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Women in Search of Common Ground: Between Islamic and International Human Rights Law

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In mid-February 2009, several hundred scholars, activists, legal practitioners, and policy-makers from 47 countries gathered in Kuala Lumpur for five days to launch Musawah ('equality' in Arabic), a global movement for equality and justice in the Muslim family. The gathering was hosted by Sisters in Islam, the Malaysia-based women's group, which since its formation in 1988 has argued for Muslim women's rights and equality within an Islamic framework. The meeting was planned over the course of two years, at workshops in Istanbul, Cairo, and London, and through constant electronic communication. The planning committee, with membership drawn from 11 countries, consulted with a wide range of other Muslim activists and academics, and produced the Musawah Framework for Action, a programme for bringing together Islamic and international human rights approaches to argue for an egalitarian interpretation of the Shari'a and the reform of family law in Muslim contexts.¹

As a member of the planning committee, I want to tell something of the story behind the formation of Musawah and the shaping of the Framework for Action, which, I shall argue, herald a new phase in the encounter between Islamic and international human rights law. One salient feature of this phase is that it brings women, rather than the abstract notion of 'gender equality', to centre stage.

The encounter between Islamic and human rights law was largely academic until 1979, when two events marked a transformation. The first was the adoption by the UN General Assembly of CEDAW (the Convention on the Elimination of all forms of Discrimination Against Women), which gave gender equality a clear international legal mandate. The second was the popular revolution that brought clerics to power in Iran, which marked the acme of political Islam, and the reversal of the process of secularization of laws and legal systems that had begun in Muslim contexts earlier in

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¹ For the launch and the framework, see <http://www.musawah.org>.
the century. The resultant clash between two opposing yet equally powerful frames of reference gave birth, as the century came to a close, to a new gender discourse that is Islamic in its language and sources of legitimacy, yet feminist in its demands. This new discourse, of which Musawah is a part, offers a new engagement, a meaningful dialogue, between Islamic and international human rights law, and holds the promise and potential to resolve the conflict between them.

This conflict is most evident in the reservations to CEDAW entered by a number of Muslim states on the grounds of inconsistency with 'Shari'a; and it must be viewed in two related contexts. One is that of 20th century shifts, both global and local, in the politics of religion, law, and gender. The other is the current confrontation between, on the one hand, the ideals of human rights, equality, and personal freedom found and advocated in international human rights laws and documents; and, on the other, systems of values and laws rooted in premodern cultural and religious practices, which sanction discrimination on the basis of faith, status, and gender, as embodied in traditional interpretations of the Shari'a. This conflict of values is not confined to Muslim contexts, rather it is ubiquitous, and shades into ongoing animated debates between universalism and cultural relativism. But it acquired a sharper political edge in the Muslim world in the second half of the 20th century with the emergence of the question of Palestine and the rise of Islamists movements, which sought a fusing of religion and politics. The intensification of the 'war on terror' in the early 21st century has added a new layer of complexity to the situation. Rightly or wrongly, many Muslims perceive the war to be directed against them and their religion. This has not only increased their sense of insecurity and the appeal of traditional values, it has also, in their eyes, eroded the moral high ground of human rights law.

Islamists uphold current Muslim family laws as the essence of justice and the foundation of the proper ordering of society, while many human rights activists condemn them as unjust and discriminatory. Family laws in many Muslim contexts, whether codified or uncodified, are based on the rulings devised in classical Muslim jurisprudence (fiqh) for the regulation and termination of marriage. These rulings are also the raison d'être of Islamic reservations to CEDAW.

In this essay, I will begin by summarizing the classical rulings. Then I will sketch—in broad strokes—the contours of the debate and the surrounding politics. Finally, I will trace the development of Musawah, which draws on a century of reformist thinking in Islam to offer both a new language and new terms of engagement that can bring a much needed paradigm shift in the politics of Islamic and human rights law.

A. Marriage in classical Islamic jurisprudence (fiqh)

This discussion of family law in Muslim legal tradition is prefaced with two caveats. First, I am concerned here mainly with the ways in which classical jurists understood and defined marriage; whether these rulings corresponded at the time to actual practices of marriage and gender relations is, of course, another question, and one that recent scholarship in Islam has started to answer. What this scholarship warns us is not to take the classical fiqh texts at face value; in premodern times judicial and court practices were quite different, and women had better access to legal justice than has been the case in more recent times; they frequented courts to negotiate the terms of their marriage and divorces.

Secondly, as in other traditions, gender equality in the current sense has not been part of the legal tradition of Islam nor has it been relevant to notions of justice among Muslims. Yet until the 19th century, Muslim legal tradition granted women better rights than any Western legal tradition; they were able to retain their legal and economic autonomy in marriage, while for instance in England it was not until 1882, with the passage of the Married Women's Property Act, that women acquired such a right. It was only in the course of the 20th century that the situation was reversed in favour of women in many Western countries.

Classical jurists defined marriage not as a sacrament but as a contract that renders sexual relations between a man and woman licit. The contract is called al-nikah (literally, ‘contract of coitus’) and is patterned after the contract of sale, which served as the model for most contracts in Islamic jurisprudence. It has three essential elements: the offer (ijab) by the woman or her guardian (wali), the acceptance (qabul) by the man, and the payment of dower (mahri), a sum of money or any valuable that the husband pays or undertakes to pay to the bride before or after consummation.

4 For this comparison, see Danaya Wright, 'Legal Rights and Women’s Autonomy: Can Family Law Reform in Muslim Countries Avoid the Contradictions of Victorian Domesticity?' (2007) 5(1) Havaia: Journal of Women of the Middle East and the Islamic World 33-54.


6 The discussion here is intended merely to outline the salient features of the marriage contract and to give references to sources available in English; for introductions to and translations of classical texts on marriage, see Madelaen Farah, Marriage and Sexuality in Islam: A Translation of Al-Ghazali’s Book on the Etiquette of Marriage from the I’ba (Salt Lake City: University of Utah Press, 1984), Susan Spectorisky, (1993), Chapters on Marriage and Divorce: Responses of Ibn Hanbal and Ibn Khushayb (Austin: Texas University Press, 1993); for differences among various schools, see Muhammad Jawad Maghniyah, Marriage According to Five Schools of Islamic Law, vol V (Department of Translation and Publication, Islamic Culture and Relations Organization, 1997), and for critical analysis of the marriage contract, see Kecia Ali, ‘Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Law’ in Omid Safi (ed), Progressive Muslims: On Justice, Gender, and Pluralism (Oxford: OneWorld, 2005), 163-69; Kecia Ali, Sexual Ethics and Islam:

2 There is now an extensive literature on this 'Islamic feminism'; for overviews, see Margot Badran, Feminism in Iran: Secular and Religious Convergences (Oxford: OneWorld, 2009), Ziba Mir-Hosseini, 'Muslim Women’s Quest for Equality: Between Islamic Law and Feminism' (2006) 32(1) Critical Inquiry 629-45.

3 For my definition of Islamists as 'Muslims committed to public action to implement what they regard as an Islamic agenda', see Ziba Mir-Hosseini and Richard Tapper, Islam and Democracy in Iran: Eikhevari and the Quest for Reform (New York: I. B. Tauris, 2009), at 81-2.
in spirit, and drew a clear line between free and slave women in terms of rights and status. They distinguished between the right of access to the woman's sexual and reproductive faculties (which her husband acquires) and the right over her person (which he does not). Certainly, there were significant differences and disagreements about this among the schools, and debates within each, with legal and practical implications. It should, however, be stressed that the notion and legal logic of 'ownership' and sale underlie the juristic conception of marriage and define the parameters of laws and practices, where a woman's sexuality, if not her person, becomes a commodity and an object of exchange, even if only once. It is this legal construct that justifies the unequal construction of rights in marriage; it is based on a certain reading of Islam's sacred texts, and exerts its power through the rules that define polygamy and divorce.

B. Contemporary Muslim legal discourses and the challenge of gender equality

Classical fiqh provisions of marriage continue to form the basis of family law in Muslim countries today, though they have been the subject of intense contestation and debate among Muslims. The debate began in the late 19th century, and it remains entangled with the politics of Muslim encounters with modernity and with Western colonial powers, during which women and Islamic law have become symbols and carriers of cultural tradition, a battleground between the forces of traditionalism and modernity.

With the emergence of Muslim nation-states in the first part of the 20th century, in most cases, as part of the modernization of the legal system, fiqh was put aside in all areas of law except family and marriage, where classical rulings were selectively reformed, codified, and grafted onto unified legal systems inspired by Western models. In codifying family law, governments introduced reforms through procedural rules, which left the substance of the classical rulings more or less unchanged, with some notable exceptions: Tunisia banned polygamy in 1956; Turkey abandoned fiqh in all spheres of law and replaced it with Western-inspired codes; Saudi Arabia preserved classical fiqh as fundamental law and attempts to apply it in all spheres of law.

These developments transformed the relationship between fiqh, the state, and social practice. Codes and statute books took the place of classical fiqh manuals;

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7 In Shi’a law a man may contract as many temporary marriages (muta’a) as he desires or can afford. For this form of marriage, see Shahla Haeri, Law of Desire: Temporary Marriage in Iran (New York: I. B. Tauris, 1989).


9 See Mir-Hosseini ‘Towards Gender Equality’.

10 Whether these rulings corresponded to actual marriage practices and gender relations is, of course, another area of inquiry; indeed recent scholarship tells us of discrepancies between juristic discourse and judicial and marriage practices; see for instance, Rapoport, Marriage, Money and Divorce in Medieval Islamic Society; Sonbol, Women, Family and Divorce Laws in Islamic History; Tucker, In the House of Law.
family law was no longer solely a matter for private scholars—the *fugaha*—operating within a particular *fiqh* school, rather it became the concern of the legislative assembly of a particular nation-state. Deprived of their role in defining law and administering justice, the practitioners of *fiqh* retreated into scholasticism; no longer accountable to society, they grew defensive of past tradition and became unable to meet the epistemological challenges of modernity, in which the notion of gender equality has become central.

The codification of *fiqh* provisions led not only to the creation of a hybrid family law that was neither classical *fiqh* nor Western, but also to a new genre of texts, issued by religious publishing houses, under the general rubric of ‘Women’s rights in Islam’. Their authors—largely men, at least until very recently—are not necessarily jurists, nor do they resort to legal reasoning. They keep silent on the logic of women’s sexuality as property, and of marriage as a form of sale, which underlies the whole edifice of classical family law. This logic is so repugnant to modern sensibilities and values, and so alien from contemporary Muslims’ experience of marriage, that no author will admit it openly. Writing for the general public and keen to distance themselves from overtly patriarchal language and concepts, these authors’ prime objectives are to explain the ‘high status of women in Islam’ and to clarify ‘misunderstandings’ about Islamic family laws. Thus, they place their focus on the ethical and moral rules that marriage entails for each spouse, drawing attention to those Qur’anic verses and *hadd* that affirm the essential equality of the sexes. They ignore the fact that these ethical rules, in effect, carry no legal sanction, and they put forward no argument for translating them into imperatives.

In these texts, terms such as ‘equity’ or ‘complementarity of rights and duties’ become a new language for the inequalities embedded in the classical *fiqh* construction of marriage and gender relations.

A good example of such texts is Jamal Badawi’s booklet, *Gender Equity in Islam: Basic Principles*, which has a wide circulation. Marriage, Badawi states, is ‘about peace, love and compassion, not just the satisfaction of men’s needs’, but then he goes on to reproduce all the *fiqh* rulings on marriage and divorce almost verbatim.

In line with other texts in this genre, Badawi simply outlines what he calls ‘normative teachings of Islam’, glosses over male dominance, and imputes the injustices that women suffer in marriage and society to what he calls ‘diverse cultural practices among Muslims’. He seems to be unaware that many of the *fiqh* rulings that he reproduces negate the ‘basic principles’ of gender equity that he claims as Islamic in his booklet.

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12 Jamal Badawi, *Gender Equity in Islam: Basic Principles* (American Trust Publication, 1995); a short version of the booklet is posted on several Islamist websites.


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The legal meanings of ‘equity’ and ‘complementarity’, which conceal the classical juristic logic of women’s sexuality as property and marriage as a sale, become clear once these texts resort to reasoning. Two such texts that offer a rationalization, a new defence of the classical *fiqh* rulings, and contain a new theory of gender rights, are Murtaza Mutahhari’s *The Rights of Women in Islam* and Abu’l A’la Maududi’s *Purdah and the Status of Women in Islam*. Both authors were Islamic ideologues, and their writings, rooted in anti-colonial and anti-Western discourses, have become seminal texts for Islamist groups and movements. Writing in Urdu in the 1930s, in the context of pre-partition India, Maududi’s adamat rejection and condemnation of modernity and liberal values appealed to radical Islamists. For him, the problem with Muslims is that they have abandoned their own way of life and adopted secular (ie Western and to some extent Hindu) values that have corrupted them and are destroying their civilization. The solution he offers is an ‘Islamic state’ with the power and inclination to enforce the Islamic way of life, where women’s seclusion and control by men are foundational. Mutahhari, writing in Persian in 1960s Iran as part of the religious opposition to the secularizing policies of the Pahlavi regime, is less adamat in his opposition to modernity and less overtly patriarchal: he is more popular with moderate Islamist groups.

These authors differ in style, language, and sophistication, but they follow the same line of argument, based on the same premises of the ‘naturalness’ of laws in Islam and the ‘innate difference’ between men and women. These two premises become the pillars of a new defence of gender inequality, which goes as follows: men and women are created equal and are equal in the eyes of God, but the roles assigned to them in creation are different, and *fiqh* rules reflect this difference. Differences in rights and duties do not mean inequality or injustice; if correctly understood, they are the very essence of justice. This is so because these rulings not only reflect the Shari’a, which they argue is the divine blueprint for society, but they are also in line with ‘human nature’ (jinayat) and take into consideration the biological and psychological differences between the sexes.

In the second part of the 20th century, with the rise of political Islam, the theory of ‘gender equity and complementarity’, as developed in these texts, became closely identified with Islamist political movements, with devastating consequences for women. Islamist forces—whether in power or in opposition—started to invoke Shari’a as a legitimizing device. Tapping into popular demands for social justice, they presented ‘Islamization’ as the first step to root out corruption, to combat crimes and immorality, and to bring about a moral and just society. These issues spoke to the masses, and played on the popular belief among Muslims that Shari’a is the essence of justice, hence no law that is ‘Islamic’ can be unjust.
The 1980s saw the introduction of regressive gender policies in many parts of the Muslim world; for instance, the dismantling of the family law reforms introduced earlier in the century in Iran and Egypt, compulsory gender segregation and dress codes for women in Iran and Sudan, and the enforcement of Hudud Ordinances in Pakistan that led to the persecution of many women. But the 1980s also saw the expansion of human rights legislation, the rise of an international women’s movement, and the emergence of women’s NGOs in many Muslim countries. The human rights framework, instruments like CEDAW, international funds, and transnational links gave women’s rights activists what they needed most: a point of reference, a language and organizational tools for their struggle to resist the regressive policies of political Islam.

All these developments widened the gap between forces of traditionalism and modernism, and intensified the conflict between Muslim legal tradition and human rights ideals. While feeding (on) older stereotypes, old polemics between Islam and the West were reignited. For many Islamist, international human rights law is an extension of colonialist politics, a Western plot to undermine the Muslim way of life, and must be rejected in the name of Islam. Many women’s rights activists, on the other hand, have attacked regressive Islamist policies by using older Orientalist and essentialist narratives that treat Islam as a monolith inherently incompatible with modernity and gender equality.

Like all ideologies, however, both political Islam and human rights carry the seeds of their own mutation, with some unintended and paradoxical consequences that dented the legitimacy of both. The political slogan ‘Return to Shari’ah’, which in practice amounted to translating into policy classical fiqh rulings on gender relations and the family, provoked criticism and spurred women to increased activism. The Islamists’ defence of these patriarchal rulings as ‘God’s Law’, as the authentic ‘Islamic’ way of life, brought the classical fiqh books out of the closet, and unintentionally exposed them to critical scrutiny and public debate. This opened a space, an arena, for an internal critique of patriarchal readings of the Shari’ah that was unprecedented in Muslim history, and a growing number of women came to question whether there was any inherent or logical link between Islamic ideals and patriarchy. At the same time, in the aftermath of the 11 September 2001 attacks, the politics of the ‘war on terror’, the illegal invasions of Afghanistan and Iraq—both partially justified as promoting ‘democracy’ and ‘women’s rights’—the subsequent revelations of abuses in Guantanamo and Bagram, and the double standards employed in promoting UN sanctions, have discredited international human rights ideals in the eyes of many. The gap between these ideals and the practices of their proponents has increasingly invited accusations of hypocrisy.

C. Musawah: A global movement for equality and justice in the Muslim family

It is against the backdrop of these developments that Musawah started to take shape. The original inspiration for the formation of Musawah as a global movement was the Moroccan women’s campaign for an egalitarian family law, which achieved success in 2004. Adopting the Moroccan women’s slogan—‘Change is Necessary and Change is Possible’—we set out the vision, principles, and conceptual foundation of the movement in Framework for Action.14 Our objective was to link scholarship and activism, and to bring together fresh perspectives on Islamic teachings, universal human rights principles, fundamental rights, and constitutional guarantees, and the lived realities of women and men today, in order to argue that equality in the Muslim family is now both necessary and possible, and that denial of this equality in the name of Islam and tradition should be firmly rejected.

It is not my intention here to elaborate on the Musawah Framework for Action, but rather to give an idea of the kind of hermeneutical, cultural, and political challenges that we faced in bringing together Islamic and human rights frameworks and developing an overlapping consensus among widely varied women’s groups. The most important challenge we faced was how to negotiate and bridge the gap between the conceptions of justice that underlie notions of gender in the classical fiqh texts that underpin Muslim family laws, on the one hand, and human rights documents such as CEDAW on the other.

A number of us, as scholars and activists, had come to the conclusion that, given the close link between religious and political identity in Muslim contexts, there could be no justice and no sustainable change as long as patriarchy was not separated from the Shari’ah. We knew that if we wished to abolish patriarchal laws and customs among Muslims, it was not enough, and it is sometimes counterproductive, to dismiss them as anachronistic or attack them on human rights grounds only. To achieve sustainable and deep-rooted change, dialogue and consensus are needed; we knew that we must show the injustices that arise from patriarchal customs and laws based on the classical fiqh notion of marriage; and, in this case, we must offer defensible and comprehensible alternatives within a framework that recognizes equality and justice in Islam. It was only then that we could free ourselves from an apparent choice between the devil of those who want to impose patriarchal interpretations of Islam’s sacred texts, and the deep blue sea of those who pursue a neo-colonialist hegemonic global project in the name of human rights and feminism. To achieve this we had to do two things. First, we had to build coalition and consensus among diverse groups of women’s rights activists, notably between, on the one hand, those secularists for whom religion, and especially Islam, has been the enemy, holding back any struggle for equality, and the increasing number of women, on the other hand, who are finding sources and justification for their struggle in their faith. Secondly, we had to broaden the debates and horizons of thinking about Muslim family laws, and to approach Islam’s sacred texts as sources of empowerment rather than as obstacles to change.

Drawing on the new wave of reformist thought and feminist scholarship in Islam, we grounded our claim to equality and arguments for the reform of family laws simultaneously in Islamic and human rights frameworks. Following and building on the work of earlier reformers, this new scholarship no longer seeks

14 Now available in five languages on the Musawah website (http://www.musawah.org/).
(as earlier reformers did) an Islamic genealogy for modern concepts like gender equality, human rights, and democracy; rather it places the emphasis on how religion is understood and how religious knowledge is produced, how gender is constructed in Muslim legal tradition, and how interpretations of the Shari'a must be evaluated in their historical contexts.

We decided to commission a number of concept papers by reformist thinkers such as Amina Wadud, Khaleed Abou El Fadl, and Muhammad Khalid Masud. We intended to use them as a way of opening new horizons for thinking, to understand the genesis of Muslim family law, how it was constructed within the classical fiqh tradition, and how the wealth of resources within that tradition and in the Qur'anic verses on justice, compassion, and equality can support human rights and a process of reform toward more egalitarian family relations. These papers became the basis of a wider discussion with a larger group of scholars and activists to shape the Framework for Action.15

It was in the course of these discussions that we realized that the source of many misunderstandings and obstacles to consensus and progress lay in the very notion of the Shari'a, which both contemporary Islamists and women's rights advocates have constructed as immutable and not open to negotiation or contestation from within. To counter this, and to pierce the veil of sanctity surrounding the classical law, we invoked two crucial distinctions within Muslim legal tradition, which have become obscured and elided in recent times. These are, first, the distinction between Shari'a (the way, as revealed in Islam's sacred texts) and fiqh (legal science and juristic rulings); and secondly, the distinction within fiqh between two major categories of rulings, those regulating the realms of 'ibadat (ritual/worship) and mu'amalah (social/contractual). Muslim family laws, we argued, are neither divine nor immutable; they are derived from divine sources, but in the end they are human understandings, legal constructs. They are the product of fiqh, as developed by classical jurists in vastly different historical, social, and economic contexts. They belong to the realm of mu'amalah, an area of fiqh rulings that is open to ijtihad, reinterpretation in line with the demands of time and place. These rulings, we argued, must change, because they are no longer in line with the justice that is the spirit of the Shari'a. This is so because in our time and in our context there can be no justice without equality. In many ways, we argued, CEDAW, which wants to eliminate gender discrimination, is more in line with the Shari'a than is current family law in many Muslim contexts.

But the divide between 'Islam' and 'feminism' was not easy to overcome. It led to heated exchanges among the members of the planning committee and to continual redrafting of the Framework, and was echoed in the Musawah gathering in February 2009. Unlike women's rights activists from Indonesia and Malaysia, who had no qualms working with religion, many activists from other regions, in particular those from North Africa, showed a visceral mistrust of religion and saw any engagement with it as futile. They argued that feminist demands, and by extension human rights and equality, were only achievable through a secular approach; religion for them was not a source of inspiration and liberation, rather it was an obstacle that would eventually be overcome but must be ignored for the time being. Many participants, however, found this engagement with religion empowering and liberating, and welcomed it enthusiastically. One young woman exclaimed, 'I feel like someone opened a window into my mind and let in the fresh air. It feels so good!' As columnist Mona Eltahawy observed, 'How lucky that young woman is, I thought. Just over 20 years ago, I felt as though I had to smash the window into my mind open myself, fists bleeding and bruised, to catch some of that fresh air.'

Undoubtedly, there will continue to be irreconcilable differences between the more ideologically committed—secular feminists on the one hand and Islamists on the other—but it was encouraging to find so many participants happy to occupy the growing area of common ground which the Musawah movement seeks to open up.

### D. Finding common ground

I conclude by drawing out three themes that run through my argument to stress the potential of new developments like the Musawah movement for bringing constructive dialogue and cooperation between Islamic and human rights law.

First, jurisprudential theories and legal systems are more connected than is often acknowledged to the cultural, political, and social contexts within which they operate. They are also reactive, in the sense that they react to ideological, political, social, and economic forces, and to people's experiences and expectations. Muslim legal theory is no exception, as evidenced by 20th century developments. Patriarchal interpretations of the Shari'a and the challenge by Musawah should be understood in this complex double image, as both moulding and expressing social norms and practices. The first half of the century saw the retreat of religion from politics and the secularization of law and legal systems in the Muslim world. This process was reversed in the late 1970s, with the rise of political Islam and the Islamists' slogan of 'Return to Shari'a'. The return of religion to politics and law renewed the debate over equality and human rights, which became part of a larger intellectual and political struggle among the Muslims, with their widely divergent understandings of their religion and ways of reading its sacred texts.

My second theme is that the idea of gender equality, which became inherent to conceptions of justice in the course of the 20th century, presented traditional interpretations of the Shari'a with a challenge that they have been trying to meet. The resultant 'epistemological crisis' in Muslim legal tradition has opened a space for negotiation with other legal theories and for transformation from within, and


can disarm the cultural relativist arguments that motivate much resistance to international human rights instruments such as CEDAW. The philosopher Alisdair MacIntyre argues against cultural relativism as follows.\(^{17}\) Every rational inquiry is embedded in a tradition. A tradition of inquiry has reached an epistemological crisis when, by its own standards of rational justification, disagreements can no longer be resolved rationally. This gives rise to an internal critique that is bound to result in transformations; when the questions and demands for change and adoption come from inside the tradition, to resolve the crisis, the tradition has to respond, for example by adopting a new idea or value and making it inherent to the tradition. I suggest that this is precisely what happened to Muslim legal tradition, leading in the 21st century to the emergence of voices such as those of Musawah that are challenging, from within, the ‘Islamic reservations’ to CEDAW. These voices argue for gender equality using the conceptual tools and legal theories of the tradition, such as the distinction between Shari’a and *fiqh* and the notion of *ijtihad*, thereby defusing opposition from defenders of traditional *fiqh*, who invoke cultural relativist arguments for gender inequality disguised in Islamic terminology.

My third theme is that we are at the threshold of a new phase of relations between Islamic and human rights legal systems, which was ultimately catalysed by reactions to both the Islamist slogan of ‘return to Shari’a’, and the US escalation of the ‘war of terror’. Both ‘Islamic law’ and ‘human rights’ have been ‘desanctified’, and both have been discredited for their manifest failures in practice to secure justice, notably for women. The launch of Musawah is not alone in marking a new phase in Muslim women’s struggle against Islamist attempts to restore gender inequality. The emergence of the Green Movement in Iran in 2009 is another such marker. As many commentators have pointed out, this movement may have started as a protest against a fraudulent election, but it soon became, and has remained, a civil rights movement, in which Iranian women have been the most prominent actors.\(^{18}\)

If my analysis is right, the year 2009 may prove to have been as important as 1979 in shifting the debate between Islamic and human rights law onto new ground. The momentous events in the Arab world in early 2011 have brought major political change in Egypt and Tunisia and inspired and ignited demands for democracy and human rights in the rest of the Arab world, including Syria, Yemen, and Libya. Leaders of the Iranian regime (and some of their ideological opponents from Washington to Tel Aviv) have claimed the 1979 ‘Islamic’ revolution in Iran as the model for these events, but the actors have explicitly acknowledged the inspiration of the Iranian oppositional Green Movement of 2009—which is thriving and expanding despite the brutal crackdown. Muslims in power, as well as their foes in Western governments, not to mention mainstream Western media, continue to interpret events in Muslim countries through the prism of dichotomies such as ‘secular’ versus ‘Islamic’ or ‘feminist’ versus ‘religious’. But Musawah and the Green Movement in Iran have shown, and the 2011 events in the Arab world have confirmed, that such dichotomies are both false and arbitrary, and that the real struggle—to which the fate of Islamic and human rights law became hostage in the course of the 20th century—is the struggle between despotism and democracy on the one hand and patriarchy and gender equality on the other.

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\(^{18}\) See for instance, Nader Hashemi and Danny Postel (eds), *The People Reloaded: The Green Movement and the Struggle for Iran’s Future* (New York: Melville House, 2010).