1.1   The concept of justice in Arabo-Islamic and Western philosophy

Justice is an indisputably important concept. The history of different traditions of philosophy shows that philosophers in diverse cultures have always reflected on justice. As part of the tradition of Western philosophy, Greek antiquity provided a significant concept of justice both in the abstract, namely the world of subjectivity (man and his soul), as well as in the concrete, namely the world of intersubjectivity (human interactions).

According to Plato, justice is the quality of the soul, and based on the purification of the soul, through which humans put aside their irrational desires. Plato argued that justice results from the harmonization of the three faculties of the soul. Since reason supervises the rational faculty, it produces virtuous acts. Thus, when the faculty of reason directs the soul to knowledge, it will act correctly and virtuously. For Plato, justice is a master virtue because when the soul performs justice, it is realised in the realm of human interaction.[7] Aristotle considered the social nature of human beings in his work, *Politics*, where he stated that any humans who are unable to live in a society or who have no need of the society because they are self-sufficient "must be either a beast or a god."[8] In this sense, Aristotle gave a notion of justice based on human social interaction. His notion of distributive and corrective justice aims at restoring a fair relationship between individuals.[9]

In Western contemporary scholarship, justice has been aptly described as the "first virtue of social institutions,"[10] and "the highest political-moral virtue by which legal, political, and social conditions as a whole – the basic structure of society – can be measured."[11] John Rawls played a significant role in how the debate on justice has developed in the liberal context.[12] Rawls's liberal theory of justice intends to have a universal outreach.[13] However, Thomas Pogge, among many other scholars, has raised the question of whether the principles of liberal justice set forth by Rawls can be applied on a global scale. Pogge refers to Rawls's analysis of economic justice as an example to illustrate how economic justice in Rawls's thought still shapes and reshapes a national economic order.[14]

One could argue that Pogge's critique of Rawls's liberal theory of justice opens up the possibility of philosophizing about justice on a global scale. This is an important

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7   Plato 2009.
8   Aristotle 1946: 4.
9   Aristotle 1975.
10   Rawls 1971–1999: 3.
11   Forst 2002: xi.
12   Forst 2013: 42.
13   Flikschuh 2013: 41.
14   Pogge (ed.) 2001; Pogge 2001:16.

shift in the history of justice theory. Since that time, philosophers and political theorists have tried to develop a more transnational notion of justice. They have become interested in discovering different injustices that occurred in different societies and cultures, and question whether Western theories of justice are applicable on a global scale. As a result, interesting studies have emerged in academia in recent years, as I mentioned earlier, dealing with a more transcultural notion of justice, involving philosophers and political theorists from the Global North (Germany) and the Global South (North Africa). Their ideas are closely related to the themes of identity, historical justice, and cultural belonging. The complex structure of their ideas suggests an openness to other philosophies about justice and calls for an examination of justice within a transcultural approach.

Writing from the perspective of Arabo-Islamic philosophy, the concept of justice in Islamic thought is based on the notion of divine justice and in relation to the purification of the soul. Divine justice is the foundation for acquiring happiness and achieving human justice. The spiritual meaning of Islam demands to promote justice. In Islam, a purification of the soul is highly recommended as the following Qur'anic verses state: "The one who purifies his soul succeeds and the one who corrupts it fails."[15] Islamic thought does not limit the notion of justice solely to divine justice. Due to their openness to Greek philosophy, early Muslim philosophers have reflected on other forms of justice related to the political, economic, and social spheres.

In this sense, early Muslim philosophers integrated Islamic religious ethics and Greek philosophy to develop their concept of justice. This reflects their humanistic inclination and shows an early dialogue developed between ancient Greek (Western) philosophy and early Islamic thought. Such a dialogue points to an intellectual atmosphere of transcultural thinking between these two different schools of thought that met and enriched one another.

The integration of Greek thought in Islamic ethics contradicts Western Eurocentric discourse, which assumes that Islamic thought can have no connection to philosophy. In contrast to this assertion, early Muslim scholars show that Islamic thought never was a stranger to philosophical and rational thought, and that philosophical tools are fundamental to the interpretation of Islamic discourse.

In the history of Arabo-Islamic philosophical scholarship, two works are particularly worthy of attention on the concept of justice: one by Majid Khadduri (d. 2007), *The Islamic Conception of Justice* (1984) and the other by Majid Fakhry (d. 2021), *Ethical Theories in Islam* (1991). Both authors offer a systematic and analytical study of the concept of justice. Khadduri classified the concept of justice into various realms, such as legal, divine, and human justice. The concept of justice has been explained in the light of the various schools of thought and philosophers who have contributed

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15   The Qur'ān, Chapter 91, The Sun, Verses 10–11.

to its theory. Fakhry's work focuses on the ethics of Islam in relation to the spiritual, religious, philosophical, and theological realms. According to Fakhry, Islamic ethics is based primarily on the concept of justice. Khadduri and Fakhry emphasize the transculturality between Greek and Islamic thoughts. Additionally, they discuss the impact of Persian and Indian literatures on the development of Islamic philosophy and science. It is interesting to note that both studies refer to controversial schools of thought that contributed to the development of Islamic thought: the Mu'tazila school of theology, the Jabarites school of theology, and the Islamic doctrine of Voluntarism (see chapter 2.3; chapter 3.1). Their work cultivates the diversity of thought that characterizes Islamic thought.

In the context of postcolonial thought, North African intellectuals from the Maghreb have determined how justice must be thought of from a transcultural approach, specifically considering the postcolonial debate on human rights and individual liberation that has taken place in most Muslim societies, developing their thinking from the perspective of a critical reading of traditional Arabo-Islamic discourse.

Thus, this research presents the concept of justice by two contemporary thinkers from North Africa. It focuses on the works of the Moroccan feminist thinker Fatima Mernissi (1940–2015) and the Algerian philosopher Mohammed Arkoun (1928–2010). Mernissi is one of the most prominent feminist thinkers in Arabo-Islamic philosophy, while Arkoun is one of the most prominent modern philosophers in contemporary Arabo-Islamic thought.[16]

This research explores their thoughts on the concept of justice in the postcolonial Maghreb. Mernissi and Arkoun share an interest in defending the concept of justice through socio-political, religious, historical, and feminist approaches. Mernissi's and Arkoun's contemporary conception of justice is based on a renewed interpretation of religious discourse in order to theorize justice. For example, Mernissi invokes the interpretation of the Islamic heritage to launch a concept of gender justice. Arkoun's contemporary intellectual project, known for rethinking Islamic thought, implicitly seeks a social and egalitarian conception of justice based on a humanistic ethos. The approach I take in this study is to carve out their notion of justice based on their reinterpretations of Islamic discourse.

My aim is to point out Mernissi's and Arkoun's contributions to a cosmopolitan theory of justice based on a transcultural approach. Mernissi introduces Sufi concepts, which fit within the context of cosmopolitan thought and transcultural dialogue between cultures. The Sufi tradition is alluded to in Mernissi's novel *Scheherazade Goes West: Different Cultures, Different Harems* (2001). For example, the Sufi practice of travel (*safar*) allows one to explore other cultures and transcend the boundaries of cultural and traditional constraints (see chapter 2.5).

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16   Dübgen 2020 : 896.

Humanism was the subject of Arkoun's dissertation (1970), which deals with Arab humanism from the 3rd/9th to the 4th/10th centuries and considers Miskawayh (d. 1030) as one of the most important humanist intellectuals in early Islamic thought. Based on Miskawayh's combination of Islamic ethics and the Greek thought of Plato and Aristotle to create his own concept of justice. Arkoun emphasizes a transcultural humanism that promotes dialogue between different cultures and different schools of thought and is guided by a rational method of thinking, which also plays a role in Miskawayh's early thought (see chapter 3.1). In this way, Arkoun speaks of a "humanistic critique" and a "non-isolated humanism"[17] as Edward Said suggested in the introduction of *Orientalism* (2003).

Next to his reconsideration of philosophical humanism in particular and the concept of justice in general in the work of Miskawayh, Arkoun also explores the transdisciplinary, comparative, and rational approaches established in the thought of the Muslim theologian and philosopher Al-Amri (d. 992). Arkoun thereby urges contemporary Muslims to reconcile with the rational Islamic heritage, to "rethink" and "liberate" Islamic traditional thought from orthodox ideas.[18] Aside from this, Arkoun points to the humanist heritage of Islamic thought, in order to correct Western misconceptions and simplifications of the rich Islamic intellectual heritage.[19]

As a feminist thinker, Mernissi presents the normative thought concerning justice, power, and law in early Islamic thought by examining the concept of legal justice in the work of the Muslim jurist Malik Ibn Anas (d. 795), divine justice in the work of the Sufi al-Hallaj (d. 922); and rational justice according to the Mu'tazila, a rationalist school of Islamic theology (8th–10th century). In this way, Mernissi intends to challenge what is actually a reductive interpretation of Islamic law (Shari'a). Specifically, patriarchal constructions deprive women in Islam of their modern political, legal, and social rights. Mernissi uses the rational heritage of early Islamic thought to reshape contemporary discourse on gender justice and democratic values.

Mernissi and Arkoun revive the early humanist thought of Islamic philosophy, while also incorporating Western Enlightenment thought and the notion of modernity. In her early works that characterize her secular thought, Mernissi turns to modernist narratives on women's rights, the United Nations Organization (UN) and the Universal Declaration of Human Rights (UDHR), to advocate political justice based on the concept of representative democracy; a combination of legal, social, and epistemic justice that she relates to this modern and secular framework with the goal of achieving women's rights. In her last work, which establishes her Islamic feminist thought, Mernissi states that secular thought fails to demand and assert women's rights in the field of religious discourse, which is still dominated by men.

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17   Said 2003: xvii.
18   Karoui 2021: 322.
19   Karoui 2020: 915.

Mernissi's approach to Islamic feminism is progressive and liberal, aiming at an innovative interpretation of Islamic discourse in order to achieve gender equality within Islam. She does this by applying different methods of thinking that combine hermeneutical, historical, and linguistic analyses of some verses of the Qur'anic and some Hadith (sayings of the Prophet Muhammad).

In addition, Mernissi criticizes Orientalist discourses that develop a stereotypical image of Muslim women. Mernissi's contribution to both approaches, secular and Islamic feminism, makes her thought an innovation in the field of feminism as she adopts a transdisciplinary approach that considers several fields of study – secular modernity and religion – in order to realize the emancipation of Muslim women.

In the same line of thought, Arkoun advances an ambivalent understanding of the concepts of modernity and secularism. On the one hand, Arkoun defends modern and secular thought and considers it the basis for promoting freedom of thought, freedom of religious beliefs, and democratic ideas in most Muslim societies. On the other hand, he disapproves of a notion of modernity based on capitalist systems and a notion of secularism based on a total rejection of religion. Arkoun considers religion an essential socio-cultural element of societies that cannot simply be discarded. Rather, religion as a field of study must be examined and critically rethought in order to disentangle it from fundamentalism.

By combining secular, modern Western thought and Islamic thought, Mernissi and Arkoun call for human rights and transcultural justice. They both propose a rational reinterpretation of Islamic discourse and an opening of Islamic intellectual discourse to dialogue with other cultural traditions. In this sense, their contemporary critical thought challenges *religious fundamentalism*, *French neo-colonialism*, *Arab nationalism*, *Eurocentrism*, and *Orientalism*:

1. In the works of Mernissi and Arkoun, both *Eurocentrism* and *Orientalism* appear as an object of critique. Both discourses construct Western representations of other cultures. On the one hand, Eurocentrism undervalues and excludes other cultures' achievements in both cultural and philosophical terms. Western achievements are considered the most significant accomplishments according to Eurocentrism.[20] As outlined above, Mernissi's and Arkoun's rereading of early Islamic thought undermines Eurocentric superiority, its closed mentality, and its judgment of other cultures. Both scholars intend to remind Eurocentric scholars that a rational concept of justice has been central to Arabo-Islamic philosophy. Orientalism, on the other hand, pertains to the study of the language, the history, and the culture of the 'Orient' and Muslim societies by Western scholars .[21] Mernissi and Arkoun seek to extricate Islamic culture from Orientalist clichés.

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20   Amin 2009.
21   Said 1994a; Ahmad 1994.

As a feminist thinker, Mernissi criticizes the subservient image that some Orientalists portraits of women in Muslim culture, such as "veiled" woman, "naked" woman in a bath, "servant" woman. According to a stereotypical Orientalist's representation, women in most Arab countries are excluded from the public sphere of human interaction. They exist in the enclosed sphere of the harem, e.g. the house of the husband, the "sultans," or the male relative. It is through her deconstructivist approach that Mernissi challenges the Orientalist stereotypical representations and Western clichés about women in Islam. For Mernissi, the harem is not only the sphere of seduction and sexual desire, where women have to serve sex and food.

As a child born in a traditional harem in Fez in the 1940s, Mernissi's autobiographical work *Dreams of Trespass: Tales of a Harem Girlhood* (1994), which has been translated into several languages, posits the harem also as a locus of women's emancipation. Despite her mother being illiterate and living under her husband's domination, she instructed her daughter (Mernissi) to be independent. She sent her to school, and let her interact with her male cousins. During that time of conflict between the colonial powers, it was difficult for women in Morocco to encourage their daughters to take the first steps towards emancipation. Embracing feminist thinking within Arabo-Islamic tradition meant removing oneself from local traditional culture and social restrictions, as well as from Western clichés. As a feminist thinker, Mernissi engages in the deconstruction of both local and Western discourses.

In the same line of thought, Arkoun criticizes the traditional method of some Orientalist historians who define Islam as a body of constructed beliefs. Indeed, their representation of Islam is based on the Qur'an and the Tradition (sayings and actions of the prophet) without submitting these corpuses to critical analysis. Moreover, some Orientalist historians are not familiar with connecting the field of Islamic studies with Islamic philosophy. Arkoun has a broad education in diverse disciplines, having studied Arabic literature, history, law, and philosophy. This transdisciplinary background helps him to integrate several disciplines into the field of Islamic studies in order to realize his project of rethinking Islam.

The Oxford Encyclopedia of the Islamic World published an article (2009) that critically reviews Orientalism and its relationship with Islamic studies. Arkoun is presented in this article as one of the few thinkers belonging to contemporary Arabo-Islamic philosophy who has attempted to enunciate an overall vision of Islamic studies and its agenda. Arkoun discusses the implicit and explicit tenets of Islamic thought. The work of Arkoun is considered as an audacious project in expressing certain methodological approaches that he considers to be inseparable from epistemological theories in order to integrate Islam and Muslim cultures into a global critical theory of knowledge and values. Arkoun's critique of the Orientalist method is therefore essential in dislocating Islamic thought from a monolithic approach of thinking. His critical thought is also important for opening up the field

of Islamic studies to various approaches and fields of research, such as comparative studies, linguistic studies, and poststructuralist approaches.

2. *Arab Nationalism* argues that all Arabs are one nation, characterized by a strong sense of shared identity, by their language, culture, history, ethnicity, geography, and politics that unites all Arabs.[22] This poses the following questions: Can it generally and validly be argued that Arabs share the same identity, culture, and ethnicity? What about the 'minority' groups with diverse ethnicity, religion and culture who are living in the Arab world? Are they part of this shared culture?

Mernissi asserts that Arab nationalism is ambivalent. In several passages of her book *Islam and Democracy Fear of the Modern World* (2002), Mernissi applies a historical approach to emphasize the great heritage of Arabo-Islamic civilization. For her, Arabs have made great strides in a variety of fields. She highlights the knowledge and scientific developments that characterized the earlier period of the Abbasid empire (750–1517). During that time, Muslim Arabs, Arab Jews, and Arab Christians worked together for the advancement of philosophy and science. Greek philosophy played a prominent role in their advancement of knowledge. 'Arab' intellectuals "transport,"[23] interpret and integrate Islamic and Western ideas. By translating Greek thinking of antiquity, they opened themselves up to other traditions of thought, and bridged the gap between different religious and philosophical perspectives. During that time of the Arab empire, there was a sense of diversity and a willingness to embrace other philosophical traditions. Mernissi evokes the complex heterogeneity within Islamic civilization to challenge the contemporary notion of Arab nationalism that conflates politics with religious faith and focuses on the notion of Islamic statehood.

Arkoun also criticizes Arab nationalism, which claims that all Arabs have the same tradition, share the same religion, culture, language, and ethnicity. He demands the reformation of Islamic thought on both the socio-religious and political level.

On the socio-religious level, he defends the rights of ethnic and religious minority groups such as the Berber community in North Africa, which was severely discriminated against during the colonial and post-colonial era in Algeria. (I examine this in chapter 3.3). In his writing, Arkoun further considers the diversity and plurality within Muslim communities, such as Shi'i, Sunni, and Khariji Islam. Arkoun's work in many ways draws to the linguistic and cultural diversity of the Maghreb. He argues throughout his career for a pluralist Islamology, i.e., a comparative, interdisciplinary study of Islam, and against definitive interpretations, which he considers to be surrogates for political authoritarianism .[24] On the political level, Arkoun

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22   Dawisha 2016.

23   Mas 2021: 338.

24   Dobie 2020 : 254.

calls for reconsidering the conditions for the establishment of fundamentalist organizations that have contributed to the development of extremist Islamic thought. In particular, he refers obliquely to the Algerian civil war between the Algerian government and various Islamist rebel groups from December 1991 to February 2002. In this way, "Arkoun sought the reform of Islamic thought along secular and philosophical lines as the means to solve the enduring violence in Algeria and in other parts of the Islamic world." [25]

3. The critique of *French neo-colonialism* is presented in the thought of Mernissi and Arkoun through the demystification of the promises of modernization and civilization that the French protectorate in Morocco (1912–1956) and the French colonization of Algeria (1830–1962) came to promote.

Mernissi critiques the colonial system that reinforces the discrimination between native Moroccan and French women. The myth that "France is a modernizing force is mere colonial fantasy," [26] claimed Mernissi. Modernity, which defends education as a means of emancipating women from tradition, was not supported by colonial France in Morocco. The aim of Mernissi is to demystify the narrative that the emancipation of native women was the outcome of the modernization project undertaken by the French protectorate. She makes it clear, , that the colonial administration did not support the education of native women, even if they belonged to the urban upper classes of Morocco like herself. [27]

Arkoun presents a controversial argument against French colonialism, and especially against the ideas of Enlightenment and modernity, which are criticized within the framework of postcolonial theory. Arkoun belongs to the first generation of colonized subjects to be educated in French colonial schools. This French education paved the way to exploring the effects of colonialism on the division between Berber and Arab Maghrebian.[28] In fact, "when Europeans colonized North Africa,

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25   Mas 2021 : 339.

26   Mernissi 2003: 7.

27   Rhouni 2010: 48–49.

28   Muslim Arab conquerors used the term 'Berber' to refer to the people who lived in what they called 'the West' (al-maghrib). Before the Muslim-Arab conquest, the inhabitants of northwest Africa belonged to the same landmass and formed a unique entity. After World War II, the response to the ravages of nationalism and racism did not extend to the category of Berber. The national independence of Morocco and Algeria, but not Berberia, located Berber identity both on the infranational level and as counter-nationalism. The point is not to distinguish between Arabs and Berbers in the Maghreb and to question the origin of its inhabitants, because the Maghreb is part of the Mediterranean and consists of a variety of inhabitants with different religious, cultural and ethnic backgrounds that contribute to its civilizational wealth. Rather, the aim is to shed light on the social discrimination of the Berbers during European colonization and after independence, caused by the rise of Arab nationalism and Islamization. See: Ramzi Rouighi, (2019 b): *Inventing the Berbers History and Ideology in the Maghrib*: University of Pennsylvania Press. Introduction (pp.1-12).

they imposed their preoccupation with race onto its diverse peoples and deep past".[29] Arkoun, by contrast, developed an interest in Arabic literature and eventually became a leading scholar of Islam.[30] "It was the renowned French Orientalist Louis Massignon that encouraged Arkoun to pursue his postgraduate studies in La Sorbonne".[31] Hence, one might argue that this turn to the Arab language was a form of resistance in order to denounce the powerful culture of the Francophonie. The French government sought to disrupt the pluralism of Algeria as a country with Arab and Berber languages. However, after independence in 1962, Arkoun left Algeria to teach in France and never returned to Algeria. During his intellectual career, he did not publish any of his work in Arabic, although it is a language that he admired. During his lifetime, Arkoun's thought was more welcome in Tunisia and Morocco. Indeed, like many other Algerian intellectuals of his generation, Arkoun criticized the increasingly military authority in post-independence Algeria. Moreover, in the 1980s, he came into conflict with another group of critics – the Islamists. In the 1990s, as Algeria traversed a period of violent conflict between the state and Islamist militias, Arkoun grew closer to Morocco. He was ultimately buried in Casablanca with full honors of the Moroccan state.[32]

During his intellectual exile in France, Arkoun was the defender of a progressive and liberal Islam. His thought was enthusiastically received in French academia, as his thinking was situated in the tradition of the Enlightenment, of which the French were proud. Despite his questioning of Western reason, labeling it hegemonic reason,[33] Arkoun found in the Western tradition of 'intellectual modernity' (inspired by the post-modern thought of Jürgen Habermas) and the notion of 'post-secularity,' groundbreaking intellectual ideas for the emancipation of Islamic thought from religious dogmatism and political authority. Arkoun mainly defended a notion of multicultural-humanistic secularity against the French tradition of laicism. His aim was to defend the notion of religious diversity in France, always remembering French civilization in terms of its promise of tolerance and human rights. During his stay in France, Arkoun was a vehement critic of the Islamophobia and discrimination, which is faced by the Muslim community in France up until this day.

Arkoun's biography is significant in locating his thought in an ambivalent position towards modern thought. Despite his critique of French colonialism, he had respect for 'les Père Blancs.' These missionaries, according to colonial thought, came to modernize and civilize the native people of Algeria (and the Maghreb region). Despite his criticism of the methods used by some Orientalist historians to study

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29   Rouighi 2019 a.
30   Dobie 2020: 255.
31   Hashas 2015.
32   Dobie 2020: 255.
33   Arkoun 1995.

Islamic thought, Arkoun was aware that Orientalist thinkers helped to convey the richness of Islamic culture to Western readers. It has been argued that Arkoun would not have become one of the most important pioneers of Islamic philosophy without the help of the Orientalist Louis Massignon. [34]

4. As a last inquiry into Arkoun's and Mernissi's critical thought in this introduction, I provide an overview of their critique of *religious fundamentalism* in Islam. From a postcolonial angle, I would like to point out that Islamism is embedded in global political powers relations. Neo-imperialist political and economic structures create injustices on the transnational level. The result of this has been an expansion of corruption and the establishment of authoritarian regimes in most Arab countries, which in turn affects the economic and social wellbeing of many Muslim citizens. Thus, Islamic fundamentalism is partly the result of the socio-economic injustice that most Muslim are experiencing in their countries.

Furthermore, Islamic fundamentalism is the result of racial and religious discrimination which affects most Muslims. In this sense, the socio-political movements that emerged in 2011 in most Arab-Muslim countries were a hope for national and transnational socio-political and economic justice and a quest for human rights and democratic prospects. However, these emancipatory aspirations were not achieved. As a result, the world witnessed emigration movements and the displacement of several ethnic and religious minorities in Arab countries. Meanwhile, terrorism increased on a transnational level with new fundamentalist organizations such as the Islamic State (*Daesh*). The world also witnessed a wave of terrorist attacks (Tunisia: Sousse and Bardo 2015, Paris 2015, Berlin 2016, Nice 2016). Indeed, terrorism not only affects the Global South, but has also taken root in the Global North and has become a transnational phenomenon.

In addition to the political and socio-economic developments that have already been mentioned as sources as well as consequences of fundamentalism, one could also argue that the rise of Islamic fundamentalism has its foundations in the Islamic discourse itself, which is constrained by the traditional method of conformity (*taqlid*) advocated by some Muslim jurists and Muslim intellectuals.

In contrast to the fundamentalist agenda, Mernissi and Arkoun aim at a rational interpretation of Islamic scriptures. They hence deserve to be studied in order to challenge the phenomenon of fundamentalism, because both thinkers call for *ijtihad*, the free and open intellectual method of the struggle of thought, against the *jihad*, the terrorist struggle. Their approach to Islam echoes the pioneering thinking of the early Muslim rationalist and humanist thinkers.

Hence, this book examines some philosophical approaches in the interest of revolting against Islamic fundamentalism and defending the concept of justice from a transcultural perspective, in search of political freedom and gender equality. As

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34   Günther 2019.

a feminist scholar, Mernissi criticizes the system of patriarchy in Moroccan society. Mernissi's defense of gender justice is relevant not only to Morocco and the Maghreb countries in general, but it is further significant to all countries, where there is a reliance on a patriarchal interpretation of Islamic law (*Shari'a*) as source of legislation. According to a patriarchal interpretation of Islamic law, man is constructed as superior to woman, since God privileges men over women. This patriarchal system of thought is the basis of discriminatory discourse against woman in most Islamic countries. It cannot foster a society, in which women and men are treated equally in the political, social, and legal realms. In what follows, I focus on the legal realm of personal status law (family law) as an important locus of gender discrimination.

As an example, I shall focus on the debate on women's rights that occurred in postcolonial and post-revolutionary Tunisia. In recent years, women in Tunisia have been increasingly affected by violence and social discrimination. The emergence of Islamic parties restricted various rights Tunisian women have gained under the state's gender policy. The first Code of Personal Status (CPS), or family law, in Maghreb originated in Tunisia in 1956. After independence, Tunisia elaborated the CPS, which is a set of progressive Tunisian laws aimed at gender equality. Under the regime of Bourguiba (the first president of Tunisia, in office from 1957–1987), several reforms were carried out. The most successful reform has been the emancipation of Tunisian women. The CPS banned polygamy, granted equal rights in divorce, and established a minimum age for marriage and mutual consent. It granted women the right to work, move, open bank accounts, and start businesses. Bourguiba insisted on upholding women's rights through social institutions . [35]

Tunisian women's rights have been improved through policies by the state , (although so-called state feminism has also been criticized).[36] However, little attention has been paid to the remnants of decades of state feminist regimes since the second half of the 20th century. After Tunisia's independence, for example, the nationalist modern regime introduced certain rights (only) for certain women. The policy of state feminism was followed without significantly changing gender relations and processes of racialization. The mostly male government officials followed a state nationalist agenda presented as feminist and sought to stabilize state power rather than implement intersectional feminism. The agenda of state feminism in post-independent Tunisia is primarily aimed at projecting a modern image of Tunisian women that shows mainly unveiled women participating in social life; this is done by oppressing veiled women and women with religious backgrounds. In addition, state feminism failed to address discrimination against Tunisian women of color and women from rural and subaltern classes. In addition, state feminism in Tunisia

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35   Charrad 1997; 2007; Grami 2018; Moghadam 2018.
36   Badran 2009; Hobuß, Khiari-Loch and Maataoui, (eds.) 2019.

did not engage in a national debate on the commitment to human rights, the establishment of social justice, and the realization of democratic ideals based primarily on the right to pluralism. It has, however, focused on the symbolic politics of giving a voice to modernized, urban women.

Thus, Mernissi's thoughts on gender justice are crucial for today's Muslim societies to protest against various forms of discrimination and fundamentalism as well as against patriarchal structures. As a feminist thinker, she considers women as equal to men. Mernissi defends full participation of women in the public sphere of human interaction. She urges women from all classes and levels of education to become free and emancipated subjects, and to participate equally with men in the improvement of their countries. Mernissi revolts against the discourse "of sending women back to the kitchen,"[37] precisely what the patriarchal ideologies would like to revive. Mernissi uses multiple disciplinary approaches to deconstruct patriarchal discourse, such as using the approach of Islamic feminism to provide a new feminist interpretation of the Islamic heritage and limit the male hegemony in Islamic discourse. Mernissi is one of the founders of this critical approach (see chapter 2.4).

In his critique of fundamentalism, Arkoun challenges the orthodox discourse. He opposes the monolithic interpretation of Islamic scriptures as introduced in the Sunni and Shi'i traditions. Orthodoxy merely repeats the linear chronological account of the historical spread of Islam and reaffirms the theological-legal articulation framework of Islam as a belief system justified by what are considered to be God's words. It is an established and dominant discourse, excluding other opinions and perceptions about Islam. Moreover, orthodoxy considers different opinions as heretical. It represents reason as a threat to a fixed religious dogma, established a priori by orthodoxy (see chapter 3.3). Consequently, orthodoxy influences the development of fundamentalist thought because orthodoxy prevents Islamic discourse from being critically analyzed.

Hence, Arkoun calls for an emancipation of Islamic thought from orthodox or fundamentalist belief systems. To this end, he analyzes various socio-historical events and conceptual notions involved in the establishment of orthodoxy. Arkoun deconstructs the so-called 'logocentric enclosure' of Islamic reason and discourse, pointing to the ruptures in Islamic intellectual history dating back to the fourth/tenth or fifth/eleventh centuries. For him, Islamic thought experiences its decadence and the establishment of orthodoxy starting from these centuries. In this regard, 'logocentrism' corresponds to the creation of the closed realm of the thinkable – the closure of the *ijtihad* in Islam – by some orthodox Muslim religious scholars. Importantly, Arkoun's concept of the Islamic fact/event describes how Islam was transformed from a spiritual and religious faith into an ideological and

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37   Mernissi 2002: 165.

political tool used by orthodox scholars to legitimize and maintain power (see chapter 3.3).

Thus, Arkoun's critique of orthodoxy in our time serves to "open the gate of *ijtihad*"[38], a concept in Islamic legal theory that denotes the creation of norms based on independent reasoning. It represents the effort of making one's own judgments. The purpose of *ijtihad*, defined as independent and rational effort to understand and interpret the religious Islamic sources, is to seek the optimal legislation within the Islamic legacy that promotes the common good (*maslaha*) of Muslims in our contemporary times. Arkoun considers philosophical rational methods as the first basis for the liberation of Islamic reason from orthodoxy. The *ijtihad* that Arkoun promotes is inspired modern and postmodern philosophical theories. In this sense, philosophy offers an analytical ability, the capacity for reflective thinking, and openness to critique in order to overcome the constraints of any cognitive system.[39]

Mernissi's and Arkoun's critical thinking is important in exposing the various forms of discrimination and fundamentalism in our times. In addition, their intellectual oeuvre paves the way for situating postcolonial theory in the Maghrebian context and for developing a concept of justice in Arabo-Islamic philosophy that starts from the deconstruction of the hegemony involved in the formation of Islamic discourse.

1.2   The significance of postcolonial theory for the Maghrebian context

Most Maghrebian universities rarely engage with postcolonial thought, in contrast to Western universities, which are becoming increasingly interested in postcolonial studies. One might argue that Maghrebian academia should engage in the debate on postcolonial thought, since the Maghrebian countries have been colonized. In addition, postcolonial studies can be related to Maghrebian thought, since poststructuralist methods form the basis of postcolonial theory and poststructuralist thought has been also used by Maghrebian scholars to critique hegemonic, orthodox, and patriarchal Islamic discourses. Furthermore, postcolonial thought also serves to critique the neo-colonialism and the nationalism which, as noted above, are challenged in the works of Mernissi and Arkoun. There are several realms in most Maghrebian societies that continue to be influenced and controlled by neo-colonialism, even though the Maghrebian countries are formally independent. As a case in point, French remains the language of culture in most Maghrebian countries, the language of the intellectuals and the bourgeoisie. Their administrative bureaucracy still reflects the system of French colonialism. Because of France's neo-

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38   Hallaq : 1984.
39   Günther 2019.