

In summary, this chapter examined Mernissi's position on secularity. Secularism allows for the separation of state and religion. As a feminist, Mernissi's call for secularity makes sense because it promises equal rights for women. Thus, in a secular state, women's rights are protected without being compromised by male interpretations of religious legacy. Mernissi seeks to understand why most Muslims reject the concept of freedom and individualism, the fundamental concepts of secular thought. She notes that the socio-historical context of pre-Islamic culture, which reminds most Muslims of disorder and atheism, is behind this rejection. Her *Islam and Democracy* was referred to as "ethnography rather than a philosophical or historical work."⁸¹ Since she uncovers the socio-historical context of the pre-Islamic period within a limited systematic study of individual culture, her examination cannot generalize to all Muslim societies.

Last but not least, Mernissi puts forward the notions of tenderness and equality as virtuous ideas of Islamic ethics. Critics contend that Mernissi's use of Arabic etymology to explain several words (*rahma*, *ahwa'*, *taghiya*) is a limited approach. There exist Muslims who cannot understand the role the implication of these notions in the history of the Islamic thought. Therefore, one might argue that Mernissi "does injustice to the plurality and richness of the Muslim world"⁸² in that her account is addressed to Muslims who are familiar with the Arabic language.

2.2 The concept of justice in the modern era: The entanglement of descriptive and normative claims of justice theories

This chapter examines justice as defined by Mernissi. It speculates on the notions of political justice, legal justice, social justice, and epistemic justice which one could interpret from Mernissi's thought. The first section examines a notion of political justice which is interpreted from Mernissi's claim about the concept of representative democracy, in which she asserts that individuals must have equal participation in political decision-making. Using a model of Western political tradition, Mernissi also clarifies Islam's relationship to democracy. Mernissi maintains that a plausible newer reading of Islamic thought may lead to an accordance between Islam and the concept of democracy.

The second section analyzes a notion of legal justice which is established based on Mernissi's call for egalitarian access to laws by every individual. I outline her reference to modern treaties concerning human rights such as the Universal Declaration of Human Rights (UDHR), which she compares with the Universal Islamic Declaration of Human Rights (UIDHR). Her argument is that the UIDHR remains

81 Mirsepassi 2014a: 178.

82 Mirsepassi 2014a:179.

based on an injustice between men and women perpetuated by Islamic law. The third section discusses a notion of social justice derived from Mernissi's assertion of the right of every individual to enjoy social rights. My analysis will center on her empirical research about the struggle of the exploited proletarian women in Morocco.

The last section of the chapter explains another aspect of Mernissi's notion of justice: epistemic injustice. A notion of epistemic justice is obtained from her strong appeal to the importance of education. For her, education is the basis for emancipating women from male domination. Indeed, education will enable women to assert their rights in the public sphere and establish themselves within society. In this context, one could affirm that Mernissi argues for an implicit notion of epistemic justice by exploring the unequal access to knowledge formation and cultural resources among children of the poor and children of the rich in most Arab Muslim countries.

Political justice as equal participation in political decision making

One can derive from Mernissi's writing an appeal for political justice. In her writings, political justice implies that citizens are to participate equally in the political decision making. For this reason, she recognizes that democracy is a pillar on which to establish a notion of political justice. She argues for "democracy—that is, insistence on the sovereignty of the individual rather than of an arbitrary leader."⁸³ As a model of democracy, Mernissi highlights representative democracy and clearly affirms:

This produced a virtual cutoff of the Third World from the advances of humanism in the last centuries in both its aspects: the scientific aspect (promoting the use of government resources to invest in scientific research and encourage freedom to explore and invent), and the political aspect (*establishing representative democracy, with citizens' exercise of the right to vote and to participate in political decision making*) [emphasis added].⁸⁴

One could argue, in agreement with Mernissi, that democracy stands for direct rule by the people. The word 'representation' refers to giving another person the right to represent a person in order to defend, claim, or protect that person's rights. In political science, representative democracy is currently understood in terms of four main characteristics:

- (a) the sovereignty of the people expressed in the electoral appointment of the representatives; (b) representation as a free mandate relation; (c) electoral mechanisms to ensure some measure of responsiveness to the people by represen-

83 Mernissi 2002: 16.

84 Mernissi 2002: 46.

tatives who speak and act in their name; and (d) the universal franchise, which grounds representation on an important element of political equality.⁸⁵

Thus, representative democracy is the cornerstone for creating an egalitarian notion of political justice. Representative democracy gives citizens (men and women) the right to be represented by others, whom they themselves have chosen, to gain or limit political power. Most importantly, representative democracy makes citizens active in the political world, thereby strengthening the authority of citizens.

One might argue that Mernissi is developing an elementary notion of democracy. In doing so, she stresses the benefits of democracy. Mernissi presents only the positive side of the concept of democracy. Her normative concept of democracy explains why it is morally desirable. Her aim is to emphasize the beneficial instrument that democracy provides to citizens as a guarantee of their sovereignty and participation in political decision making. In this sense, Mernissi classifies the various privileges that democracy provides to individuals. She declares:

The term [democracy] covers an impressive array of freedoms and privileges, of rights to exercise and taxes to pay, from the right to eat pork or drink wine or read censored works; to the right to fall in love, have a platonic friendship or embark on an affair, marry one's partner or not, have children or not; to the right to demand a wage at least equal to the legal minimum wage, and appeal to a union if unjustly treated; to the right to elect a prime minister, and then to protest when the government-run television station gives him prime airtime at taxpayers' expense.⁸⁶

Mernissi considers the rights and duties to which citizens are entitled in a democratic state. Citizens enjoy several rights but also have some duties, such as paying taxes. Mernissi highlights the rights that democracy provides. She mentions subjective rights that are in strict contradiction to what most Muslim culture generally proscribes, such as the right to drink wine, eat pork, or choose not to marry a partner. She, thus, claims very modern privileges of democracy that are forbidden in the cultural tradition of most Muslim societies. In this sense, Mernissi rises against the socio-cultural tradition of several Muslim societies.

Mirseppassi considers that Mernissi's idea of democracy comes from the definition of democratic enlightenment.⁸⁷ In this sense, democracy tends to make people decide for themselves and make collective decisions. In democratic societies, individuals are encouraged to be more autonomous. Democracy gives citizens some control over the political decision-making process. Democracy educates citizens to

85 Urbinati 2012: 23.

86 Mernissi 2002: 50–51.

87 Mirseppassi 2014a: 187.

be active and productive individuals rather than passive citizens. Democracy makes people think carefully and rationally because what they do or do not affect political outcomes. Democracy strengthens the moral qualities of citizens. When they participate in decision-making, they must listen to others, they must justify themselves to others, and they are forced to think partly in terms of the interests of others. Some have argued that people who find themselves in such a situation can be expected to think genuinely in terms of the common good and justice. Democratic processes tend to promote autonomy, rationality, activity, and morality among participants. Because these positive effects are seen as intrinsically valuable, they argue in favor of democracy and against other forms of rule.⁸⁸

This Enlightenment tradition of democracy emphasizes the universal privileges of democracy, which must be recognized by all citizens and shared by all nations. Democracy, thus, affirms autonomy and responsibility and provides the common good of citizens. It must be asked: What if not all citizens are aware of the privileges of democracy? What if a particular cultural tradition of a particular country does not accept democracy? This leads us to think about a notion of relative democracy, rather than a universal notion of democracy.

In this context, Mernissi shows how individuals from different social classes, as well as Arab and non-Arab Islamic regimes, perceive democracy. First, she sees that there are individuals who defend democracy, such as the intellectual and middle-class citizens of Muslim societies who believe that democracy protects their political and social rights. She writes

Some groups of people think that [democracy] can promote their interests, especially those who know foreign languages, who have access to Western knowledge and culture (including such amenities as bank credit, social security, paid vacations, and so on). This is generally the case with bourgeois city dwellers, both men and women, who operate in the fields of finance and business. It is also the case with university professors, artists, and intellectuals, all of whom are involved in the creation and manipulation of knowledge, both traditional and modern.⁸⁹

By contrast, lower-class citizens conceive that democracy contradicts the values of Islamic legacy. Mernissi argues:

Others feel their interests to be terribly threatened by that *dimuqratiyya*. Considering the intensity of the opposition to democracy, which sometimes results in violence, they must believe that their very survival is in danger. This is apparently the situation of all those excluded from the good things mentioned above.

88 Tom and Bajaj 2021.

89 Mernissi 2002: 53.

Can it be that what they perceive of democracy is so distorted that its corollaries, personal and political initiative, seem threatening to them? Can it be that the most dispossessed in our societies cling to Islam because they fear being forgotten by their own people ... ?⁹⁰

Mernissi's argument can be interpreted as elitist reasoning to affirm why we should educate and enlighten people about the necessity to establish democracy. In an interpretative stance, Mernissi suggests that illiterate citizens without access to the benefits of modernity might make an unwise decision when voting. They might not choose their representatives wisely. This is because some political representatives' resort to populist discourse to manipulate the emotions of the electorate; for example, by using religious and idealistic discourses to attract citizens. This assumption relates to critical theories on the concept of representative democracy.⁹¹ Following this train of thought:

Most people do not have the kinds of intellectual talents that enable them to think well about the difficult issues that politics involves. But to win office or get a piece of legislation passed, politicians must appeal to these people's sense of what is right or not right. Hence, the state will be guided by very poorly worked out ideas that experts in manipulation and mass appeal use to help themselves win office.⁹²

Representative democracy would not be possible in a low-education country. Occasionally, citizens without political engagement and without any idea of how to claim their political rights are manipulated by their representatives' ideas. Thus, an educational approach to enlighten citizens about democracy is necessary to shape rational citizens who will participate in political decision-making. Political justice is hence dependent on epistemic justice, understood as equal access to education.

Second, there are Muslim countries that claim the law of Shari'a as the basis of legislation. They therefore reject democracy as contradictory to their interpretation of Islamic rules. In contrast, there are regimes that present themselves as secular modern regimes, but without truly maintaining the privileges of democracy. Mernissi argues:

But what is still more astonishing is that what goes for individual goes for governments too. Some have more need of Islam, more need to find their identity

⁹⁰ Mernissi 2002: 53.

⁹¹ Von Beyme 2012.

⁹² Tom and Bajaj 2021.

in religion, than others. There are two kinds of governments: those that reject democracy as contrary to their identity, and those that embrace it.⁹³

Mernissi directs her criticism at regimes that profess modern and secular rules but reject democracy. In this sense, citing the example of President Habib Bourguiba of Tunisia (president of Tunisia from 1956–1987), Mernissi argues:

President Bourguiba, whom we all admire for his past as a nationalist leader, would certainly have had a shorter presidency if he had not put government funds into publicity for himself as the *mujahid akbar* (Great Warrior). If I mention President Bourguiba, it is because Tunisia is one of the rare Arab states that have declared themselves modern ...

... The regime of President Bourguiba monopolized the mass media and the schools to tell citizens that they must modernize and renounce tradition while refusing to grant them the essence of modernity: freedom of thought and participation in decision making.⁹⁴

One could argue that Mernissi does not highlight the example of Bourguiba's regime for nothing, as Tunisia is known for its modern and secular political achievements, especially for granting several rights to women. Mernissi's interpretation of the socio-political facts in Tunisia under Bourguiba's regime is shared by several contemporary scholars. On the one hand, it is correct to assert, like Mernissi, that "Bourguiba prioritized education and made it his mission to liberate the Tunisian people from the remnants of their past; this included the emancipation of women."⁹⁵ On the other hand, one can agree with Mernissi that Bourguiba did not promote democratic rules in Tunisia. Under Bourguiba's regime Tunisia was a one-party state dictatorship. In other words, there were no democratic rules and no diversity of political parties. There was no pluralism nor different political opinions in the political world. There was only one political party that ruled the country. Hence, "To consolidate its rule, Bourguiba's regime relied on a party militia, whose existence was not formally recognized, and a secret police force, a component of the Department of State Security that specialized in propping up the regime."⁹⁶ Mernissi's overview of the socio-political facts of post-independent Tunisia illustrates Tunisia's political process from a post-colonial dictatorial state to a post-revolutionary democratic state and shows that Mernissi's concept of representative democracy works in post-revolutionary Tunisia.

93 Mernissi 2002: 53.

94 Mernissi 2002: 64–65.

95 Jebnoun 2014: 108.

96 Jebnoun 2014: 107.

The rule of a dictatorial political party in Tunisia has lasted for eighty-five years. Democracy and the modern tools of freedom of thought, the press, and expression have been completely absent for decades. In 2011, citizens were protesting the continued dictatorship in postcolonial times. The protest aimed to support a new democratic system. This demand resonates with Mernissi's concept of representative democracy, developed already in the 20th century.

The new constitution of 2014 makes Tunisia an open and democratic state. Various independent political representatives and parties were elected and represent most Tunisian citizens who participated in the drafting of the new 2014 constitution. Subsequently, the Assembly of People's Representatives was elected by citizens (men and women) in numerous sessions, most recently in 2019, who participate in political decision-making through their elected representatives. In line with Mernissi's promise of democracy, this socio-political fact of Tunisia's post-revolutionary modern history confirms that a notion of democracy could only be achieved by starting a revolution. Thus, "Mernissi's work, on the political front, courageously confronts the twentieth-century legacy of dogmatic totalitarianism linked to the one-party nation-state, or revolutionary statism in its various incarnations."⁹⁷ Mernissi's notion of representative democracy was realized at the latest after several social and political struggles in Tunisia.

Previously we learned about Mernissi's attitude towards a modern notion of representative democracy. Mernissi not only examines democracy by setting out its privileges, but she also invites us to reflect on the following question that has preoccupied scholars: Is Islam compatible with democracy?⁹⁸ In doing so, Mernissi shifts her field of research from a socio-political study of modern times to an etymological and genealogical study. She analyzes the etymological connotation of the term democracy in the Arabic language and through a reinterpretation of the socio-historical context of the pre-Islamic period. Mernissi's examination of the concept of democracy is valuable because she methodologically establishes a link between Western and modern political thought and the tradition of Islamic thinking. In this sense, Mernissi writes

The debate turns on six key words that constitute its two poles. On one end is the pole of allegiance to the leader, confounded with faithfulness to God; it inseparably links together three words: *din* (religion), *i'tiqad* (belief), and *ta'a* (obedience). At the other end are grouped together three words that are just as strategic and that all affirm individual responsibility: *ra'y* (personal opinion), *ihdath* (innovation, modernization), and *ibda'* (creation).⁹⁹

97 Mirsepassi 2014 a: 180.

98 Esposito and Voll 1996; Bayat 2007; Esposito, John L., Tamara Sonn and John O. Voll 2016.

99 Mernissi 2002: 40.

In this statement, Mernissi highlights two contradictory concepts: the concept of personal opinion as opposed to the concept of allegiance. Personal opinion refers to the fact that an individual is innovative, creative, and productive. These are the characteristics of a free individual. Thus, democracy ensures the right to have one's own opinion. It is one of the fundamental pillars of democracy. In contrast, allegiance refers to the characteristic of an obedient and submissive individual. Importantly, Mernissi links the concept of allegiance to the leader, which has a political connotation, with the concept of allegiance to God, which has a religious meaning. In what follows, Mernissi examines how the attributes of the concept of personal opinion are constructed in the collective memory of Muslims. She highlights the concept of arrogance as set forth in the Qur'an. She argues: "Arrogance is condemned in the Koran: 'Allah loveth not such as are proud and boastful!'"¹⁰⁰ Thus, not only was the attribute of arrogance forbidden, but also the meaning of imagination, which was associated with the notion of creation, innovation, and production. As Mernissi states:

Khayal (the imagination) and *ikhtiyal* (arrogance) come from the same linguistic root. Imagining is full of risks for society because it is the power to create and think in images—that is, to create a different reality.¹⁰¹

In *Lisan al-'Arab*, a dictionary of the Arabic language, Mernissi points out that the verb 'to imagine' is *takhala*, which means to imagine God or to create an image of God. The definition in *Lisan al-'Arab* takes us back to a pre-Islamic period when the Arabs created idols in the form of sacred scripture, which incarnate their gods or the gods of their tribe; for this reason Islam forbids the production of images. She writes:

To imagine something," says the *Lisan al-'Arab*, "is to create an image of it." Creating an image is what was slapped with a ban, because the images that the pre-Islamic Arabs created were those of idols. They were the reproduction of their personal gods, or the gods of their tribes, each of which might contain only a few families.¹⁰²

Huff speculates accordingly about the argument that asserts Islam and democracy are at odds. Consequently, a traditional interpretation of Islamic heritage may conclude that Islam is based on submission to one God, in contrast to democracy, which is based on individual opinion, innovation, and plurality.¹⁰³ Additionally, he argues that Islam is in opposition to the Christian religion, which promotes the freedom

¹⁰⁰ Mernissi 2002: 94; The Qur'an, chapter 4, Women, Verse, 36.

¹⁰¹ Mernissi 2002: 94.

¹⁰² Mernissi 2002: 94.

¹⁰³ Huff 1995: 505.

of thought of individuals.¹⁰⁴ In this regard, the New Testament declares, “You will know the truth and the truth will make you free.”¹⁰⁵

Mernissi, however, does not fall into the trap of following this mainstream reading of Islam, which sets up a strict dichotomy between true Islam and democracy. Mernissi proposes a different reading of the relationship between Islam and notions of democracy. One could argue that Mernissi does not claim that Islam forbids the idea of democracy. Rather, she returns to the socio-historical context of the pre-Islamic era to clarify that Islamic culture dictates that personal opinion, which has led to the idea of innovation, creation, and production in the modern era, was prohibited in the circumstantial context of the pre-Islamic era. In fact, she clarifies that Islam prohibited personal opinion as a pillar of democracy in this exclusive historical context of the pre-Islamic era because at that time violence and disorder prevailed in the tribal society of Arabia before the spread of Islam. For this reason, Islam comes to expound monotheism and prohibit polytheism. However, this historical stance does not mean that Islam prohibits personal opinion and a pluralistic society. Thus, it was pragmatic political reasons that led to the prohibition of personal opinion. Moreover, the problem of lack of access to democratic rules in most Islamic societies is an example of how Islamic leaders in more recent centuries use the argument of banning opinion to deny citizens access to their political rights. Mernissi wants to point out that Islamic leaders confuse the tradition of obedience to a leader with obedience to God to maintain their despotism.

Mernissi “unveils the historical conditions and power relations that underlie the democratic deficit and unachieved democratic potentials of Muslim/Arab societies.”¹⁰⁶ In this way, she turns the question of Islam and its compatibility with democracy around, claiming that the problem lies in how the traditional interpretation of Islamic culture explains the contradiction between Islam and democracy. One could argue that Mernissi does not provide a decisive answer to the question of the compatibility of Islam and democracy. However, we could implicitly claim that Mernissi’s aim is to find a plausible justification to develop a democratic concept of Islam beyond traditional interpretations, but her thoughts on this topic remain unspoken, and an open space for varied interpretations.

To further develop Mernissi’s argument for a notion of democracy that fits Muslim societies, there are liberal and democratic Muslim scholars who claim that there are concepts in the Qur'an that point to a form of democracy. These concepts include *shura* (consultation), *ijma'* (consensus), *al-hurriya* (freedom), and *al-huqquq al-shariyya* (legitimate rights). The Qur'anic chapters of The Family of 'Imran (Al-'Im-

¹⁰⁴ Huff 1995: 505.

¹⁰⁵ The Bible: John 8: 32.

¹⁰⁶ Mirsepassi 2014a: 178.

ran)¹⁰⁷ and of the chapter Consultation (Ash-Shura)¹⁰⁸ talk about electing leaders to represent the community and rule on its behalf.

In our present time, we must find a way to tackle a hermeneutical project so that it can be re-appropriated without being corrupted. Since the concepts of *ijma'* جماعت and *shura* شورى do not in themselves provide a fully satisfactory framework for elaborating a model of Islamic democracy, a more convincing approach would be to use both concepts as the basis for legitimizing a reappropriation of a tradition and a culture that are not democratic in themselves, and see how we may explore the possibility of an enlarged democratic understanding of them without corrupting their essence.¹⁰⁹ Moreover, a new interpretation of Islamic thought should refute the traditional interpretation of Islamic fundamentalists.

In sum, Mernissi's concept of political justice is based on an egalitarian notion of representative democracy. Mernissi focuses on a normative definition of what democratic rule should serve for, namely granting fundamental subjective rights to all citizens. She places the concept of democracy in the tradition of Enlightenment thought. Similarly, Mernissi provides a reinterpretation of traditional Islamic thought by historically situating the prohibition of personal opinion in pre-Islamic times. Mernissi explains that a traditional interpretation of Islamic thought is responsible for the assertion of a contradiction between Islam and democracy. One can argue that Mernissi's study cannot provide a definitive answer to the question of the compatibility between Islam and democracy. This question remains the subject of several contemporary studies in the field of Arabo-Islamic philosophy. In the next section, I derive from Mernissi's writing an appeal for legal justice.

Legal justice as equal protection under law

In Mernissi's view, everyone should be able to access the legal system. In this sense, legal justice requires that there be no discrimination between men and women in terms of laws. Mernissi is interested in the concept of legal justice because the legal realm is the important issue to promote justice in societies and to guarantee equal access to right and equal treatment under law. Woman can guarantee her equal status with man only when she enjoys the same rights as man. This emphasis on rights resonates with her arguments for political justice as mainly providing and protecting subjective rights. In our modern time there are universal organizations and treaties such as the United Nations (UN) and the Universal Declaration of Human Rights (UDHR) that prescribe important decrees to realize human rights. Mernissi turns to these universal treaties to show their importance for maintaining

¹⁰⁷ The Qur'ān, chapter 3, The family of 'Imran, Verse, 159.

¹⁰⁸ The Qur'ān, chapter 42, Consultation, Verse, 38.

¹⁰⁹ Mestiri 2010: 7.

a universal notion of human rights. Mernissi shows how several Islamic countries, despite signing on to these contracts, do not practically apply their laws within their own boundaries. In the following section, I discuss Mernissi's thoughts on the reasons why several Islamic countries do not apply the rule of the universal contracts, and their justification for doing so. Mernissi refers to the UN, and highlights the universality of its constitutional charter. She argues:

The United Nations Charter has the effect of law ... It is impossible to imagine one more forceful, for it claims to be superior to all local laws, the ideal that will reform and transform them. It is the supreme model: a higher law than those of the states' constitutions themselves.¹¹⁰

In his article entitled "Human Rights, Democracy, and Development," Donnelly emphasizes the universality, power, and legitimacy of the UDHR, which Mernissi also refers to in her work defending a universal concept of human rights and secular rule—as I will explain below. Donnelly argues that the UDHR has an international legitimacy; it links the regimes that foster prosperity and political rights to a universal realm. Whatever the specificity and particularity of the states, the states' leaders that have signed on this covenant should respect the universality and the internationality of its laws.¹¹¹ Mernissi and Donnelly are not far apart. Both agree that the universal treaties of UN and the UDHR are universal and legitimate treaties. Therefore Mernissi believes that democracy should be contextual, but rights are universal. Mernissi aims to undermine the ideological and political systems that silence and oppress most Muslims in many Muslim societies and deny them access to these universal rights. As a socio-political thinker, Mernissi aims to show the reasons why most Arab countries do not apply the rules of these treaties in their countries, although they have signed them. Do most Muslim leaders refuse to submit to the rules of these treaties because they promote strong notions of democratic rules that conflict with a sense of obedience, *ta'a*, to authority figures?

In this context, Mernissi argues that the Arab and non-Arab Muslim countries such as Iran, Turkey, Lebanon, Syria, and Saudi Arabia have signed on to the charter of San Francisco on June 26, 1945. Afterwards, they sent their diplomats to confirm their desire to become members of the UN on November 21, 1947. They also signed the United Declaration of Human Rights (UDHR) adopted by the General Assembly of Human Rights on December 10, 1948, which obliges all member nations to promote the respect of human rights.¹¹²

¹¹⁰ Mernissi 2002: 62.

¹¹¹ Donnelly 1999: 609.

¹¹² Mernissi 2002: 62–63.

However, most of the Muslim countries that signed on to UDHR do not agree with Article 18. This article asserts the principle values of democracy and secular states as the right of individuals to participate in political decision-making, and the freedom of religious beliefs. These emancipatory rights contradict dictatorship rule, which is based on obedience to the leader. In this regard, Mernissi writes:

The states that were signatories of the charter and the international conventions had a choice between two possible approaches: they could seize the opportunity of the adoption of these new universal laws to open up a full public debate on the nature of power and explain to the people the mechanisms of participatory democracy; or they could hide these laws away, sequestering them like clandestine courtesans who are an embarrassment when one wants to play the role of imam and demand *ta'a*. It was the second option that was chosen (...). Mobilizing the media and millions of teachers to explain Article 18 would have meant explaining the philosophical basis of the secular state.¹¹³

In the context of this debate, it is worth mentioning the Universal Islamic Declaration of Human Rights (UIDHR), adopted in September 1981, which also takes up an important concept of human rights; but we might wonder whether these human rights have been adopted and under what legal tradition the drafting of this treaty took place.

The UIDHR recognizes the religious and cultural specificity of most Muslim countries. In fact, most Muslim countries took part in drafting this document. The charter declares the right of freedom, the right of justice, as well as the right to freedom of religion by stressing that "Every person has the right to freedom of conscience and worship in accordance with his religious beliefs."¹¹⁴ Furthermore, human rights are fostered in the Cairo Declaration on Human Rights in Islam (CDHRI) adopted in August 1990, but with some restriction. Indeed, it stresses in the two last articles that "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah".¹¹⁵ Moreover, it points out that "the Islamic Shari'ah is the only source of reference for the explanation or clarification to any of the articles of this Declaration."¹¹⁶ Thus, despite the modern treaties of UIDHR, as well as the CDHRI, both of which assured to Muslim individuals fundamental legal rights, these treaties remain restricted in comparison with the Universal Declaration of Human Rights, due to the law of Shari'a, meaning a strict interpretation of the religious text of the Qur'an and Tradition used for guiding Islamic legislation. (I will explore this issue in a later section.)

¹¹³ Mernissi 2002:64.

¹¹⁴ UIDHR, 1981, Article XIII.

¹¹⁵ CDHRI, 1990, Article 24.

¹¹⁶ CDHRI, 1990, Article 25.

Thus, it makes sense that Mernissi places more emphasis on the UDHR adopted by the UN than on the Islamic Declaration of Human Rights mentioned above to establish her respective notion of legal justice. In this manner, Mernissi's critique of Article 20 of UIDHR underlines how the notion of law is used with an ambiguous and at the same time significant meaning. The article asserts "Rights of Married Women" in situations of marriage and divorce. It emphasizes that a woman has the right to seek divorce through the court of law. Mernissi argues that the rights asserted by the UIDHR in favor of women should not threaten the law of *Shari'a*. She declares: "What do we understand from reading the text of this reservation? Not much, since the equality ensured in Article 16 in no way "prejudices" the *shari'a* if that is interpreted to guarantee a 'just balance'."¹¹⁷

Mernissi recognizes that the concept of *Shari'a* law is implicitly used in this article to violate women's rights. In fact, returning to Article 20 of UIDHR, it is worth noting that the conception of law was introduced twice; "Every married woman is entitled to seek and obtain dissolution of marriage (*Khul'a*) in accordance with the terms of the Law", "Every married woman is entitled to inherit from her husband, her parents, her children, and other relatives according to the Law."¹¹⁸ However, one could observe that the notion of law is not clarified in this article. In other words, which type of law must woman pursue to demand her rights; the civil laws or the traditional law of *Shari'a* restricted by religious and patriarchal interpretations? This is crucial when we consider certain areas of law, such as family law.

There are several Muslim feminist scholars from different Islamic cultural traditions who agree with Mernissi on the necessity of a reinterpretation of the *Shari'a* to guarantee legal rights for women.¹¹⁹ Mir-Hosseini asks: In a state that claims to be guided by the *Shari'a*, why are justice and equality not reflected in the laws that regulate gender relations and the rights of men and women? Why do Islamic jurisprudence texts—which define the terms of the *Shari'a*—treat women as second-class citizens and place them under men's domination?¹²⁰ To put it simply, considering that justice and equality are intrinsic values and cardinal principles in Islam and *Shari'a*, why is a woman unequally treated? One might affirm that the inequality between man and woman in the terms of legal texts of Islamic legislation is present in different realms. In this regard, I refer to the rules for the marriage contracts and the rules for the dissolution of marriage according to Islamic legacy, to follow Mernissi's argumentation on this example. The aim is to further illustrate the injustice between men and women in order to understand why Mernissi is fighting against a patriar-

¹¹⁷ Mernissi 2002: 67.

¹¹⁸ UIDHR, article XX.

¹¹⁹ Sadiqi 2006–2009; Mir Hosseini 2006; Charrad 2007; Eddouada 2008; Badran 2009.

¹²⁰ Mir-Hosseini 2006: 629.

chal interpretation of Islamic law, and appealing for an egalitarian interpretation of law in line with the UN Declaration of Human Rights.

Hence, a woman in Islam, according to the traditional interpretation of the Shari'a law, has not the right to express her refusal to marry. She does not even need to be present at the contract of marriage. The "matrimonial guardian," who is usually her father or, in his absence, another male member of her family, can speak and decide in her name. In cases of disagreement between the woman and her father over the choice of a spouse, the right of decision is legally granted to the father or legal guardian. Furthermore, the Islamic legislation of Shari'a law accords to woman only fragile rights concerning divorce. In this way, the law of Shari'a facilities the termination of marriage by offering three procedures to end the marriage: the first is a unilateral repudiation of the wife by the husband, the second is a repudiation negotiated between the spouses and the last is a judicial dissolution of the marriage through appeal to a religious judge. Hence, the first one represents the strictest form of divorce; when the husband has the right to end the marriage by simply pronouncing the formula "I repudiate thee" three times, which mean that the husband has ended the marriage without recourse to the judicial authorities.¹²¹ The idea conveyed in this statement is that women are second-class citizens. Women are deprived of their right to freely choose their spouse and to obtain a divorce under patriarchal interpretations of Islam. Hence this interpretation of Islamic law does not grant each human being equal rights and violates any egalitarian understanding of justice.

Mernissi's concept of legal justice, conversely, is strongly based on the notion of the equality of men and women in relation to laws. Mernissi recognizes that modern human rights treaties are important in elaborating gender equality, in contrast to Islamic human rights declarations that are based on male dominance over the Shari'a law. Mernissi rejects the patriarchal interpretation of Islamic laws that make women second-class citizens.

Despite Mernissi's understanding of the UDHR as an important source of legal justice for the advancement of women's rights at the time of her writing of this book (1992), the UDHR is currently the subject of critical debate in contemporary feminist scholarship. Feminist critiques of human rights seek to destroy some of the hierarchies embedded in the human rights regime. Criticizing the basic assumptions of human rights as they were formulated in 1945–48, feminist have demonstrated that these assumptions are inadequate, that men and women have different relationships with the state, and that rights are not fixed and unchanging. They are, in fact, historically, socially, culturally, and economically contingent.¹²²

121 Charrad 2001: 33–35.

122 Parisi 2017.

Social justice as access to social rights

Mernissi's vision of social justice is also based on a strong notion of egalitarianism. Mernissi emphasizes the social rights that state institutions should ensure to citizens. Mernissi's concept of social justice entails equal access to social rights by everyone. Her empirical research in this regard focuses on women from the subaltern class in post-independent Moroccan society. I refer here to "her original training as a sociologist and her scholarly production that strives to present the history of lay-women. Mernissi's avowed agenda is to make audible to state planners subaltern women's voices that speak about or reveal real issues—illiteracy, minimum wage, and social security, for instance."¹²³ In this regard, I would like to emphasize that after the independence of Morocco in 1956, Moroccan scholars and political activists aspired to establish a notion of social justice. They argued that state policies had created unequal social development in post-independent Moroccan society. In doing so, the political activists of the leftist parties fought for the interests of the popular masses of the lower class.¹²⁴

One might consider that Mernissi as a feminist thinker and activist in civil society belongs to this social reformist movement, in that she defends the right of Moroccan woman from the sub-class to have access to social rights. Indeed, it was in an interview with "Mina," a Moroccan carpet weaver, that Mernissi depicted the typical situation of a Moroccan woman who has no access to such social rights as health insurance. The woman in the interview knows that the employer she seeks to get a job from does not offer her health insurance. Mernissi argues:

An interview I had with Mina, a Moroccan carpet weaver who was hospitalized with a broken wrist incurred in an on-the-job accident, perfectly summarizes the democratic, cultural, and linguistic handicaps suffered by people like her. As a result of her accident, and despite ten years' seniority, Mina had been fired by the factory where she worked, which offered her no medical coverage or compensation.¹²⁵

This story describes one of the normative issues of social justice, which states that every worker should have access to social insurance. Mernissi comments that the woman interviewed is aware that to not be insured at work is unjust. She also notes that the woman in the interview does not realize that there is a law which can protect her social rights.¹²⁶ In this line of ideas, one might assume that the law Mernissi indicates is the International Covenant on Economic, Social and Cultural Rights (ICE-

¹²³ Rhouni 2010: 44.

¹²⁴ Rachik and Bouriqa 2011: 7.

¹²⁵ Mernissi 2002: 57.

¹²⁶ Mernissi 2002: 57.

SCR). This international covenant was adopted in 1966 by the UN in accordance with the UDHR. It asserts normative claims of social justice in the sense of basic social rights. In addition, social justice requires legal justice, in the sense of equal access to law by every citizen.

Contrary to this, Mernissi asserts that Arab businessmen are afraid to see their workers as responsible individuals who claim their social rights.¹²⁷ Mernissi means by social rights “the right of everyone to the enjoyment of just and favorable conditions of work” (ICESR Part III, Article 7). Article 9 of the ICESCR, moreover, recognizes the right of everyone to “social security, including social insurance”. In this context, she speculates on the reasons for unemployment among young university graduates. She affirms:

One of the reasons for unemployment among young university graduates in Morocco is that the factory owner fears letting in among his workers “educated” people who have participated in demonstrations on their campuses.¹²⁸

To put it simply, a young intellectual might be able to request their rights because they know of the international conventions that protect human rights. Therefore most employers do not hire educated young employees. Mernissi’s speculation is based on empirical investigation done in 1987 in Moroccan manufacturing. It could not be generalized to all Arab countries. Mernissi continues her investigation to examine the role of women in the textile industry. She argues that “many workers testified that it was much easier to be hired if one wore a traditional djellaba.”¹²⁹ In Maghreb countries like Morocco and Tunisia, the traditional djellaba is an exceedingly popular dress for women. Women from the lower classes usually wear it. This attire is a symbol of a societal divide between women who dress in a modern way, wearing jeans and t-shirts from modern stores, and women who wear traditional clothes, such as a djellaba from a Souk store. As a covering for the female body, it might be argued that the djellaba has an Islamic religious as well as socio-economic symbolism.

Raja Rhouni claims that Mernissi critically focuses on the traditional and poor Moroccan woman who is unaware of her social rights; that Mernissi wants the proletariat woman to have a “class consciousness” in order to be aware of the conflict with the bourgeois class, and to make the decision to fight for liberation from capitalism through organized structure.¹³⁰ Hence, according to this analysis, there can be no

¹²⁷ Mernissi 2002: 58.

¹²⁸ Mernissi 2002: 59.

¹²⁹ Mernissi 2002: 59.

¹³⁰ Rhouni 2010: 78.

gender justice without social justice. In this sense, one could argue that Mernissi exhibits a Marxist approach. Her pursuit of social justice reveals the conflict between proletariat and bourgeois classes.

It must be noted here that the League of Arab States also adopted the Arab Charter on Human Rights (ACHR) on September 1994 in Cairo, which affirmed several social rights to the workers; it affirms in Article 30 that the state guarantees every citizen the right to work and to social security.¹³¹ Moreover, Article 32 of ACHR maintains that “[t]he State shall ensure that its citizens enjoy equality of opportunity in regard to work, as well as a fair wage and equal remuneration for work of equal value.”¹³² Thus, there are legal texts that protect human rights in the socio-economic sphere in most Arabo-Muslim societies, but they are not implemented in practice.

As I mentioned above, Mernissi's research dates to 1987, so one might question whether the empirical results she gathered are still relevant for examining social policy in the Arab world today. A more recent empirical study (2014) examines the social policy and the development of social rights in the Middle East and North Africa region after the 2011 Arab revolutions. An emphasis is placed on Tunisia post-revolution. It shows that while Tunisia achieved political success, its impact on social policies remains limited. Karshenas, Moghadam and Alami (2014) argue that an integrated social policy regime linking education, health, labor markets, and women's participation is imperative. Specifically, the authors favor the participation of unions, employer organizations, women's rights groups, and other horizontal civil society organizations in the development of social policy that can realize the social and economic rights of citizens.¹³³ The lack of social rights that Mernissi outlined in her time is, thus, still relevant today, according to social scientists. In this regard, Raja Rhouni argues:

Mernissi is one of the first Moroccan sociologists to attempt to bring poor rural and urban working women to the sphere of representation, against the grain of official economic and political discourses that ignore their existence. ... Combining a Marxist and feminist approach, she is the first sociologist to draw attention to female labor in Morocco and to declare the existence of a Moroccan female proletariat.¹³⁴

Thus, Mernissi's thoughts relate to postcolonial theory, which is concerned with the defense of subaltern women. Mernissi takes a critical look at the social politics of post-independence Morocco. She explores the social injustices that affect most Moroccan women workers. Her purpose is to bring the voices of the subaltern to

¹³¹ ACHR, 1994, Article 30.

¹³² ACHR, 1994, Article 32.

¹³³ Karshenas, Massoud, Valentine Moghadam and Randa Alami 2014: 737.

¹³⁴ Rhouni 2010: 86–87.

the forefront. Social injustice disproportionately affects lower class and illiterate women. In this sense, Mernissi believes that equal access to education is necessary to protect women from legal and social injustice.

Epistemic justice as equal access to knowledge formation and cultural products

Mernissi compares two systems of education to reveal the inequality of access to knowledge formation. Her focus is on Muslim societies, especially Maghreb societies. Based on her egalitarian stance, one might point out her sense of injustice in this regard and call it epistemic injustice, in the sense of domination in and by the sphere of knowledge formation. According to her normative stance, epistemic justice entails equal access to knowledge formation, as well as equal access to cultural products. In this sense, she writes: "It is in the types of knowledge available in each institution that we find the inequalities that today divide the Arab world and create an intense animosity between classes."¹³⁵

In order to point out the inequality in educational systems she compares the traditional system of the Qur'anic school and the modern system of the kindergarten. Mernissi affirms that most children who join the Qur'anic schools belong to the poor classes.¹³⁶ Hence, in the context of Mernissi's analysis, epistemic injustice goes hand in hand with social injustice. She declares that children of the poor are excluded from early training in modern learning, especially mathematics and modern educational games; also, they are not getting access to the foreign languages. The system of education is limited to the recitation of Qur'anic verses and the learning of the Arabic language without any openness to other foreign languages and without the experience of modern knowledge.¹³⁷ By contrast, in the English-style kindergartens or French-style *maternelles* in Maghrebian countries, children of the rich learn to read and write by reading "Snow White" and "Alice in Wonderland" in foreign languages and devote only a few hours to the Arabic language and religious education.¹³⁸

In Mernissi's view, social injustice is at the root of people's inability to achieve good quality of education. For Mernissi the unequal access to knowledge among children in most Arab Islamic countries in matters of learning foreign languages and gaining access to modern knowledge would affect their capabilities for intercultural exchanges and openness to Western countries, and their future careers. In this regard, she explains:

135 Mernissi 2002: 80.

136 Mernissi 2002: 80.

137 Mernissi 2002: 80.

138 Mernissi 2002: 80.

This difference in the cultural universe of Muslim children, depending on their social class and parents' income, is probably responsible for the xenophobia and rejection of the West in those who were deprived early in life of access to modern education. Chances of finding employment are in turn dependent on mastery of modern knowledge.¹³⁹

Another point Mernissi makes is that individuals in most Muslim societies do not have access to cultural resources. She affirms:

When I visit a Muslim country ... I see bitterness over blocked ambition, over frustrated desires for consumption—of clothes, commodities, and gadgets, but also of cultural products like books and equality films and performances which give meaning to life and reconcile the individual with his environment and his century.¹⁴⁰

In line with Mernissi's earlier arguments, the international covenant on human rights can be invoked to emphasize the need for equal distribution of knowledge, education, and cultural resources to all, which is a universal right alongside the right to respect for human dignity. Indeed, the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that everyone has the right to freely participate in the different systems of education, which should be promoted equally for everyone. For example, "primary education shall be compulsory and available free to all" and "The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved".¹⁴¹ Moreover, it is important to recall that the treaty assures that everyone has the right to take part in cultural life and that the state should encourage cultural performances.¹⁴²

Mernissi argues in line with theorists on the concept of epistemic justice who defend an account of distributive epistemic justice in the production of scientific knowledge.¹⁴³ They realize that science should produce the knowledge citizens need to reason about the common good, their individual good, and pursuit thereof. Science should produce the knowledge those serving the public need to pursue justice effectively. Finally, science should be organized in such a way that it does not aid the willful manufacturing of ignorance. From the same perspective, Mernissi realizes that education is a fundamental right and enables people to acknowledge and request their social and legal rights. The right to educate oneself is essential to a

¹³⁹ Mernissi 2002: 80–81.

¹⁴⁰ Mernissi 2002: 56.

¹⁴¹ ICESCR, Part III, Article 13, Sections 2a and 2e.

¹⁴² ICESCR, Part III, Article 15.

¹⁴³ Kurtulmus and Irzik 2021.

woman's empowerment. Contrary to Kurtulmus and Irzik, Mernissi focuses more on an elementary notion of education than on a high view of science and higher education.

Mernissi's aim is to reveal the societal poverty, discrimination, and injustice in most Muslim societies. According to her, social injustice is correlated with epistemic injustice in the Global South. Her work marks a change in basic assumptions in the discourse on epistemic justice, pointing to unequal power relations between the Global North and the Global South.¹⁴⁴ Mernissi defines epistemic justice within the context of the Global South. Her interest lies in Muslim societies.

The concept of justice that Mernissi focuses her work on is not studied to defend the rights of the proletariat and rural women, as some critics of Mernissi's concept of justice claim. In this sense, Anouar Majid states that Mernissi defends a capitalist model of economics and politics, arguing : "The prominent feminist sociologist Fatima Mernissi, however, has accepted the capitalist models of human relations."¹⁴⁵ Furthermore, he notes that Mernissi agrees with the bourgeois notion of democracy and individual liberties by holding up the UN definition of human rights and democracy.¹⁴⁶

In response to this criticism, I argue that Mernissi seems to refer exclusively to Western constitutional treaties when describing democracy, human rights, and social development, while she does not refer to Islamic treaties because Islamic treaties still reflect misogynistic interpretations of Islam. For this reason, her feminist project calls for (re)interpreting the Islamic heritage in order to fulfill the rights of Muslim women. Moreover, Mernissi emphasizes the role of education in the emancipation of women to condemn misogynist and patriarchal advocates who see women's education as a threat to Islamic legacy. In her book entitled *Beyond the Veil : Male-Female Dynamics in Modern Muslim Society* (2003), Mernissi quotes Qasim Amin¹⁴⁷ as follows : "Many people still believe that it is not necessary to educate women. They even go so far as to think that to teach women how to read and write is against the *shari'a* and a violation of the divine order."¹⁴⁸

Mernissi's main critique is directed at the male and patriarchal interpretation of Islam, which she sees as responsible for the exclusion of women from the political, legal, social, and educational spheres. Her focus in articulating this critique is the subaltern woman in Islam who is under man's dominance. Mernissi is against

144 Dübgen 2020.

145 Majid 1998: 328.

146 Majid 1998: 329.

147 Qasim Amin (1863–1908) was an Egyptian philosopher, reformer, and judge. Amin is considered one of the "first feminists" of the Arab world. His advocacy for more rights for women sparked a debate on women's issues in the Arab world. He criticized the veiling, early marriage and lack of education of Muslim women.

148 Mernissi 2003: 14

an untamed capitalist system because she obviously defends the rights of the laboring class, for example of women who work in domestic services and such economic sectors as crafts and agriculture. Mernissi criticizes development policies and global capitalism, and their impact on subaltern woman.¹⁴⁹

In some ways, I argue, Mernissi's ideas on justice are in the middle of a controversy between communitarian and liberal perspectives. Raja Rhouni, for instance, considers Mernissi a communitarian feminist thinker since she defends proletarian women. According to Anouar Majid, Mernissi is a liberal thinker because she links liberal politics with capital and economic development. According to another interpretation, Mernissi's views on development are understood as related to those of Amartya Sen and Micheline Ishay in the context of the capability approach, as "she insists upon the crucial link between economic development and public freedom" in the sense of political and social rights, and on "the self-reliance that includes a respect for certain existential questions of dignity."¹⁵⁰

In the case of Mernissi's study of the concept of justice and human rights, she rejects the discourse that accuses Western thought of being hegemonic. Consequently, she views human rights and justice as universal rather than a Western achievement. Mernissi is concerned with individual rights. When she wrote *Islam and Democracy* (2002), she believed that justice and human rights were well developed in the West. A common problem in many nations which Mernissi wants to solve is that of power relations. On issues of human dignity and women's emancipation, she advocates openness to other ways of thinking, including Western ones.

This chapter has explained Mernissi's stance on the concepts of justice based on her critical empirical research in most Muslim societies. Mernissi presents justice in terms of the universal treaties of human rights and criticizes the patriarchal interpretation of the legal system within the Islamic heritage that denies women access to their rights. In the next chapter of this part of the study, I examine Mernissi's concept of justice through her revision of 9th century Arabo-classical Islamic thought. The aim is to show that Mernissi offers a new perspective on the concept of justice and human rights. In doing so, she identifies the concept of justice simultaneously with two traditions: first, with the modern tradition of Western thought—as explained above in chapter two—and second, with the historical tradition of classical Islamic thought.

149 Rhouni 2010: 1.

150 Mirsepassi 2014a: 181.