considers that it has universal value. On the other hand, he assures us that Islamic law's "theoretical basis" is no different from the human rights spelt out in the West. From its origins, Islam sought to find its sermons on theoretical foundations close to the basics of human rights conceived in Europe.

Admittedly, the author asserts, human rights in the contemporary sense were unthinkable in the past because they were the fruit of the economic, social, political, and cultural evolution in modern Europe. However, if Islamic texts do not consider human rights, they will most likely be. It is possible to understand human rights in the contemporary sense of the objectives of Islamic law, considering the five needs as analogous to basic needs. While he advocated using the idea of the purpose of Islamic law, the philosopher judged those scientific and legal texts do not recognize the interpretation of human rights.

At the same time, he justified the classical principles of substantive Islamic law relating to relations between men and women, between Muslims and non-Muslims, and those relating to freedom. Among Shia imitation sources, Ayatollah Osayn Alī Montaẓerī, Yūsuf Āneʿī and Moḥammad Ibrāhīm Jannātī are by far the only ones who devote works to human rights. Unlike scholars who study philosophical and legal theologies, the mock sources do not refer to the Universal Declaration of Human Rights texts or the conventions derived from it. The author does not consider the content of human rights in the texts of the United Nations or the possible differences between the legal system from which they came and Islamic law.

If he sees as a "new question" several rights, especially in the political sphere, Montaẓerī does not clearly distinguish the heterogeneity of the Islamic legal system and international human rights law. This reduced the second system to the foreign policy prism of the great powers. Unaware of the philosophical principles underlying the modern Declaration of Human Rights, he understood new things within the theoretical framework with which he was familiar with whom he accepted to compromise sometimes out of pragmatism. In his Treatise on the rights and punishments of Islam and human rights, Montaẓerī recapitulates all Shia *fiqh's* theological, eschatological, and philosophical foundations to justify the teachings of substantive law (Montazeri, 2004).

In his Treatise on the Rights and Punishments of Islam and human rights, Montaẓerī summarizes all Shia *fiqh's* theological, eschatological, and philosophical underpinnings to justify the teachings of substantive law. The Treaty of Rights has many analogies with Islam's Cairo Declaration on Human Rights. Montaẓerī recalls the doctrine of classical *fiqh*, which states that humanity's rights are related to God's rights. The conception of man identical to Montaẓerī is formulated in chapter 1 of the Cairo Declaration. According to him, the freedom to change minds is included in the right to freedom of thought. In addition, every human being has the right to express his true and false beliefs. However, he has no right to offend or slander the beliefs of others or what they consider sacred (Akhavi, 2008).

Contrary to what he would do in his two subsequent works on human rights, he makes no mention of the asymmetry of the provisions relating to the entry or exit of Islam nor the teachings of Islamic criminal law. Because he publicly opposed Khomayn's successor and criticized the institutional evolution of the Republic in which he was one of the decisive architects, Montaẓerī was presented by some as a supporter of democracy and universal human

rights. In fact, in its doc of criminal justice and its conception of democracy, it faithfully reaffirmed the basic principles of law and the prime Constitution of the Islamic Republic of Iran. In criminal matters, he justified the doctrine outlined by Khomaynī in the work that inspired Iranian legislation in the early 1980s (Hajatpour, 2011).

Diversification of Doctrine: Critical Inventory and Proposals for Refoundation from the Mid-1990s to the Present

Since the mid-1990s, legal doctrines and conceptions of human rights have been mixed. While some continue to offer harsh apologies for Islamic law and its theological basis and while others seek to reconcile their "traditions" and human rights with a concurring point of view, certain authors, both Sunnis and Shia, have engaged in a critical effort with the explicit purpose of re-establishing the law in Islam. In addition, the fourth approach to human rights has been developed by human rights activists in various countries. These authors stand out from the rest because they promote respect for human rights and democracy without discussing legal aspects. For this reason, they appeared outside the scope of this study. It is important to note the existence and vitality of these currents of thought and action that are sometimes represented by prominent political figures, including the former President of the Tunisian Republic of Indonesia, Munṣif Marzūqī.

Thinkers who approach Islamic law from a critical point of view give an inventory of their legal heritage, reject all or Parts of it and put forward proposals to re-establish law in Islam. Unlike the Shi'a world, where the harshest criticism of the Muslim legal-political tradition is due to clerics and generally accompanied by projects for theological foundation, only lay thinkers have hitherto challenged their traditions in the Sunni world (Author *et al.*, 2013).

Rebuilding The Law in Islam: A Sunni Approach

In controversy, it was carried out by Sunni human rights thinkers, two French-speaking Tunisian jurists who delivered a harsh critique of jurisprudence and its grip on state law. Convinced of the universality of human rights in the UN Declaration, they reject Islamic particularism and concordism. Detecting the philosophical roots of human rights in European history, Yadh Ben Achour and Mohamed Charfi advocated a profound transformation of the law to integrate the principles of human rights. Coming from a family of scholars, Mohamed Charfi studied law in Paris.

Professor of law at the University of Tunis, he was a member of the Tunisian Human Rights League in the 1980s. Professor of public law and philosopher of law Yadh Ben Achour is dean of the Faculty of Legal Sciences at the University of Tunis. In Islam et liberté, Charfi examines at length the relationship between Islam and law. Legal discrimination inevitably leads to imbalances in the couple, inequalities in facts and behaviours, and situations of dependence and inferiority. Charfi also denounced discrimination against non-Muslims in Muslim countries today, which only one person reports.

The above developments prove that Islamic law requires comprehensive and in-depth revision. After reconsidering substantive Islamic law, Charfi compared the Declaration of Islam and the Universal Human Rights. According to him, the Cairo Declaration has a conception of religious freedom that severely restricts and ignores the right to bodily integrity, equality between human beings and women, and equality between Muslims and non-Muslims. On the one hand, many of the rules of classical Islamic law or sharia are contrary to human rights, as

the international community understands today. In all these cases, Sharia rules violate the principles of individual freedom, equality between all men and between men and women and the respect necessary for human physical integrity.

On the other hand, these rules of Islamic law do not have a truly religious nature. The Sunnah can be a source of religion and morals, but not a law. The Qur'an includes legal precepts in matters of criminal law and inheritance. The rule of criminal law is anachronistic. The teachings of inheritance law require interpretation to be properly applied. Simultaneously, the Shi'a cleric Moḥsen Kadīwar compiled an equally severe but more complete inventory of jurisprudence.

According to the Tunisian jurist, eclecticism is unsuitable for modernizing the law. He considers it inappropriate. The law, on the contrary, by definition, is an obstacle. Regarding the regime, Lastly, Charfi questioned the role of religious institutions in the development of law. According to him, the absence of autonomous religious institutions in Sunni Islam hampered the evolution of religious thought. He recommended instituting religious authority within the State, independent of other powers. Ben Achour shares Charfi's views on the unequal principles of Islamic law, the need to reform them and education. These verses have » the privilege, in a concentrated and synthetic style, to guide believers and unbelievers towards this ethic, which is universally acceptable, which has the potential to inspire modern law—human rights, which he understood from a philosophical point of view (Achour, 1980).

In the rule of law, freedom of conscience allows freedom of religion, but this proposition cannot be reversed. Ben Achour also points out the ambiguity of the notion of blasphemy, which can endanger freedom of conscience. It is therefore advisable to use a more precise idea of incitement to religious hatred. According to his terms, the rule of law does not conflict with religion but only with the idea of a religious code. The rule of law is revealed and held in such a way that it is always binding and in all places.

Ben Achour established an inseparable relationship between the rule of law and democracy that cannot be reduced to majority power on the one hand and between the rule of law and secularism on the other. On the contrary, he considers the rule of law incompatible with an integral belief system. Addressing the theological and philosophical foundations of Islamic law, Ben Achour recalled that he relied on postulates stating that the law has revealed origins and juridical reasons are not fundamental. The obsession with Islam throughout history is precisely the reason for the legislature. For the author, the philosophy of human rights embodied par excellence in the Universal Declaration of 1948 challenges historicism, naturalism, and culturalism (Achour, 1980).

The Qur'an contains elements that allow the foundation of both the doctrine of objective natural law and the doctrine of universalist natural law. However, the doctrine of objective natural law applies to men's rights in Islamic law. In addition, substantive Islamic law is incompatible with human rights. As for the statement of Islam, the Cairo Declaration, like the Arab Charter on Human Rights, puts human rights under Islamic law without explaining the articulation between the two legal systems. Ben Achour, the text's ambivalence corresponds to an attitude common to most Muslim writers, which indicates harmony. Ben Achour observed that there are also currents that reject reconciliation between Islam and human rights. In conclusion, he said he was aware of having conveyed a contradictory vision of the Muslim

world. He deliberately drew an accurate picture because he was convinced that strong tensions crossed Islam (Grote Rainer, 2006).

In their uncompromising inventory of substantive laws and the theological and philosophical foundations of fiqh, as well as in their attempts to understand the religiosity centred on the individual, Charfi and ben Achour present a strong analogy with some sites of Iranian Shi'a scholars. Likewise, Sunni defenders and concords have views that conform to the views of other Iranian Shia religious authorities. However, Shia writers seem to follow the division of labour in their efforts to maintain or renew their legal heritage.

Re-establishing law and theology: from the "division of labor" within Shia clerics

Combined with the transformations affecting all Shi'a scholars, the institutional innovations that have occurred since the advent of the revolutionary regime have prompted the need in Iran to reassess theological heritage and Shi'a law. The duality of the principle of sovereignty that drafted the inaugural Constitution of 1979 was reinforced after Khomayn's death. On the one hand, the new leader of the Islamic Republic of Iran has increased his power and is trying to expand state power in religious education institutions. While the Khāmeneh'ī Leader consolidated his power, Presidents Rafsanjān and Khātam contributed to the emergence of a new political and social climate. In particular, the second, elected in 1997 as President of the Republic, formalized a new political discourse by calling for respect for the rule of law. He also contributed to renewing the debate on Iranian cultural identity by calling for a better-shared knowledge of civilization and the re-harmonization of Islamic law with moral and political philosophy (Akhavi, 2008).

The methods of the *kyai* vary according to their status in the religious hierarchy. Sources of imitation reconsider the teachings of scientific law in the light of the notion of human rights as they perceive. At the same time, clerks generally have an intermediate rank in the hierarchy close to the foundation of their legal tradition. Despite this division of labour, there is no correlation between status and doctrinal orientation. The Great Ayatollah Āneʿī is the illustration. As Montaẓerī, he is a central authority within the Shia community. However, both embody the ambivalence of tradition. While Montaẓerī sees this as a lasting and monolithic legacy to perpetuate, Ayatollah Āneʿī instead assumes the dynamism and historicity of the Shia legal tradition. She discusses human rights in four works: equality of retribution, equality of blood money, rights of women and children, and dynamic ijtihād and human rights. The first two are treatises; the other two take the form of dialogues. Based on his past juridical and judicial functions and his position as Marjaʿ Āneʿī had dual competence in scientific law and state law. Without reference to the texts of international human rights law, Ayatollah views human rights through the prism of the notion of human equality. Because of this partial perception of human rights principles, he only reformulated part of the laws studied in the criminal and family sphere. In the four works it has made on human rights, he has little to do with other areas of criminal law. However, he reveals himself to an important point: the fixed death penalty against illicit sexual relations between married people and against apostasy cannot be applied (Siavoshi, 2016).

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four works he has made on human rights, he has little to do with other areas of criminal law. However, he reveals himself to an important point: the fixed death penalty given against illicit sexual relations between married persons and against apostasy cannot be applied cable during the priestly sermons.

While some Marjaʿ reconsider certain areas of Shi'a substantive law in the light of human rights as they perceive, some scholars explain jurisprudence's theological and philosophical underpinnings, like the ayatollah Abdollāh Jawādī Molī, Ujjat Al-Islām Moḥsen Kadīwar and Moḥammad Mojtahed Shabestarī note the basic heterogeneity of jurisprudence and human rights (Akhavi, 2008). However, they drew the opposite conclusion to Jawadīmolī. After becoming a student of Montaẓer, Sheikh Moḥsen Kadīwar has taken a very different path from his teachers since the late 1990s. Unlike the other Iranian clerics mentioned here, he does not hold office in the Iranian State. In the Law of Nations Islam and Human Rights, Kadīwar departs from observing the dualism of law in the Islamic Republic of Iran. According to him, many human rights principles are theoretically contrary to divine teachings. From a practical point of view, many articles of the Declaration of Human Rights and UN conventions are contrary to the principles of the Iranian Constitution. In a society governed in the name of religion and where everything is officially explained by religion, it is natural that the question of the relationship between Islam and human rights imposes itself on reflection and becomes controversial. Kadīvar's book is a collection of fourteen articles on Islamic and human rights issues, written between 1999 and 2007 and first published separately in Iran (Inhorn, Patrizio and Serour, 2010).

To establish a spiritual Islam, religion must be refocused, which implies a significant reduction in the legal context. To replace the Islamic faith with the Islamic restriction, the cleric explicitly distanced himself from the people he called traditionalists. It also stands out from those who want to ignore religion in modern society. It advocates the dissociation of the State and religious institutions and the reference of religious and moral values in public policy. After a century of clerical debate from which he sought lessons, Kadīwar rethought the relationship between Islam and modernity (Sliti, 2014).

Contrary to his legal tradition, which qualifies as historical or traditional Islam, it reverses the perspective on religion's temporal and universal dimensions. His statement agrees with mujtahid Shabestarī's statement. However, while Kadīwar adopted historiographical and legal methods, Mojtahed Shabestarī adopted philosophical and theological methods. He also differs from all other writers in his eclecticism.

In addition to its vast Muslim culture, it uses European philosophies and Theologies of Christianity, Protestantism and Catholicism. Although scholars are often referred to as jurists-theologians, most are mainly jurists. Mojtahed Shabestarī was essentially a theologian (Grabus, 2012). It was to theology that he devoted three of his four works. Book, the title of which summarizes the purpose of his efforts: Hermeneutics, Books and Traditions. The Process of Exegesis of Revelation; Faith and Freedom; A reflection on the Declaration of Human Religion. His book on human rights, Critique of an Official Reading of Religion. Crises, Challenges and Solutions, he noted doctrinal, social, and political crises that, in his view, affected the Muslim world in general and Iran in particular (March, 2018). In his words, our society's official reading of religion is in crisis. This crisis has many causes. It will clarify the two main causes. The first

is a constant affirmation that Islam involves a political, economic, and juridical system designed by scientific law and that always corresponds and in all places by the will of God (Foltz, 2002).

CONCLUSION

Although the adoption of the Universal Declaration of Human Rights did not immediately spark debate in Islam, the UN text became the subject of controversy in the 1970s, which has increased since the early 1990s. Rights flourish in the same temporality in Sunni and Shia. About the development of international law and international relations and facing the legal, social, political, and cultural transformations of Muslim countries, secular scholars and thinkers have confronted the Islamic legal tradition with the tradition from which the Universal Declaration originated. They also challenged the freedom of conversion. While affirming the same principles, other authors tend to obscure the distinction between Islamic law and international human rights law.

This concordial tendency also applies in Declarations made in the name of Islam, including the Cairo Declaration, which translates both the assimilation of the language of human rights and the intent to mark the superiority of Islamic law over international law. Commonly used in works on contemporary Islam, Classifications such as modernist, conservative, or Even traditionalist seem to be of little use in seeing the renewal of legal thought reflected by human rights controversies. Indeed, this debate makes it possible to observe the act of transformation and historicity of traditions and the irreducible internal plurality in them.

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