Article

The 'Islam of the Government': The Islamic High Councils in Algeria, Morocco, Mauritania and Tunisia

Francesco Tamburini [ID]

Department of Political Science, University of Pisa, Italy

Abstract

Islam, in its relation between state and politics, has often been used to strengthen the sense of national identity or as a tool of self-legitimation by Arab regimes to gain the support of the people. This happened in Algeria, Morocco, Mauritania and Tunisia, where the state not only co-opted religion for official purposes but absorbed the '*ulamā*', the religious establishment, in the administration as simple employees of newly created institutions, such as the High Islamic Councils. This article aims to shed light on these little-known organizations, one of the regime's keystones to having a firm hold on their power.

Keywords

Islamic high councils, Maghreb, Islam and politics, *ulamā*, political religious institutions

The legal and historical structure

In the Maghreb states, in the aftermath of the achievement of their independence, governments controlled and co-opted Islam, using religion to consolidate their power and to strengthen national identity. In Tunisia this process arose already at the time of the Ottoman reformism and the *tanẓīmāt*. Islam, with its values and symbols, was employed to legitimize regimes and to justify their policies (Papi, 2006; Tozy, 1993). States took control over religious issues and personnel, absorbing the *ulamā* (singular: *ālim*) into the public administration, who were turned into functionaries of newly created institutions that were not enshrined in the Islamic classical law (Le Roy, 2016). These state-controlled public organisms helped regimes to hold the power, interpreting religious texts and issuing *fatāwā* (singular: *fatwā*), the formal ruling or interpretation of Islamic law.[1] The Islamic High Council in Algeria and Mauritania, the High Council of the *'Ulamā'* in Morocco and the Islamic High Council in Tunisia represent the 'long arm' of the executive powers that succeed in controlling most of the religious issues in their countries.[2] Oddly enough, no specific study has ever been devoted to these institutions despite their institutional and political relevance.

Before examining each institution, it is necessary to explain how the Maghreb states could manipulate religion, while also giving some hints of the complex relationship between Islam and politics.

Corresponding author:
Francesco Tamburini, Department of Political Science, University of Pisa, via Serafini, Pisa 31-56126, Italy.
Email: frSancesco.tamburini@unipi.it

Islam is an integrated and complex system of connections between religion, society and State (*Dīn, Duniyā wa Dawla*), which rejects the Western concept of secularism (in Arabic عَلْمَانِيَّة *ʿalmānīyya*). *Dīn* is a polysemic word in Arabic; it is much more than religion, worship and dogma, because it means to live in association with other Muslims, in a close-knit community. In other words, religion is an ideology that regulates social relations between human beings (Campanini, 2015). In a perfect, and utopian, Islamic society, sovereignty belongs to God and no law or constitution can subordinate Islamic principles. Thus, it would be a pure theocratic society, in which the state has value only if it depends on the revealed religion and God's message. The part of the constitutional law and the activities of the Western-style legislation are regarded by the Islamic law pertaining to the institutions of power (*al-ahkām al-sulṭānīyya*), and specifically defined as *siyāsa* (literally politics, government and the affairs of the state). *Siyāsa* means governing and managing internal and international policy with norms that did not come from Islamic sources. In any case, these norms must be *Šarīʿa* compliant, thus becoming *Siyāsa Šarīʿa*, or the administrative power and government (*Siyāsa*) within the boundaries of the *Šarīʿa* (Castro, 2004).

In reality the relationship between *Šarīʿa* and Western law has always been very complicated and it depends a lot on the different local circumstances and the time (Dupret, 2012). The interconnection between *Siyāsa Šarīʿa* and *Šarīʿa* changed in time. It should be immediately underlined that if in the first years of Islam this complex relation was in favour of the *Šarīʿa*, afterwards, in some jurisdictions, there was the prevalence of *Siyāsa Šarīʿa*, which, used as a tool to govern public affairs, was able to replace the pure *Šarīʿa* in many aspects of the law, even though Islamic law remained a source of religious and moral authority (Hallaq, 2013). Furthermore, since the 19th century, with colonialism, new foreign legislative models arrived in the field of law, influencing the *Šarīʿa* oriented legislations, which had already questioned and been challenged by the reforms brought about by the Ottoman empire (Weissman and Zachs, 2005). Western legal influence (Roman Law in the Maghreb and elsewhere the Common Law) produced a further estrangement from the *Šarīʿa* model. Tunisia was the first state of the Arab-Muslim world to endow itself with a constitution in 1861. It can be generally assumed that France 'exported' the modern state concept to the Maghreb, and its structures basically did not change after their independence. Islamic law and Islam were exploited during the national liberation struggles (Berque, 2001: 108–109) and Muslim religion began to be instrumentalized by the elite in power as a means of national unity and as the solid base to build the future nations (Willis, 2014: 157).

The Maghreb countries adopted a Western model of constitutional law after decolonization (Rycx and Blanchi, 1983). However, the radical difference from the Western concept of state is that Islam in the Maghreb constitutions is promoted to state religion[3] and it is considered the significant identity where the deepest values of the nation founds its roots, hence we are in the presence of confessional states (Roy, 2016). All contemporary constitutions make clear reference to Islam: Morocco article 3 ('Islam is the religion of the State'), Tunisia article 1 ('Tunisia is a free, independent sovereign State, its religion is Islam'), Algeria article 2 ('Islam is the religion of the state'), Mauritania article 5 ('Islam is the religion of the people and of the State'). Furthermore, the head of state in Mauritania, Algeria and Tunisia has to be a Muslim, while in the Kingdom of Morocco the king is the 'Commander of the faithful' and his Alawite dynasty claims to descend from the Prophet. Besides, in Algeria the constitution (article 10) does not allow 'practices that are contrary to the Islamic ethics'.

However, *Šarīʿa* is not proclaimed (excluding in the Mauritanian constitution) 'the' source of law and therefore at the top of the hierarchy of sources of law (Arjomand, 2007). There is not the so-called 'repugnancy clause', which is the constitutional provision that requires legislation to conform to the core concepts of Islam.[4] On the other hand, it is not explicitly stated that secular law has the characteristic of a primary norm (Castro, 2006: 13).

As we said, *Šarīʿa*, or in other terms the *fiqh* (the law in the strict sense of the legal and religious doctrine), although retaining a moral significance and a guide to the legislator, was marginalized in favour of the Western oriented constitutions, laws, civil and criminal codes. In fact, a great part of the *Šarīʿa* concerning the *muʿāmalāt* (believer's relationships with other human beings regulated by Islamic law) was set aside, but the ritual rules and the practices of worship (*ʾIbādāt*) remained intact. Among the *muʿāmalāt*, which are often preserved, there is the succession and the family law (Piccinelli, 2005).

Sometimes, however, legislators had to adjust these *muʿāmalāt*, so it was more difficult to justify the changes to *Šarīʿa* rules in favour of the Western law (An-Naim, 2008). In all of the Muslim countries the use of the *Iğtihād* instrument became common, namely to deduce, from the *Qurʾān* and the Sunna, through the production of an intellectual effort, new provisions respectful of these two religious sources. Historians have erroneously believed for a long time that from the 10th century in the Sunni area, the so-called 'closing the door of *Iğtihād* (*ʿinsidād bab al- Iğtihād*)' had occurred, that is to say that legislators had ceased to practise it, holding that all legal issues had been already defined and that legislation should be limited to apply, or rather imitate (*taqlīd*), what had been decided by the four legal schools (*maḏāhib)*, namely the Maliki, Hanafi, Hanbali and Šafiʿi. Only with the Islamic reformism of the late 19th century there was a return to the full use of *Iğtihād* (Hallaq, 1984), although the complete restoration of *Iğtihād* took place after decolonization. However, this restoration was not carried out by *muğtahiddun* (singular: *muğtahid*), those legally in charge to execute the *Iğtihād*, but by the state, embodied by a secular legislator, who engineered a kind of legislative hybridization. In Tunisia, legislators, under the aegis of the president Habib Bourguiba, created, by applying *Iğtihād* (elevated to the rank of source of law), to the Code of Personal Status of 1956, allowing the alteration of the precepts of the *Šarīʿa* and their coexistence with Western-style rules (Predieri, 2006: 151). The newly born republic, organized by Bourguiba, envisioned a thorough control of the state in the religious sphere, where the religious practices were carried out within the limits imposed by the government (Kerrou, 1998: 84). Bourguiba took control of the mosques and integrated the *Šarīʿa* courts in the secular legal system. Something similar happened in Algeria, Morocco and Mauritania. In Algeria the first presidents, Ahmed Ben Bella and Houari Boumedienne, obliterated almost immediately the role of the traditional *ʿulamāʾ*. In Morocco, the kings Mohamed V and Hassan II placed themselves at the top of the religious hierarchy with the monopoly of interpretation on religious issues, marginalizing not only the class of the *ʿulamāʾ*, but also the *sufi* orders and the *salafiyya* movements (Munson, 1993). In 1960, within the French community, the Islamic Republic of Mauritania became independent. It was the first country in Africa to claim the label of 'Islamic state', although at that time this designation did not absolutely mean any interference of religion in public affairs. The choice was dictated by practical reasons, because the first Mauritanian political leaders did not have a truly popular legitimacy originating from a consolidated democracy, nor historical values, such as an armed resistance from colonization. Islam was the only common feature of the different ethnic groups. Therefore, the Mauritanian leadership tried to give at least a religious legitimacy to the new country, even though political power remained essentially secular and tied up to Western legal values (Rehstock, 2007: 51).

As we noticed, Tunisia led the way in the other Maghreb countries to the secularization of the civil and political society. However, the influence of politics on religion sometimes generated a sort of schizophrenic system, where the relation between state and Islam was unclear or blurred: Algeria, despite having a socialist form of state, in 1984 promulgated a family code that was a 'nationalized' version of Islamic laws, with specific legal and political restrictions applied to women. For this reason, even if partially revised in 2005, feminist movements call this code 'the code of shame' (Lalami, 2015); Mauritania experienced in the 1980s a partial re-Islamization of the

state with the introduction of a penal code based essentially on *Šarīʿa* and the Qurʾanic punishments relating to *Ḥudūd* crimes.[5] The Mauritanian penal code, which was still in effect, contributed to complicate the law system and the relation between Islam and the state in the country.

Another important effect of the takeover of the religious sphere by the state, which invaded the realms of Islamic law, was the awakening of radical Islamic forces. The secular orientation pursued by governments, combined with wider social and economic problems, led radical Islamists to criticize and challenge the state, claiming they embodied the 'true Islam' (Sahin, 1997). Regimes initially were tolerant, mainly because they wanted to counterweigh the radical left movements or parties, but later responded with a mixture of compromise and repression. In any case, all governments kept imposing a tight control over religious issues, trying also to cope with the sense of unease experienced by part of the population that, in the end, did not completely understand why *ʿulamāʾ* had been deprived of their independence and traditional role of arbiters. The *ʿulamāʾ*, scholars knowledgeable about Islamic law and theology, always represented the elite in Islamic societies (Zaman, 2002). Furthermore, they have always been the link between the state, the public authority and the people (Winter, 2009: 25). Their support is essential for the government's survival and stability, hence the necessity to secure their loyalty. This aim was reached, setting up new and solidly controlled organisms in the form of 'Islamic councils', where the Islamic scholars exercised their theological expertise without the slightest independence and, therefore, without conflicting with the political establishment's views. The co-optation of the *ʿulamāʾ* made it possible for their legal opinion to be reflected by the government's attitude towards religious issues. For several reasons, the institution of such organisms was not simultaneous in the Maghreb and most of the states waited many years before creating these institutions. After independence, the newborn political elite did not deem it necessary, nor even thought, to build an institutional framework for the *ʿulamāʾ*. However, in the following years, the internal situation changed and the need for a state-depended organization was considered essential, even though these institutions did not always succeed in controlling Islamic radicalism or stopping its ideology, which often led to violence and terrorism.

Complex juridical mechanisms with common purposes: Stability and control

Algeria

Algeria was the first state to experiment with institutional state control on *ʿulamāʾ*. Under the Ahmed Ben Bella's government, immediately after independence, Algeria took a leftward course that provoked great concern between the Muslim conservatives and traditionalists,[6] who organized an Islamically oriented opposition (Knaus, 1987: 105). One of the results of this opposition was the *Al-Qiyam al-Islāmiyya* (Islamic values). This association, founded in 1963 by the *aʾimmah* (plural of *imām*) Ahmed Sahnoun and Abdelatif Soltani, fought all non-Islamic cultural and political influences in Algeria, pressing to reintroduce *Šarīʾa* in every realm of Algerian society and create a real Islamic state (Willis, 1996: 43–44; Roberts, 1988).

The activities and ideas of *al-Qiyam* undermined the Algerian government, which risked losing control of the religious sphere (the president Ben Bella could not find any *ʿilm* that wanted to condemn or criticize the association). The bloodless coup of 19 June 1965 led by Houari Boumedienne that ousted Ben Bella from power was welcomed by Islamist forces. In fact, they believed erroneously that the new president would have defended the Islamic values in the country, since in Ben Bella's critique he had always stressed the importance of the religious past and identity of Algeria. However, it was just an opportunistic move, because after the coup he

operated a 'selective incorporation' of the programme of *al-Qiyam*, and, at the same time, also a repression of the Islamic movement (Knauss, 1987: 105). A prefectoral decree in September 1966 banned *al-Qiyam al-Islāmiyya* from the regions of Algiers and three years later a new decree prohibited all his activities throughout Algeria.

Without any doubt, part of the repression and control of Islamic movements was the creation of the Conseil Supérieur Islamique (Islamic High Council – IHC) or *Mağlis islāmī aʿlā* (مجلس إسلاميّ أعلى) by the Decree 66-4 on 25 January 1966 (JORADP, 1966). This organism, created under the aegis of the Ministry of Religious Affairs and Waqf,[7] according to article 1 of the Decree 66-4, had the main purpose of 'affirming the real face of Islam and eradicating every falsification and fiction introduced in the Islamic faith'. It was a clear reference to radical Islam, which diverted from the real interpretation of Islam. Only the IHC embodied true Islam and therefore the Algerian state was the keeper of the religious faith. This feature was underlined by the other purposes made explicit by the decree. The IHC was responsible for the promotion of religious teaching, the translation into Arabic of every religious text and the strengthening of the relation with other Muslim countries through the intellectual cooperation. Finally, yet importantly, it had the task of issuing *fatāwā* for the official institutions of the state.

The state influence on the council was assured by the fact that it was composed of 11 permanent members, chosen from among the functionaries of the Ministry of Waqf (*ḥubus*), and by 19 non-permanent members. All 30 members were appointed by the Minister of Waqf, who was the honorary chairman of the institution. All permanent and non-permanent members could be dismissed if their behaviour was 'incompatible with the quality of member' of the Council (article 6).[8] It was not specified which kind of behaviour would have led to such a measure, but it can be argued that it was related to the possibility that a member of the IHC did not follow the right ideological religious stream. In other words, it was a sort of fail-safe clause that prevented the influence of radical Islam on the members of institution. In any case, the IHC served Boumedienne's government to justify many of his policies, giving them an Islamic guise. An example can be found in the *fatwā* issued by the Council on April 1968 that encouraged birth control and followed the government fight against the demographic growth (Ouadah-Bedidi and Vallin, 2012).

Boumedienne succeeded during his term in power (1965–1978) in handling religious opinion towards his secular political and economic agenda, but this did not mean that the presence of underground Islamist dissent was over. Boumedienne's Arabization policy led to the recruitment of foreign teachers coming from Islamist circles (mainly from Egypt) and when he died in 1978, president Chadli Bendjedid lessened the government's control on social and political life, permitting the growth of independent mosques outside of the state influence (Papi, 2010). In this scenario, the IHC did not work at all and remained almost silent on major social and religious issues. It was overpowered by the bloody streets riots of October 1988 and the following political reforms that allowed multipartism, depriving the National Liberation Front of its hegemonic status, and the legalization of Islamic parties such as the Islamic Salvation Front (Aït-Aoudia, 2015). The Chadli Bendjedid administration had to cope with the new political situation and retain control of the Islamic movements. The legislation on IHC was reset and the government studied a brand-new institution that was embodied in article 161 of the new constitution of 23 February 1989. This article provided the creation of an Islamic High Council with the aim of encouraging and promoting *Iğtihād*, to give its opinion on the matters submitted to it with regard to religious rule, and to present a periodic report of its activity to the president of the republic. Unusually the government did not provide a detailed law on the matter until June 1991, when the political atmosphere in Algeria was in turmoil. The surprising victory of the Islamic Salvation Front in the local and regional elections of June 1990 led the government to issue in April 1991 a new electoral law that gerrymandered the electoral districts favouring the National Liberation Front in order that the

Islamist forces did not prevail in the following elections for the National Assembly (Tahi, 1992). The new electoral law triggered mass street protests in May and June 1991 that provoked the intervention of the army and the declaration of martial law.

It was in this social and political climate that Chadli Bendjedid issued on 28 May 1991 the presidential decree 91-179 that completely reformed the IHC. The new law was directed to find a much better control of Islamic issues and adapt the task of the IHC to the unstable Algerian situation, increasing its field of intervention and competence to three main areas: doctrine, renaissance of civilization and culture (JORADP, 1991: article 3). These three domains made the law look like a moral text and a religious programme, deeply influenced by the political chaos due to the Islamic opposition. In the dogmatic area the IHC had to work for the diffusion of the teachings of Islam and 'correct the erroneous perceptions of the *Šarīʿa* law' leaning on the Qur'an and the prophetic *Sunna*; take charge of the *daʿwa*[9]; fight the 'falsifications, deformations and excesses that could undermine the good comprehension of Islamic principles'; and finally, issue *fatāwā*. As can be easily understood, all was conceived to face Islamic political radicalism and its interpretation of Islam – in other words, the IHC – as the bastion against the rise of new religious-political players that could propose new visions contrasting with the government's power and its grip on religion. This purpose was reflected in two domains of actions: in the nebulous concept of 'renaissance of civilization', *al-baʿth al-aḍlarīya* (البعث الحضري), where the IHC had to promote the Islamic consciousness and values in order to overcome underdevelopment, also using the *zakāt* and *waqf*; and in the cultural field, where the institution basically had to ensure the coherence of the Islamic educational programmes with the Qur'an and Sunna and to deal with Islamic publications, correcting any mistake and promoting Islamic culture that could be used to 'understand the past and apprehend the present and the future'. Unfortunately, the work of the IHC, even though it depended heavily on the government,[10] could neither prevent nor stop the descent of Algeria into civil war generated by the cancellation of the electoral process by the army on January 1992. The IHC proved to be totally ineffective in front of the radical Islamist propaganda and ideology that permeated the myriad terrorist Algerian groups. In the late 1990s, the levels of violence declined and the negotiations between the new president Liamine Zeroual and the Islamic armed groups began, allowing the government to start a democratization process that was realized through the new constitution of 28 November 1996 (Tamburini, 2016: 78–79). As had happened in 1989, the new constitutional chart revised the IHC as well: article 171 stated that the main tasks of the institution were to promote the *Iǧtihād* and to express its views in comparison with religious precepts on matters submitted to it, while article 172 specified its composition (15 members). However, the complete reform of the HIC was brought about only two years later by the presidential Decree 98-33 of 24 January 1998. This decree did not contain as many dogmatic references as the 91-179, being the reflection of a new climate, even if military power still controlled the state and the violence had not completely disappeared. The 98-33 decree detailed new fields of intervention of the IHC,[11] such as *Iǧtihād*, necessary to safeguard Islam from 'political frictions', *al-ḫazāzāt al-siyāsīyat* (الحزازات السياسية), recalling how its principles were in 'perfect harmony' with the democratic and republican character of the state. Furthermore, it underlined that the IHC had only non-binding advisory powers and could not replace the legislative power of the Parliament (JORADP, 1998: article 2). Even the issuing of the *fatāwā* was on the initiative of the president of the republic.[12]

The 1998 IHC did not stand out for industriousness. The only relevant action taken by the IHC was a *fatwā* issued on 12 April 1998, which allowed abortion, *'iǧhāḍ* (اجهاض)[13] for the rape victims of the civil war (Hélie, 2012: 19). The absence of important interventions by the IHC did not mean it was a useless instrument. The Algerian IHC represented, and represents, the mirror of the state control on religion, even though this control can appear merely symbolic. Almost every Algerian president has contributed to refit the legislation on the IHC to the needs of the state and to

the political atmosphere or to constitutional amendments. Abdelaziz Bouteflika, during his fourth mandate, after the constitutional revisions of February 2016 redefined the tasks of the IHC. Once again, it took two years to write a legislative text on the issue. The presidential Decree 17-141 of 18 April 2017 did not differ very much from the 1998 decree. It specified the IHC members' term of office (five years) and above all changed the purpose of the *Iğtihād*, which served to protect Islam not from 'political frictions', but from 'political manipulations', *taūaẓīf siyāsīya* (توظيف سياسي) (JORADP, 2017: article 4). It is interesting to note that it was not just a matter of semantic terms. Islamic radicalism linked with terrorism was still a problem in 1998; that is why the legislator chose the term *al-ḥazāzāt*, which also means tensions or resentments. In 2017 many moderate Islamic parties were represented in Parliament and the government required Islam to be exploited by power, hence the use of *taūaẓīf*, which, combined with *siyāsīya*, could be translated by political recruitment or politicization. The IHC, still the highest religious authority in Algeria, was the pretext to affirm that the state was the only interpreter of Islam.

Morocco

The Kingdom of Morocco did not organize a form of Islamic council until 1981. The link of the Alawite dynasty with the Prophet (the Moroccan king is also considered the 'Commander of the Faithful' ('*amīr al-mū'minīn*) made it easier to identify religion with the state, giving the monarchy a religious authority and legitimacy (Bennadji, 2012). Furthermore, traditional religious tolerance and the mystic and apolitical sufi organizations had been a bulwark against extremism until the 1990s (Bouasria, 2015). Radical organizations such as the Moroccan Islamic Youth in the 1960s and the preacher Abdeslam Yassin, critic of the monarchy, in the 1970s were too weak to be a real danger for the kingdom. Nevertheless, rural and urban poverty were a huge problem and undermined social harmony (in 1980 inflation reached 15% a year) (Pennel, 2000: 354). Moreover, the 1979 Iranian revolution, which forced the Shah into exile, proved the existence of an alternative way of governance, where religion could provide a different and alternative political structure.[14] It was time to close ranks and protect the 'Moroccan Islam' and society from the danger of Shiism. Hassan II on 8 April 1981 issued the *ẓahīr* (decree) 1-80-270 establishing the High Council of *'Ulamāʾ* or Conseil Supérieur des Oulémas (*al-Maǧlis al-ʿalā al-ʿalmī* - المجلس العلمي الأعلى). It is important to note that the decree was preceded by a reasonably long preamble where it was explained how Islam had always been the essential part of the Moroccan personality and that Morocco had been following the teaching of a dogmatic school that contributed to the cohesiveness of the nation, preventing divisions that had occurred in other countries. It was also stated that Moroccan Islam had answered to every need and avoided resorting to 'doctrines or ideologies that had no similarity with the values that represented the identity of the Moroccan nation' (BORM, 1981). It is easy to glimpse here a reference to exogenous religious tendencies such as the Muslim Brotherhood, the Iranian ideology, or to whatever could hinder the primacy of the king in the field of religion.

The council was composed by the 19 presidents of regional councils of *'ulamāʾ*, which, operating at a local level, had the main task of managing mosques and preserving the unity of the country in the domain of dogma and doctrine. The council, at a national level, coordinated the regional councils, gave advice on issues submitted by the king and maintained relations with pan-Islamic institutions and the Organization of Islamic Cooperation. The institution had no real autonomous powers, depending on King Hassan II, and was able to meet only twice a year. However, the council never met, and even if it could have done, it was highly unlikely it would have prevented the bloody riots of Casablanca on 6 June 1981, or the formation in 1985 of the Islamist association *Al-ʿAdl wa al-Iḥsān* (justice and spirituality), which gathered support in the urban underclass. The institution could be considered an empty shell and, although in 2000 the new king, Mohammed

VI, replaced 16 of its members (Weinscott, 2012: 109), the monarch was far from being satisfied. Thanks to Mohammed VI, the kingdom had been going through an unprecedented transitional period since 1999, which tended to improve democracy standards and turn the page from the 'years of lead' of Hassan II. Nevertheless, this programme seemed to be stopped by the suicide bombings on 16 May 2003 in Casablanca, attributed to an *al-Qāʿida* splinter group, the Moroccan Islamic Combatant Group. The attacks, known as the 'Moroccan September eleventh', renewed again attention to the presence of religious extremism in the country and spread the idea that immunity from the violence of terrorism was over. Moroccan authorities reconsidered the state's religious policy and the king issued a new law on terrorism on 28 May 2003 (Tamburini, 2018), afterwards reasserting also the state monopoly on religion through the Decree 1-03-193 of 4 December 2003. This legislative measure stated that the Ministry of *ḥubus* and Islamic Affairs had the task to 'spread the authentic concepts of the Muslim religion and to work to diffuse the Islamic precepts of tolerance and its true values' (BORM, 2003). In reality, it was not only a problem of the fears produced by terrorism and radicalism. The harsh public debate about the *Mudawwanat al-aḥwāl al- šakhṣiyyah*, the new personal status code that improved the rights of women, showed the existence of a huge divergence of views about religion related to socio-cultural norms (El Khatiri, 2013). In any case, the 1981 council remained untouched until 22 April 2004, when Mohammed VI completely reformed it and its regional councils through the Decree 1-03-300, which reshaped the composition and duties of all the institutions. As in the past, the decree contained a very long and detailed explanatory preamble, where the faith in the 'authentic Muslim religion' and the 'bond to the unity of the *Mālikī rite* and its sunni doctrine' were strongly reaffirmed. Also the memory of Hassan II, whose efforts had allowed the creation of the first Council for the *ʿUlamāʾ*, found space in the preamble. However, according to the preamble, the preserving of the heritage was not enough, because it was also necessary to work for its evolution and regeneration. The High Council would have to work using *Iǧtihād*, but leaving behind 'every subjectivity and hermeticism', looking for simplifications, 'removing barriers and acting in a happy medium (*al-wasaṭīyya* الوسطية)'. This regeneration meant also the integration and deployment of the women religious guides into the High Council, part of a more general endorsement of the king for gender equality (El Haitami, 2012). In any case, the composition of the institution had changed. Headed by the king, it was composed of the minister of Hubus, eminent *ʿulamāʾ* selected by the monarch, the secretary general of the High Council, and the presidents of the local councils. The broadened composition allowed the government (i.e. the king) to bring a new generation of theologians to sit on the council, without losing control of the loyalty of the latter. The High Council gained a broad range of tasks such as the study of issues presented by the king and the supervision of the yearly action plan for the local councils as the coordination of their work; however, it was deprived of the most important task: the issuing of *fatāwā*. The responsibility of such important commitment was given to a special body created within the High Council, that is, the Scientific Committee (*haīyyʾa ʿilmī*yya), the only authority in Morocco to issue *fatāwā* after a request by the president or the secretary of the High Council. The latter is assigned only to supervise the *fatwā*.

The structures and purposes of the local councils underwent a complete reform as well. First of all, the numerical composition depended on the size of provinces,[15] then it was specified that only 'known scientific personalities for their exceptional contributions in the field of Islamic culture and the diffusion of religious knowledge, their expertise in *fiqh*, with deep knowledge of the country's situation and the innovations of the modern world' could be appointed as members of the council (BORM, 2004: article 11). Conceived as 'basic councils', the regional institutions have the general mission to preserve the integrity of the kingdom in the field of dogma and rite, as well as the Moroccan personality, in Arabic *al-šakhsīyya al-maghribīyya* (الشخصية المغربية). This is an obscure meaning if we do not analyse the polysemic word *šakhsīyya* that here indicates the Moroccan

national character. However, the decree details their important tasks as well as the supervision of the preaching and the literacy in the mosques, the advice service to citizens on religion in relation to their private life, and the selection of *Imām* and *khaṭīb*, the person who delivers the sermon (*khuṭbah*, literally 'narration') during the Friday prayers. These are all commitments deemed fundamental not only in order to avoid the control of the mosques by unauthorized doctrines or groups, but also to reconcile the 'Moroccan Islam' with its local environment through a policy of vicinity to the citizens. On closer inspection, it becomes clear that local councils are more relevant than the High Council, also because they meet at least once a month and the former just twice a year and only at the king's request.

The importance of the Moroccan diaspora in Europe led Mohammed V to extend the 'spiritual security' to Moroccan society and create the *'Ulamāʾ* Council for Moroccans in Europe in October 2008. This institution, mainly composed of experts appointed by the king, was given the task of promoting a tolerant and moderate Islam among the Moroccan citizens, above all orienting them towards the *Mālikī* rite, but always contributing to the dialogue between the three monotheistic religions and excluding every form of intolerance and discrimination (BORM, 2008: article 2).

The law architecture of the councils has the general purpose to fight extremism and, at the same time, to ensure the homogeneity of Moroccan religious practice and thought, as well as protecting the identity and values of the nation. Having said that, it is important to recall that sometimes the High Council followed the tradition too closely, entering into conflict with the moderation that Mohammed VI had tried to propagate in the country. The case of the April 2013 *fatwā* is emblematic, which was issued by the council that called for a death sentence for a Muslim who changes his/her religion, even though the Moroccan penal code does not forbid apostasy (Zafar, 2014: 82). However, in February 2017, the council backtracked this stern position by redefining apostasy as not a religious issue but a political stand more aligned with high treason.

The High, regional and European councils were conceived to preserve Moroccan cultural heritage from the dangerous influence of foreign Islamic doctrines such as shiism, wahabism or any form of radical Islamism. On the other hand, it is obvious that these institutions also have a political purpose: to reaffirm and strengthen the authority and the institutional outlay of the king, keeping it safe from the challenge of any Islamic movement. These purposes are so important that the High Council was included in the new Moroccan constitution in 2011 (article 41), bestowing to the institution a constitutional relevance.

Mauritania and Tunisia

Among the Maghreb states, the Islamic republic of Mauritania was the last in bureaucratizing the work of the *'ulamāʾ*. This happened when the regime of the president Ould Taya, attempting to develop a 'controlled democracy', decided to give the country a new constitution, approved by referendum on 12 July 1991. In the constitution, which offered a compromise between Islam and secular democracy, article 94 enshrined the Islamic High Council (IHC), *al- Maǧlis al-islāmī al-aʿlā*, a five-member institution whose meetings were at the demand of the president of the republic, who consulted it to have opinions on religious issues. The Mauritanian legislator gave formal and constitutional value to the IHC before a specific law was promulgated. Apart from the political turmoil, generated by the Senegal-Mauritanian crisis of 1989–90 and the Gulf crisis of 1990–91 (Taya had strong links with Saddam Hussein), in the same years the Islamic republic witnessed the growth of the phenomenon of Islamic radicalism (Freire, 2005). The opening to democracy and the presence of radical Islam in the country did not match. It was necessary to consolidate the state grip on religion through a government-controlled institution that could spread and preserve the traditional values of Islam (Monteillet, 2002: 77).

The Mauritanian government released a specific law only in February 1992 (Decree 07-92). In comparison to other Maghreb countries, the legislation on the issue was a rather concise law (only 10 articles) and created a powerless institution, completely dependent on the president of the republic and above all without the authority to issue *fatāwā*. The members were appointed by the head of state among the *ʿulamāʾ* of the country for a non-renewable five-year term. Its non-binding opinions could concern the Islamic orientation of the country, the diffusion and promotion of Islam and its culture and finally every question in relation to the role of Islamic religion in the Mauritanian society (JORIM, 1992a). Another decree (92-037) set up the internal organization of the IHC, implementing its dependence on the government: its secretary general depended on the prime minister, who approved the budget (JORIM, 1992b).

However, the IHC never really worked and its services were seldom required by Taya, while the next presidents who followed him (Mohamed Vall, Cheik Abdallahi, Mohamed Ould Abdel Aziz) preferred to use the old-fashioned kind of control on religion typical of Mauritania, such as the tribal ties and the supremacy of the white Arab-Berbers Maure elite. The latter kept on prevailing on the black African population, also marginalizing the Haratines group, also known as the 'black Moors', the Arabic-speaking descendants of slaves, who were (are) still informally dependent on their former white masters.

The 'Arab spring' riots in Nouakchott forced the government to find an agreement with certain opposition parties, amending the constitution in March 2012 (Bouboutt, 2014), but the IHC remained untouched. The problems came when Biram Dah Abeid, a well-known activist of a movement against slavery in Mauritania, on 27 April 2012 publicly burned *Mālikī* law books because they justified the practice of slavery, a still widespread phenomenon in the country. Law enforcement charged him with threatening national security and good morals and for apostasy (article 306 of the Mauritanian penal code stipulates apostasy as a crime punishable by death). However, it was an action that openly challenged institutionalized religion as a system controlled by the state. The 1991 IHC was not sufficient any more, therefore Abdel Aziz's government with the Decree 2012-134 created a new institution on 24 May 2012: the *Haut Conseil de la Fatwā et des Recours Gracieux* (*High Council for Fatwā and Administrative Appeals*). The council, composed of nine members, appointed by the head of state for a four-year mandate, has the power to issue and correct *fatāwā*, approve their publication and develop for them a specific Mauritanian code. The High Council can also solve disputes among the citizens and the state that are not processed by justice or the *Médiateur*, the Mauritanian ombudsman. The August 2017 constitutional reform finally dissolved both the IHC and the *Médiateur* (Bouboutt, 2018), which were merged into the new institution. The High Council, constitutionally endorsed by article 94, was a clear sign of how much the Mauritanian state wants to keep control of religion and does not allow any sort of innovation alien to tradition, even though it means indirectly preserving social plagues such as slavery and discrimination.

The Mauritanian case is very peculiar because the control of religion is not only the 'invisible binding element' of a society that helps a regime to survive, but it is also the keystone of the dominance of an ethnic group (the Maures) over another (the Haratines and Black Africans).

All the states examined so far chose to create governmental bodies with the task of exercising the complex Islamic opinion of the *fatwā*. Only Tunisia decided to shift from a collective effort to an individual one in 1962 – in other words, *fatwā* as the result an individual *Iǧtihād* performed by a *Muftī de la République* (JORT, 1962; Daiya, 2001). The Republic of Tunisia has been lacking an institution that gathered eminent *ʿulamāʾ* until 1987, even though, as we pointed out, Bourguiba has been developing a process of nationalization since the independence in 1956, focusing on an Islam controlled by the state (Bras, 2002: 225).

In June 1981, Rachid Ghannouchi founded ḥarakat al-itiǧah al-islāmī, in French *Mouvement de la Tendence Islamique* (Movement of Islamic Tendency – MTI), an Islamist party, whose agenda

was to restore Tunisia's Islamic identity, calling for citizens to practise the moral creed of Islam in their lives. Bourguiba not only did not allow the party to be legal, but also arrested the leaders of MTI. The latter were released in 1984 in an attempt to open a dialogue with political Islamism, but the result was the strengthening of the movement that grew among young people, especially in the universities, and organized mass strikes in the country. The regime reacted by hardening its line in March 1987, blaming the MTI for the social unrest and accusing it of instigating an Iran-style Islamic revolution (on 26 March 1987 Tunisia severed relation with Iran). Ghannouchi was arrested again, with the charge of preaching in a mosque without licence, and his jailing provoked new waves of protests calling for his freedom. It is impossible not to link this social turmoil to the government's decision to release the Decree 87-663 on 22 April 1987, which created the *Conseil Islamique Supérieur* or *al- Maǧlis al-qawmī al-islāmī* (المجلس القومي الأسلامي). It was clear evidence of how the Tunisian government tried to tighten control more firmly on religion in time of emergency. First of all, it is interesting to point out that there is an unusual difference of meaning between the French and the Arabic official text of the decree. In fact, the Arabic adjective *al-qawmī* does not mean high (*supérieur*) but it derives from the word *qawm* (meaning 'tribe, ethnic nationality') and it is literally the attachment to the Arab nation – *qawm* is nation, but in the sense of a people that is not confined or defined by borders. This is the reason why since the mid-20th century *Qawmīyya* has been used to describe pan(Arab) nationalism, hence the right translation would be Islamic National Council. We can suppose that the Arabic version is the nearest to the real will of the Tunisian legislator, who intended to give an Arabic/national character to the institution. Therefore, Islam is an essential element of the Arab cultural and national personality, which was incompatible with any other form of Islamism, not only radicalism but also shiism that mainly belonged to the Persian (Iranian) world.

The council was formed by the *Muftī de la République*, the dean of the ez-Zaituna Faculty of Theology in Tunis, the director of religious affairs, and by seven other members known for their knowledge of Islamic sciences (JORT, 1987: article 3). As in other similar laws, the most important part was devoted to the tasks of the institution, which had the duty of examining all the questions submitted by the government related to article 1 of the 1959 constitution (Islam is the religion of the state), the Muslim doctrine and social and ethical issues. Furthermore, the council had advisory powers making proposals in order 'to preserve the nation from every moral loosening or closures' and 'everything that could have a negative influence on the founding principles of its authenticity'. Once again, the state was conceived as the authoritative keeper of religious values, stressing their national characteristics, but in this case attempting to find also a happy medium between tradition and innovation. The Arabic version can help to understand this concept better; the council in fact had to fight moral *tafsakh* (تفسخ) – literally split, detachment – and at the same time avoid *inghilaq* (انغلاق) – closure. The council had to meet at least once a year and every time the government deemed it necessary.

The Decree 87-663 of course did not contribute to reconcile the country, nor prevent the Islamist bombing attacks in Sousse and Monastir in August 1987. In any case it was one of the last legislative actions taken by Bourguiba, in his erratic leadership due to his health problems, before being ousted by the swift and bloodless coup on 7 November 1987, which led Zine al-Abdine Ben Ali to power. The new Tunisian head of state slightly reformed the council a few months later (February 1988), adding other competences such as the control on teaching programmes of the az-Zeituna University, surveying religious publications and the training courses of *imām* and preachers. The numbers of members, experts in Islamic sciences, was raised to 12 and the council, with the permission of the prime minister, was allowed to attend international and national meetings with other religious organizations. It was also provided with a budget for missions in the country and abroad (JORT, 1988).

Ben Ali's policy tended in the first time to avoid a direct clash with MTI. In fact, he appointed a member of the council, Abdelfatah Mourou, one of the top figures of the movement. Ben Ali increased the number of the council to 25 in 1989 (JORT, 1989), but afterwards he left the structure unmodified, as well as the purposes of the institution. The relationship between the regime and MTI, renamed *Hizbu an-Nahḍah* (Renaissance party), declined quickly and Ben Ali restricted the party's activities as well as hunting down other Islamist movements during all the years of his regime (Wolff, 2017). The council stood still, contributing to represent the Tunisian national Islam as the one accepted by the state, and working as a tool for the regime. Nothing changed even after the 2010/11 Tunisian revolution and the new constitution (27 January 2014), which was a compromise between the Islamist and secularist forces (Moine, 2014). Some parties of the Constituent Assembly, especially *an-Nahḍah*, proposed to place the council in the constitutional chart and give it real decisional power and not just an advisory role. Notwithstanding, the proposal was dismissed by the majority of the Constituent Assembly, which feared that the state could assume a dangerous Islamic character. In other words, secularist parties suspected that the constitutionalization of the council, in a political arena with strong political Islamic forces, could create a constitutional rival of other institutional entities such as the Constitutional Court. This could have jeopardized the *Dawla al-madanīyya*, the 'civil state' or 'government', namely a state where the secular sector can coexist with the religious one – something very different from *Dawla al-ilāhiyya*, a religious state, but above all from *Dawla 'almanīyya*, a laic state where religion has no space at all. Hence, the *al- Maǧlis al-qawmī al-islāmī* did not undergo any change. It is one of Ben Ali's few legislative leftovers and at the same time the authoritative religious institution of the country.

Conclusions

As we pointed out many times, the High Councils in the Maghreb responded to the specific need of controlling religion, which has been seen as a tool of social cohesion and balance. To control religion meant to spread a certain kind of Islam, the traditional one, the one that has been supporting governments and regimes since their independence. The religious sphere had to be preserved from external interferences menacing stability and order. All High Councils promoted the protection of a 'national Islam', where national often stands for the interests of the government and its survival. The institutions were not created simultaneously, but at different times and, as we could see, only after internal political disturbances caused by the growth of radical Islamism. The other common characteristic is that the councils often are just symbols, more than active organisms, and, above all, they always depend on the executive power who painstakingly select their members.

The presence of state-controlled institutions, such as also the High Councils, has its deep roots in the juridical anarchy produced by the fragmentation of the religious authority in Muslim society (Giunchi, 2017: 215). In fact, all governments always tried to avoid 'vacuum power' areas and empty spaces in the religious field, because these could be filled by ideologies that do not fit with the establishment order or are enemies of the *siyāsa*.

The governmental need of a religious reference authority that could operate beyond the competence of, or support, the ministry of religious affairs is particularly felt nowadays. Mass communication media such as radio, satellite TV, DVDs and, above all, the world wide web represent the amplifier of dissenting voices, as well as counterculture and counter-information centres, between the wide *Ummat al-Islām*, the Islamic community. The phenomenon of the circulation of clandestine and 'do it yourself' *fatāwā*, or *Iǧtihād*, delegitimizes the traditional state-centred religious authority not only on political issues but also in the social domain (Ali, 2010; Hofheinz, 2015); hence, the necessity of institutions that could limit the innate doctrinal heterogeneity of the Muslim world, which grew in modern times and could spread the official vision of Islam.

The stiffness in defending and spreading the 'real Islam' is different and depends on the country. We can say that the Algerian and the Mauritanian High Councils are the most traditional and less inclined to assume innovative positions in their non-binding advice service, reflecting the state stance on religious issues. On the other hand, the Moroccan and Tunisian councils in general try to avoid extremes and find a centred and balanced position, which in Arabic is *wasaṭīyya* (وسطية). This conduct is plainly endorsed by the decrees; in fact, as we noticed, the Arabic text of the Moroccan decree quotes specifically the *wasaṭīyya*, while the Tunisian one states that the council fights extreme positions represented by *tafsakh* and *inghilaq*. However, this concept is also the reflection of the general attitude of the Tunisian and Moroccan governments to religious problems, which are treated with moderation and restraint in comparison to other Arab countries.

We could be tempted to refer this position of *wasaṭīyya*, the middle way or mediation, to the concept of the contemporary Egyptian theologian Yusuf al-Qaradawi, who elaborated a new relationship between religion and politics. Qaradawi deems that Islam is a religion of strict principles, but also one that leaves leverage for addressing changing realities, finding flexible solutions to the problems of modern society. Nevertheless, Qaradawi, when he conceived the idea of *wasaṭīyya*, thought that the *ʿulamā'*'s mission was to disseminate religious knowledge in order not only to save it from extremism, but also from the governments' scheming (Shavit, 2014: 169). That is not applicable to the councils, which are institutionalized tools that serve the governments. The *ʿulamā'*, as members, as we underlined several times, depend on the executive power and their main purpose is to support the governments' choices or their stability. Several norms impair their independence, first of all the fact that the members are chosen by the executive and with a methodology of selection unclear or too discretionary. There is not a recruitment exam and this lack of transparency is a sort of insurance for the governments, who are sure that these institutions are resistant to the infiltration of radicalism. In this conceptual framework, we have to remind ourselves that all states decided to use the Arabic noun *Maǧlis* (مجلس) to name the councils. *Maǧlis* (literally, the 'place of sitting') is normally used in the Arab world for legislative assemblies or Parliament, but in this case it is more related to a gathering of persons with a common religious and cultural interest and not a popular elected institution with binding powers. The High Councils, in fact, deliberate only upon a specific request of the executive (head of state, prime minister) or the king, in the case of Morocco.

The councils are also the 'religious ambassadors' outside the *al-waṭan* (the nation), representing the official national Islam of *Mālikī* tradition in international events and meetings. It is not a coincidence that all the decrees provide that the councils can attend international conferences or maintain relations of scientific cooperation with other Islamic organizations (for example, the Organization of Islamic Cooperation) in the large-scale *Ummat al-Islām*. This is a sort of 'reconciliation' with the borderless Islamic world, based on uniqueness and indivisibility, after the councils have been spreading their national views and characteristics of Islam.

As we said, the major aim of the Islamic High Courts, even though it is not explicitly stated in the decrees, is the defence of order, the system, or what in Arabic is referred to as the *niẓām*. This is obtained by protecting it from radicalism or simple deviations from what is deemed the 'genuine Islam'. It is very interesting to highlight how all the legislative texts often remark that councils devote their efforts to protect Islam and 'its authenticity', *asalathā* (اصالتها), stressing how important the 'true Islam', *al-islāmī al-hanīf* (الحنيف الاسلمي), or the 'original', al-*asīla* (الاصيلة), Islam is. The adjectives authentic, true and original are somewhat ambiguous because no legislative document or constitution in the Maghreb (or in any Muslim country) defines what real Islam is, hence the broad subjectivity of values that can fit with the Muslim religion conceived by the government. Therefore, we could say that High Councils are the mirror of a wider issue in Islam, namely the absence of a central authority and control in the Umma, which is the use and consumption of governments.

ORCID iD

Francesco Tamburini https://orcid.org/0000-0002-1733-941X

Notes

1. *Fatwā* (فتوى) literally means explanation, innovation, clarification. It is composed by the act of soliciting (*istiftā*) and issuing a *fatwā* (*iftā*).
2. Libya has not been taken into account due to the peculiar political system established by Muammar Gaddafi in the 1970s, the Great Socialist People's Libyan Arab ǧ*amāhīrīyah*, shaped around the utopian Third International Theory contained in his *Green Books.*
3. This is a characteristic of all Arab constitutions, apart from the 2012 Syrian constitutional chart. However, the Syrian constitution affirms that the religion of the president is Islam and the Islamic jurisprudence is the major source of legislation (article 3).
4. One of the first repugnancy clauses was inserted in the Pakistani constitution of 1973.
5. The introduction of Islamic penal law was due to the need to strengthen the bonds with Mauritanian society (especially with the most conservative sectors) and to achieve greater social control.
6. Many of them were former members of the Association of Algerian Muslim *'ulamā'*, established in 1933. Despite being disbanded in 1956, the association was still powerful and followed by the Algerian population.
7. *Waqf*, synonymous with *ḥabs* (حَبْس) or *ḥubus*, in Islamic law are the donations of land, buildings or money as an endowment, the profits from which are given away as charity.
8. The exclusion was pronounced by the minister of *Waqf* after a two-thirds (or absolute majority plus the vote of the minister) proposal of the Council.
9. Daʿwa is the invitation, propagation or 'call' to Islam, based on nonviolent measures to rectify Muslim society through the system of education, indoctrination and solidarity.
10. Even if the status of the members was incompatible with any political, judiciary or administrative function and the membership of a political party, the functionaries of the IHC were appointed and dismissed by the president of the republic. Furthermore, the IHC could be appealed to only by the head of state, the prime minister and the president of the National Popular Assembly.
11. Among the tasks were the education of the *imām*, the organization of seminars for the functionaries of the Ministry of Religious Affairs, the creation of television and radio programmes on Islam.
12. In 2003 the Ministry of Religious Affairs deprived the IHC of the ability to issue *fatāwā*, giving this task to a ministerial department. Due to the state of anarchy in the field of the *fatāwā* issued by foreign preachers on satellite television, in 2015 the same ministry created a Scientific National Council that had the power to issue them. The IHC had its authority back in this field only in 2017 with the Decree 17-141.
13. Radical Islamist groups had kidnapped and raped between 1,000 and 3,000 young women during the conflict. The 1998 *fatwā* was an exception in the Algerian law, which condemned abortion. The IHC, on 15 February 1973, issued a *fatwā* that qualified abortion as a crime.
14. Iran severed diplomatic relations with Morocco in 1981, when Hassan II received Shah Mohamed Reza Pahlavi after his overthrow.
15. Casablanca has 16 members and Marrakesh 12. The rest of the councils have eight members.

References

Aït-Aoudia M (2015) *L'expérience démocratique en Algérie, 1988-1992: apprentissages politiques et changement de régime*. Paris: Sciences po les presses.

Ali SS (2010) Cyberspace as emerging Muslim discursive space? Online Fatawa on women and gender relations and its impact on Muslim family law norms. *International Journal of Law, Policy and the Family* 24(3): 338–360.

An-Naim A (2008) *Islam and the Secular State. Negotiating the Future of Shari'a*. Cambridge: Harvard University Press.

Arjomand SA (2007) Islamic constitutionalism. *Annual Review of Law and Social Science* 2: 34–54.

Bouasria A (2015) *Politics in Morocco. Activism and Dissent*. Oxon: Routledge.

Bennadji C (2012) *Diritto e religione in Marocco*. In: Ferrari A (ed.) *Diritto e religione nell'Islam mediterraneo. Rapporti nazionali sulla salvaguardia della libertà religiosa: un paradigma alternativo?* Milano: Il Mulino, pp.197–281.

Berque J (2001) *Le Maghreb entre deux guerres*. Tunis: CERES Éditions.

Bras JP (2002) *L'Islam administré : Illustrations tunisiennes*. In: Kerrou M (ed.) *Public et Privé en Islam*. Paris: Maisonneuve & Larose, pp.227–246.

Bulletin Officiel du Royaume du Maroc (BORM), n. 3575, 6 May 1981, Dahir n. 1-80-270 du 8 avril 1981 relatif à la création du Conseil Supérieur et des Conseils Régionaux des Oulémas.

BORM, n. 5174, 1 January 2003, Dahir n. 1-03-193, du 4 décembre 2003 fixant les attributions et l'organisation du ministère des Habous et des Affaires Islamiques.

BORM, n. 5210, 6 May 2004, Dahir n. 1-03-300, du 22 avril 2004 portant réorganisation des conseils des ouléma.

BORM, n. 5688, 4 December 2008. Dahir n. 1-08-16, 1-08-17, du 20 octobre 2008 portant organisation du Conseil marocain des Ouléma pour l'Europe

Bouboutt A (2014) La Révision constitutionnelle du 20 mars 2012 en Mauritanie. *L'Année du Maghreb* 10: 435–455.

Bouboutt A (2018) La constitution mauritanienne, toujoursrecommencée! Réflexions sur la révision.

Campanini M (2015) *Islam e Politica*. Milano: Il Mulino.

Castro F (2004) *Il modello islamico*. Giappichelli: Torino.

Castro F (2006) *Diritto musulmano*. Milano: UTET.

Daiya B (2001) *Le Mufti de la République en Tunisie. L'institution et la fonction*. Tunis: Ceres-Productions.

Dupret B (2012) *La charia aujord'hui. Usage de la référence au droit islamique*. Paris: La Découverte.

El Haitami (2012) Restructuring female religious authority: State sponsored women religious guides (Murshidat) and scholars ('Alimat) in contemporary Morocco. *Mediterranean Studies* 20(2): 227–240.

El Khatiri M (2013) The institutionalisation of religious affairs: Religious reforms in Morocco. *The Journal of North African Studies* 18(1): 53–69.

Freire F (2005) La Ligue des ulémas de Mauritanie: débats religieux et politiques dans une république islamique. *Annuaire de l'Afrique du Nord*, Centre national de la recherche scientifique; Institut de recherches et d'études sur le monde arabe et musulman (IREMAM), pp. 279–288.

Giunchi E (2017) *Nel nome di Allah. L'autorità religiosa nell'Islam*. Milan: Jouvence.

Hallaq W (2013) *The Impossible State. Islam, Politics, and Modernity's Moral Predicament*. New York: Columbia University Press.

Hallaq W (1984) Was the gate of ijtihad closed? *International Journal of Middle East Studies* 16: 3–41.

Hélie A (2012) The politics of abortion policy in the heterogeneous Muslim world. In: Raghavan C and Levine J (eds) *Self-determination and Women's Rights in Muslim Society*. Lebanon: Brandeis, pp.3–36.

Hofheinz A (2015) *The Internet in the Arab World. Playground for Political Liberalization*. Available at: http://www.fes.de/ipg/IPG3_2005/07HOFHEINZ.PDF

Journal Officiel de la République Algérienne Démocratique et Populaire (JRADP), n. 15, 22 February 1966, Décret n. 66-207 du 11 Aout 1966 portant organisation de l'administration centrale du ministère des habous.

JORADP, n. 27, 2 June 1991, Décret présidentiel n. 91-179, du 28 mai 1991 relatif au Haut Conseil Islamique

JORADP, n. 4, 28 January 1998, Décret présidentiel n. 98-33, du 24 janvier 1998 relatif au Haut Conseil Islamique

JORADP, n. 25, 19 April 2017, Décret présidentiel n. 17-141, du 18 avril 2017 fixant l'organisation et le fonctionnement du Haut Conseil Islamique

Journal Officiel de la République islamique de *Mauritanie* (JORIM), n. 777, 29 February 1992, Décret n. 92-7, 18 février 1992 relatif à l'organisation et au fonctionnement du Haut Conseil Islamique

JORIM, n. 789, 30 August 1992, Décret n. 92-037 Déterminant l'organisation du Secrétariat General et le régime financière du Haut Conseil Islamique

Journal Officiel de la République Tunisienne (JORT), n. 19, 10 April 1962, Décret n. 62-107 du 6 avril 1962 créant le poste de Mufti de la République Tunisienne

JORT, n. 31, 1 May 1987, Décret n. 87-663 du 22 avril 1987 portant création du conseil islamique supérieur de la République Tunisienne

JORT, n. 9, 2 February 1988, Décret n. 88-87 du 26 janvier 1988 modifiant et complétant le décret n. 87-663 du 22 avril 1987 portant création du conseil islamique supérieur de la République tunisienne.

JORT, n. 5, 20-24 February 1989, Décret n. 89-118 du 9 janvier 1989 relatif à la création du conseil islamique supérieur.

Kerrou M (1998) *Politique de l'Islam en Tunisie*. In: Kilani M (ed.) *Islam et Changement Social.* Lausanne: Payot, pp.81–102.

Knaus P (1987) *The Persistence and Patriarchy: Class, Gender and Ideology in Twentieth Century Algeria*. New York: Praeger.

Lalami F (2015) *Le algériennes contre le Code de Famille*. Paris: Presses de Science Po.

Le Roy T (2016) Constitutionalism in the Maghreb: Between French heritage and Islamic concept. In: Grote R and Röder T (eds) *Constitutionalism in Islamic Countries. Between Upheaval and Continuity*. New York: Oxford University Press, pp.109–119.

Moine A (2014) Les références à l'islam et à ses principes dans la Constitution tunisienne du 27 janvier 2014. *Civitas Europa* 32(1): 225–254.

Monteillet S (2002) *L'Islam, le droit et l'état dans la constitution mauritanienne*. In : *L'Afrique politique. Islam d'Afrique : entre le local et le global*. Paris: Karthala, pp.69–100.

Munson H (1993) *Religion and Power in Morocco*. New Haven: Yale University Press.

Ouadadh-Bedidi Z and Vallin J (2012) Fertility and population policy in Algeria: Discrepancies between planning and outcomes. *Populations and Development Review* 16: 179–196.

Papi S (2010) Le contrôle étatique de l'Islam en Algérie: un Héritage de l'époque coloniale. *L'Année du Maghreb* VI: 491–453.

Papi S (2006) Islam et droit musulman au Maghreb : une référence centrale, mais d'application limité. *L'Année du Maghreb* I: 429–454.

Pennel CR (2000) *Morocco since 1830. A History*. New York: New York University Press.

Piccinelli GM (2005) Diritto musulmano e diritto dei paesi islamici: tra orientalismo e comparazione giuridica. *Iura Orientalia* 1: 131–143.

Predieri A (2006) *Shari'a e Costituzione*. Roma-Bari: Laterza.

Rehstock U (2007) Democracy, Islamicity and Tribalism in Mauritania. In: Bierschenk T (ed.) *Islam und Entwicklung in Afrika*. Köln: Köppe, pp.51–66.

Roberts H (1988) Radical Islamism and the Dilemma of Algerian nationalism: The Embattled Arians of Algiers. *Third World Quarterly* 10(2): 556–589.

Rycx JF and Blanchi G(1983) Références à l'islam dans le droit positif des pays arabes. *Pouvoirs* 12: 57–70.

Sahin E (1997) *Political Ascent: Contemporary Islamic Movements in North Africa*. Boulder: Westview.

Shavit U (2014) The Post Modern Reconstitution of an Islamic Memory: Theory and Practice in the case of Yusuf al-Qadarawi's Virtual Umma. In: Weisman I (ed.) *Islamic Myths and Memories*. London: Routledge, pp.163–184.

Tahi M (1992) The arduous democratization process in Algeria. *Journal of Modern African Studies* 30(3): 397–419.

Tamburini F (2016) *Il Maghreb dalle indipendenze alle rivolte arabe: storia e istituzioni*. Pisa: Pisa University Press.

Tamburini F (2018) Anti-terrorism laws in the Maghreb countries: The mirror of a democratic transition that never was. *Journal of Asian and African Studies* 53(8): 1235–1250.

Tozy M (1993) *Islam and the State*. In: Zartman IW and Habeeb WM (eds) *Polity and Society in Contemporary North Africa*. Boulder: Westview, pp.102–122.

Wainscott AM (2012) *Bureaucratizing Islam. Morocco and the War on Terror*. Cambridge: Cambridge University Press.

Weisman I and Zachs F (2005) *Ottoman Reform and Muslim Regeneration*. London: Tauris.
Willis M (1996) *The Islamist Challenge in Algeria: A Political History*. New York: New York University Press.
Willis M (2014) *Politics and Power in the Maghreb: Algeria, Tunisia and Morocco from Independence to Arab Springs*. Oxford-New York: Oxford University Press.
Winter M (2009) *Ulama between the State and Society in Pre-modern Sunni Islam*. In: Eickelman D (ed.) *Guardian of the Faith in Modern Times: Ulama in the Middle East*. Leiden: Brill, pp.21–45.
Wolf A (2017) *Political Islam in Tunisia: The History of Ennahda*. London: C. Hurst Publishers.
Zafar H (2014) *Demystifying Islam. Tackling the Tough Question*. Boulder: Rowman Littlefield.
Zaman M (2002) *The Ulama in Contemporary Islam. Custodians of Change*. Princeton: Princeton University Press.

Author Biography

Francesco Tamburini is an assistant professor in the Department of Political Science (University of Pisa), where he teaches History of Afro-Asiatic countries and History of Islamic countries.