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# THE “TUNISIAN” SPRING: WOMEN’S RIGHTS IN TUNISIA AND BROADER IMPLICATIONS FOR FEMINISM IN NORTH AFRICA AND THE MIDDLE EAST

John Hursh\*

## I. INTRODUCTION

More than six years have passed since the tumultuous weeks that comprised the key moments of the Arab Spring.<sup>1</sup> Although initially greeted with great optimism, most results of these remarkable events ultimately have been discouraging.<sup>2</sup> In Egypt, a “democratic coup

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1. See Lin Noueihed, *Peddler’s Martyrdom Launched Tunisia’s Revolution*, REUTERS (Jan. 19, 2011, 11:29 PM), <http://uk.reuters.com/article/uk-tunisia-protests-bouazizi-idUKTRE70I7TV20110119>. Most accounts of the Arab Spring mark December 17, 2010 as the starting point, when local protestors gathered in Sidi Bouzid, Tunisia following Mohamed Bouazizi’s self-immolation. See *id.* (“It began with a slap and an insult hurled at a vegetable seller in a small town surrounded by scrub and cactus. It ended with a revolution that has shaken authoritarian leaders across the Arab world.”). Bouazizi, a fruit seller, committed this act after a humiliating encounter with local authorities that encapsulated the feeling of helplessness that many Tunisians, particularly the marginalized youth, felt during President Ben Ali’s corrupt and repressive rule. See *id.* This feeling resonated throughout much of the Arab world, where protesters, often led by frustrated youth, rebelled against similarly corrupt and authoritarian regimes. See, e.g., Kareem Fahim, *Slap to a Man’s Pride Set Off Tumult in Tunisia*, N.Y. TIMES (Jan. 21, 2011), <http://www.nytimes.com/2011/01/22/world/africa/22sidi.html> (“The revolution has rippled beyond Tunisia, shaking other authoritarian Arab states, whose frustrated young people are often written off as complacent when faced with stifling bureaucracy and an impenetrable and intimidating security apparatus.”).
2. See, e.g., Robin Yassin-Kassab et al., *‘I Was Terribly Wrong’ - Writers Look Back at the Arab Spring Five Years on*, GUARDIAN (Jan. 23, 2016, 2:30 AM), <https://www.theguardian.com/books/2016/jan/23/arab-spring-five-years-on-writers-look-back> (demonstrating the contrast between Arab writers’ initial positive reactions to the Arab Spring and their reactions five years later).

d'état" paved the way for the resignation of longtime authoritarian leader Hosni Mubarak and, eventually, democratic elections.<sup>3</sup> However, this moment of hope and reform proved to be short-lived. The elected president and Muslim Brotherhood leader Mohamed Morsi proved to be so divisive and consolidated executive authority to such an alarming extent that General Abdel Sisi replaced him in a military, if arguably popularly supported, coup.<sup>4</sup> Egypt is now perhaps even more authoritarian and less free than it was under President Mubarak,<sup>5</sup> and as President Sisi's popularity continues to wane, many commentators argue that Egypt's "deep state" remains in control of the country despite the 2011 revolution or 2013 coup.<sup>6</sup> Likewise, little has changed in Morocco, where after widespread protests and a promising youth-led grassroots initiative (the February 20th Movement),<sup>7</sup> the majority of Moroccans eventually stood pat

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3. See Ozan O. Varol, *The Democratic Coup d'État*, 53 HARV. INT'L L.J. 291, 356 (2012).
  4. See, e.g., David D. Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES (Feb. 11, 2011), <http://www.nytimes.com/2011/02/12/world/middleeast/12egypt.html> (detailing President Hosni Mubarak's resignation); David D. Kirkpatrick, *Named Egypt's Winner, Islamist Makes History*, N.Y. TIMES (June 24, 2012), <http://www.nytimes.com/2012/06/25/world/middleeast/mohamed-morsi-of-muslim-brotherhood-declared-as-egypts-president.html> (assessing Mohamed Morsi's successful presidential campaign in 2012); *Sisi Takes Power in Egypt*, AL JAZEERA (June 8, 2014), <http://www.aljazeera.com/news/middleeast/2014/06/sisi-be-sworn-as-egypt-president-20146843619902534.html> (discussing General Sisi's assumption of power after deposing President Morsi).
  5. *Worse than Mubarak*, ECONOMIST (May 2, 2015), <http://www.economist.com/news/middle-east-and-africa/21650160-abdel-fattah-al-sisi-has-restored-order-egypt-great-cost-worse> ("But [Sisi's] authoritarian habits leave Egypt looking a lot as it did before the Arab spring, when Mr. Mubarak, another military man, ruled with an iron fist. The repression is even worse now, say many.").
  6. Heba Saleh, *Sisi Loses His Lustre as Discontent Grows in Egypt*, FIN. TIMES (Apr. 21, 2016, 1:46 PM), <http://www.ft.com/cms/s/0/5528ce9e-0799-11e6-9b51-0fb5e65703ce.html#axzz4ErqGlfnu> (statement of Osama al-Ghazali Harb, Democratic Front Party) ("Sisi has become less popular with time because it has been demonstrated that those who really rule in Egypt now are the agencies of the deep state—security organs and the bureaucracy.").
  7. Adria Lawrence, *The Mixed Record of Morocco's February 20 Protest Movement*, WASH. POST: MONKEY CAGE (Feb. 20, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/02/20/the-mixed-record-of-moroccos-february-20-protest-movement/> ("The biggest winner of the Moroccan Arab Spring was the monarchy itself . . . The February 20th movement's objective—a monarch constrained by democratic procedures—has not been achieved. Instead, the king paid lip service to democratic aspirations while quietly shutting down critical voices."); Ilhem Rachidi, *Inside the Movement: What Is Left of Morocco's February 20?*, MIDDLE EAST EYE (Feb. 26, 2015, 6:32 PM), <http://www.middleeasteye.net/in-depth/features/what-left-morocco-s-february-20->

when King Mohammed VI made largely superficial democratic reforms.<sup>8</sup>

Perhaps most distressing, violence has increased significantly.<sup>9</sup> After the removal of Muammar Gaddafi, Libya remains a violent state with two parallel governments.<sup>10</sup> Yemen also remains ensnarled in violence, which escalated significantly in 2015 due to Saudi Arabia’s intervention, turning an already protracted internal conflict into a regional one.<sup>11</sup> Finally, the civil war in Syria continues to

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movement-857852436 (“[D]espite constitutional reforms announced in the aftermath of the first 2011 protests and hailed by the international community, most activists say they feel no real political progress has been made.”).

8. Marina Ottaway, *The New Moroccan Constitution: Real Change or More of the Same?*, CARNEGIE ENDOWMENT FOR INT’L PEACE (June 20, 2011), <http://carnegeendowment.org/2011/06/20/new-moroccan-constitution-real-change-or-more-of-same-pub-44731> (“A large number of interviews during a recent trip to Morocco suggest that the king may well have succeeded in staying ahead of the protest that has led to the demise of the regimes in Tunisia and Egypt and plunged Libya, Syria, Yemen, and Bahrain into turmoil and violence.”); *see also* Aidan Lewis, *Why Has Morocco’s King Survived the Arab Spring?*, BBC NEWS (Nov. 24, 2011), <http://www.bbc.com/news/world-middle-east-15856989> (explaining how the majority allowed King Mohammed VI to remain in power despite the protests and grassroots movements). *See generally* MOHAMED DAADAOU, *MOROCCAN MONARCHY AND THE ISLAMIST CHALLENGE: MAINTAINING MAKHZEN POWER* (2011) (providing a strong socio-institutional explanation for the monarchy’s ability to remain in power and withstand opposition through its appropriation and manipulation of traditional cultural and religious symbols and practices).
9. *See, e.g.*, Greg Botelho, *Arab Spring Aftermath: Revolutions Give Way to Violence, More Unrest*, CNN (Mar. 28, 2015, 1:52 PM), <http://www.cnn.com/2015/03/27/middleeast/arab-spring-aftermath/>. In addition to violence and armed conflict, women and girls living within Arab countries have faced additional violence linked to the Arab Spring. *See* RACHEL KEAN, *INTERNATIONAL SECURITY MEETING SUMMARY: THE RISE OF VIOLENCE AGAINST WOMEN AND GIRLS SINCE THE ARAB SPRING 4* (2014), [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20140610RiseViolenceAgainstWomenArabSpring.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140610RiseViolenceAgainstWomenArabSpring.pdf) (noting that women and girls face new forms of violence “intrinsicly linked to the political uprisings of the Arab Spring – women’s ‘bodies are battlefields’ and are being instrumentalized in political rivalries”).
10. Leila Fadel, *Libya Today: 2 Governments, Many Militias, Infinite Chaos*, NPR (Feb. 6, 2015, 1:49 PM), <http://www.npr.org/sections/parallels/2015/02/06/384277648/libya-today-two-governments-many-militias-infinite-chaos>; *see also* Agence France-Presse, *Libya Conflict: UN Says All Sides Probably Guilty of War Crimes*, GUARDIAN (Feb. 25, 2016, 3:36 AM), <https://www.theguardian.com/world/2016/feb/25/libya-conflict-un-says-all-sides-are-probably-guilty-of-war-crimes> (“All sides in the Libyan conflict are probably guilty of war crimes, including torturing, raping and executing prisoners . . .”).
11. *Yemen: Crisis Overview*, UNITED NATIONS OFF. FOR COORDINATION HUMANITARIAN AFF., <http://www.unocha.org/yemen/crisis-overview> (last visited Dec. 19, 2016) (noting that since the March 2015 escalation of an already protracted conflict,

show few signs of abetting. The conflict already has claimed the lives of perhaps 400,000 people,<sup>12</sup> led to an overwhelming refugee and migrant crisis,<sup>13</sup> and provided fertile ground for the Islamic State to take root.<sup>14</sup>

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government and opposition forces had killed 6,500 people (an average of 113 casualties per day) and injured more than 31,400, while an estimated 14.4 million people cannot meet their food needs and 7.6 million are “severely food insecure”); see also Laura Kasinof, *How Yemen’s Civil Conflict Turned into a Regional Proxy War*, NATION (May 4, 2015), <https://www.thenation.com/article/how-yemens-civil-conflict-turned-regional-proxy-war/> (“The conflict in Yemen is not rooted in a regional conflict. . . . [I]t has become a part of a bigger regional war that is not just about Yemen.”); Jim Michaels, *Yemen Fighting Grows into Regional Conflict*, USA TODAY (Mar. 26, 2015, 7:54 PM),

<http://www.usatoday.com/story/news/world/2015/03/26/tikrity-shiite-iran-saudi-arabia-yemen/70505808/> (“Sectarian fighting escalated dramatically in Yemen Thursday, as an unfolding civil war began to look more like a regional conflict between Sunni-led Saudi Arabia and Shiite power Iran.”); *Yemen: The Forgotten War*, AMNESTY INT’L, <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/> (last visited Dec. 19, 2016) (“On 25 March 2015, an international coalition led by Saudi Arabia launched air strikes against the Huthi armed group . . . . [T]he conflict has spread and fighting has engulfed the entire country. Horrific human rights abuses, as well as war crimes, are being committed throughout the country causing unbearable suffering for civilians.”).

12. *Syria Death Toll: UN Envoy Estimates 400,000 Killed*, AL JAZEERA (Apr. 23, 2016), <http://www.aljazeera.com/news/2016/04/staffan-de-mistura-400000-killed-syria-civil-war-160423055735629.html>.

13. *Syria Regional Refugee Response*, UN HIGH COMMISSIONER FOR REFUGEES, <http://data.unhcr.org/syrianrefugees/regional.php> (last updated Oct. 23, 2016) (noting that there are nearly 4.8 million registered Syrian refugees); see also *Syria’s Refugee Crisis in Numbers*, AMNESTY INT’L (Feb. 3, 2016, 7:02 PM), <https://www.amnesty.org/en/latest/news/2016/02/syrias-refugee-crisis-in-numbers/>.

14. See Philip Issa, *Syrian Civil War: Five Ways the Conflict Has Changed the World*, INDEPENDENT (Mar. 13, 2016, 3:44 PM),

<http://www.independent.co.uk/news/world/middle-east/syrian-civil-war-isis-how-it-changed-the-world-refugee-crisis-a6928796.html> (“It was in the vacuum of the deteriorating Syria conflict that a little-known and terrifically violent branch of al-Qaeda grew into the foremost terror group on the planet.”); Loveday Morris, *In Syrian Civil War, Emergence of Islamic State of Iraq and Syria Boosts Rival Jabhat al-Nusra*, WASH. POST (Oct. 28, 2013), [https://www.washingtonpost.com/world/middle\\_east/in-syrian-civil-war-emergence-of-islamic-state-of-iraq-and-syria-boosts-rival-jabhat-al-nusra/2013/10/25/12250760-3b4b-11e3-b0e7-716179a2c2c7\\_story.html](https://www.washingtonpost.com/world/middle_east/in-syrian-civil-war-emergence-of-islamic-state-of-iraq-and-syria-boosts-rival-jabhat-al-nusra/2013/10/25/12250760-3b4b-11e3-b0e7-716179a2c2c7_story.html). In 2016,

Ennahda found that it had outgrown its Islamist origins and the party now identifies as “Muslim democrats.” Rached Ghannouchi, *From Political Islam to Muslim Democracy: The Ennahda Party and the Future of Tunisia*, 95 FOREIGN AFF. 58, 58 (2016). Noting that Islamic values still guide the party’s actions, Ennahda no longer feels under threat from authoritarian dictators that previously denied its participation in the political process. *Id.* at 59. As such, Ennahda can function as a political party rather than as the social movement from which it began. As Ghannouchi stated: “Tunisia is finally a democracy rather than a dictatorship; that means that Ennahda can finally be a political party focusing on its practical agenda and economic vision rather than a social movement fighting against repression and dictatorship.” *Id.* at

In the midst of this authoritarianism, chaos, and bloodshed, Tunisia has emerged as a largely free and open society.<sup>15</sup> Tunisia’s successful transition from authoritarian kleptocracy to democratic state received further validation when Tunisia’s National Dialogue Quartet received the 2015 Nobel Peace Prize.<sup>16</sup> A crucial aspect of Tunisia’s transition from revolution to an emergent, if fragile, democracy was the success of women’s rights activists in shaping this process. These activists worked tirelessly to ensure that women’s rights remained strong both through their participation in civil society and by safeguarding these rights in Tunisia’s legal system.<sup>17</sup> Indeed, Tunisian feminists and women’s rights activists succeeded not only in joining the protests that forced President Zine al-Abidine Ben Ali to flee the country, but also in remaining an active part of civil society and the National Dialogue.<sup>18</sup> Their most

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60. Although a significant change worth noting, this Article discusses Ennahda through 2015, when the party still identified as an Islamist party.

15. Sebastian Fagan, *Tunisia Declared Free by Freedom House*, TUNIS. LIVE (Feb. 11, 2015), <http://www.tunisia-live.net/2015/02/11/tunisia-declared-free-by-freedom-house/> (“Tunisia was singled out as an example of a successful democracy in a region which has seen continuing state suppression and human rights abuses.”); Arch Puddington, *Discarding Democracy: A Return to the Iron Fist*, in FREEDOM HOUSE, FREEDOM IN THE WORLD 2015 (2015), [https://freedomhouse.org/sites/default/files/01152015\\_FIW\\_2015\\_final.pdf](https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf) (“Tunisia’s . . . status improved from Partly Free to Free due to the adoption of a progressive constitution, governance improvements under a consensus-based caretaker administration, and the holding of free and fair parliamentary and presidential elections, all with a high degree of transparency.”).
16. Julian Borger et al., *Tunisian National Dialogue Quartet Wins 2015 Nobel Peace Prize*, GUARDIAN (Oct. 9, 2015, 11:04 AM), <https://www.theguardian.com/world/2015/oct/09/tunisian-national-dialogue-quartet-wins-2015-nobel-peace-prize>; *The Nobel Peace Prize for 2015*, NOBELPRIZE.ORG (Oct. 10, 2015), [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2015/press.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/2015/press.html).
17. *See UN Women Applauds the Decision to Award the Nobel Peace Prize to the Tunisian National Dialogue Quartet*, UN WOMEN (Oct. 9, 2015), <http://www.unwomen.org/en/news/stories/2015/10/statement-on-nobel-peace-prize-to-the-tunisian-national-dialogue-quartet> (“[T]he remarkable strides in Tunisia’s democratic transition, including the adoption of the Constitution in 2014 . . . were due in large part to the extensive consultations with civil society including women from diverse backgrounds and segments of Tunisian society.”).
18. Hayat Alvi, *Women’s Rights Movements in the ‘Arab Spring’: Major Victories or Failures for Human Rights?*, 16 J. INT’L WOMEN’S STUD. 294, 307 (2015) (“Women took part in the Tunisian revolution of 2011, and played significant roles in the activism that helped end decades of authoritarianism.”); Mounira M. Charrad & Amina Zarrugh, *The Arab Spring and Women’s Rights in Tunisia*, E-INT’L REL. (Sept. 4, 2013), <http://www.e-ir.info/2013/09/04/the-arab-spring-and-womens-rights-in-tunisia/> (“At the heart of this burgeoning civil society and activism following the

significant legal victory was including an article guaranteeing gender equality within Tunisia's 2014 post-revolution constitution, despite initially strong opposition from conservative actors and reluctance from Ennahda, the Islamist party then controlling parliament.<sup>19</sup> Just as importantly, women's rights activists maintained their ability to participate in public discourse and the political process that shaped Tunisia's mostly peaceful transition, as the country moved from authoritarian regime to a surprisingly inclusive democracy.<sup>20</sup>

In this regard, Tunisia can be viewed as a state moving toward the gender inclusive society reflected in the canonical texts of Islamic feminism.<sup>21</sup> Scholars such as Leila Ahmed, Fatima Mernissi, Amina Wadud, Asma Barlas, among many others, have long rejected that Islam is incompatible with women's rights.<sup>22</sup> Rather, they find that deep-seated patriarchal traditions have usurped the ethos of gender equality present within Islamic thought.<sup>23</sup> At the same time, scholars such as Abdullahi An-Na'im argue that a secular state is necessary for Islam,<sup>24</sup> while contemporary writers such as Mona Eltahawy find that the Middle East requires a sexual revolution before women will find equality and escape patriarchy and oppression.<sup>25</sup> The Tunisian

Jasmine Revolution is the historical status of Tunisia as the bulwark of women's rights in the region.").

19. *See infra* Section IV.B(3)(c)(ii).
20. Alvi, *supra* note 18, at 305–06 (noting that “[i]n Tunisia, women freely occupy the public space” and that an August 2012 rally saw thousands protest against possible constitutional changes that would have threatened gender equality).
21. *See, e.g.,* Ziba Mir-Hosseini, *Towards Gender Equality: Muslim Family Laws and the Shari'ah*, in WANTED: EQUALITY AND JUSTICE IN THE MUSLIM FAMILY 23, 42 (Zainah Anwar ed., 2009); Ziba Mir-Hosseini, *The Construction of Gender in Islamic Legal Thought and Strategies for Reform*, 1 HAWWA: J. WOMEN MIDDLE E. & ISLAMIC WORLD 1, 4 (2003) (“The further *fiqh* texts are removed from the time and the spirit of revelation, the stronger becomes their patriarchal voice.”).
22. *See* LEILA AHMED, WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE 11 (1992); FATIMA MERNISSI, BEYOND THE VEIL: MALE-FEMALE DYNAMICS IN MODERN MUSLIM SOCIETY 19 (Ind. Univ. Press rev. ed. 1987) (1975); FATIMA MERNISSI, THE VEIL AND THE MALE ELITE: A FEMINIST INTERPRETATION OF WOMEN'S RIGHTS IN ISLAM 10–11 (Mary Jo Lakeland trans., Addison-Wesley Publ'g Co. 1991) (1987); AMINA WADUD, INSIDE THE GENDER JIHAD: WOMEN'S REFORM IN ISLAM 2 (2006); AMINA WADUD, QUR'AN AND WOMAN: REREADING THE SACRED TEXT FROM A WOMAN'S PERSPECTIVE 1 (Oxford Univ. Press 2d ed. 1999) (1992); ASMA BARLAS, “BELIEVING WOMEN” IN ISLAM: UNREADING PATRIARCHAL INTERPRETATIONS OF THE QUR'AN 2 (2002).
23. *See infra* Section III.A.
24. ABDULLAHI AHMED AN-NA'IM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A 1 (2008) (“In order to be a Muslim by conviction and free choice, which is the only way one can be a Muslim, I need a secular state.”).
25. MONA ELTAHAWY, HEADSCARVES AND HYMENS: WHY THE MIDDLE EAST NEEDS A SEXUAL REVOLUTION 31 (2015) (“The battles over women's bodies can be won only by a revolution of the mind.”).

experience reflects aspects of these diverse perspectives, although secular feminism maintains the strongest presence in Tunisian social discourse, politics, and law.

This Article examines women’s rights in Tunisia after more than six years since a popular uprising forced longtime autocrat Ben Ali to flee the country, which allowed Tunisian democracy to begin to take hold. Further, it explores what, if any, broader implications Tunisia’s women’s rights movement has for other states in North Africa or the Middle East. Part II reconsiders the Arab Spring through a critical perspective, while also assessing how Tunisian exceptionalism and the Islamist Ennahda party situate Tunisia in this larger dynamic.<sup>26</sup> Part III discusses Islamic feminism and examines how this innovative school of thought contributes to the struggle for advancing women’s rights and achieving gender equality throughout Islamic and Muslim majority states.<sup>27</sup> Finally, Part IV explores women’s rights in Tunisia, both before and after the 2010–2011 revolution, and assesses how these rights relate to Tunisia’s legal tradition, historical legacy, and significant legal developments that occurred after the revolution.<sup>28</sup>

## II. RECONSIDERING THE ARAB SPRING

Few, if any, expected the Arab Spring.<sup>29</sup> Western analysts and host country observers alike failed to predict the civil protests and popular uprisings that commentators quickly characterized as the Arab Spring.<sup>30</sup> Most accounts mark the beginning of the Arab Spring as December 18, 2010, when protests broke out after the self-immolation of Tunisian street vender Mohamed Bouazizi.<sup>31</sup> Bouazizi’s self-immolation followed years of harassment and abuse

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26. See *infra* Part II.

27. See *infra* Part III.

28. See *infra* Part IV.

29. See, e.g., F. Gregory Gause III, *Why Middle East Studies Missed the Arab Spring: The Myth of Authoritarian Stability*, 90 FOREIGN AFF. 81, 81 (2011) (“The vast majority of academic specialists on the Arab world were as surprised as everyone else by the upheavals that toppled two Arab leaders last winter and that now threaten several others.”).

30. See Jeff Goodwin, *Why We Were Surprised (Again) by the Arab Spring*, 17 SWISS POL. SCI. REV. 452, 452 (2011) (“[N]o social scientist or political analyst in either the West or the Arab world itself claims to have predicted these uprisings, so far as I am aware. Nor did any Western or Arab intelligence agency predict them. In fact, the very people who participated in these uprisings, including long-time activists, do not seem to have foreseen them.”).

31. See *supra* note 1 and accompanying text.



from local authorities, a pattern repeated throughout Tunisia during President Ben Ali's authoritarian and highly corrupt rule.<sup>32</sup>

Within Tunisia, popular protests spread quickly, and Ben Ali fled to Saudi Arabia to escape the collapse of his rule.<sup>33</sup> Following this dramatic departure, a caretaker national government assumed the daily activities of the state before holding elections on October 23, 2011.<sup>34</sup> The formerly banned Ennahda (Renaissance) party won the largest share of seats in the National Constituent Assembly,<sup>35</sup> which held the responsibility of drafting Tunisia's post-revolutionary constitution.<sup>36</sup> Drafting and implementing a new constitution was the foremost priority for the newly elected government, although this process proved much more difficult and time-consuming than anticipated.<sup>37</sup>

By 2013, social and political tensions were extremely high, as Tunisia's nascent democracy appeared on the verge of collapse.<sup>38</sup> The constitution remained incomplete, as Ennahda and rival parties struggled to resolve strong differences on key legal issues.<sup>39</sup> A stagnant economy and general feeling that democracy could not address the fundamental socioeconomic issues at the heart of the

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32. See *supra* note 1 and accompanying text.

33. *Tunisia: Ex-President Ben Ali Flees to Saudi Arabia*, BBC NEWS (Jan. 15, 2011), <http://www.bbc.com/news/world-africa-12198106>.

34. *Tunisia's Interim Government Delays Election*, BBC NEWS (June 8, 2011), <http://www.bbc.com/news/world-middle-east-13702372>; see also *Tunisia: Ex-President Ben Ali Flees to Saudi Arabia*, *supra* note 33.

35. *See Ennahda Wins Tunisia's Elections*, AL JAZEERA (Oct. 28, 2011), <http://www.aljazeera.com/news/africa/2011/10/2011102721287933474.html>.

36. *Tunisia Constituent Body Holds First Session*, AL JAZEERA (Nov. 22, 2011), <http://www.aljazeera.com/news/africa/2011/11/2011112217751533504.html> ("The politicians, who will be entrusted with drafting a new constitution and paving the way for fresh elections, sang the national anthem as the session got under way in the Bardo palace, on the outskirts of Tunis.")

37. *Tunisia Begins Landmark Debate on Draft Constitution*, NAHARNET (July 1, 2013, 8:43 AM), <http://www.naharnet.com/stories/en/88921> ("Tunisia's first parliamentary debate on the draft constitution was suspended on Monday amid chaotic scenes in the National Assembly, with tensions between the ruling Islamists and their opponents flaring over the long-delayed text."). In addition to disagreements over the constitutional text, the drafters struggled even to agree upon the political system that the constitution would serve. *Id.* ("The main political parties were originally given a year to draft the text after the first post-revolution elections in October 2011, but the timetable was repeatedly revised amid disagreement about the nature of Tunisia's future political system.")

38. See Ridha Kéfi, *Tunisia: Civil Society, the Driving Force Behind the Democratic Transition*, in IEMED MEDITERRANEAN YEARBOOK 2015 237, 239 (2015), [http://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/anuari/med.2015/IEMed%20Yearbook%202015\\_Panorama\\_TunisiaDemocraticTransition\\_RidhaKefi.pdf](http://www.iemed.org/observatori/arees-danalisi/arxius-adjunts/anuari/med.2015/IEMed%20Yearbook%202015_Panorama_TunisiaDemocraticTransition_RidhaKefi.pdf).

39. See *id.*

revolution contributed to this crisis.<sup>40</sup> These factors, alongside a rise in religious extremism and the assassinations of leftist politicians Chokri Belaid on February 6, 2013, and Mohamed Brahmī on July 25, 2013, brought the country to the brink of civil war.<sup>41</sup>

Tunisia’s remarkable recovery from this point onward is well-known. Civil society organizations intervened at this crucial impasse, creating a National Dialogue that saw the main political parties compromise on contested issues, dissolve the government, hold new elections, and eventually adopt a new constitution.<sup>42</sup> The four civil society organizations that established and drove the National Dialogue became known as the National Quartet.<sup>43</sup> Over the course of several months, the Quartet worked closely with the leaders of Tunisia’s political parties, culminating in a voluntary dissolution of the elected government and the decision to hold new elections by the end of 2014.<sup>44</sup> Following a second round of post-revolutionary elections, the Tunisian parliament drafted a new constitution, which it then adopted on January 26, 2014.<sup>45</sup> As noted

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40. *See id.*

41. *Id.*; Monica Marks, *Tunisia’s Ennahda: Rethinking Islamism in the Context of ISIS and the Egyptian Coup*, in *RETHINKING POLITICAL ISLAM SERIES 1*, 8–9 (2015) [hereinafter Marks I], [https://www.brookings.edu/wp-content/uploads/2016/07/Tunisia\\_Marks-FINALE-5.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/Tunisia_Marks-FINALE-5.pdf); *see also* Carlotta Gall, *Islamist Party in Tunisia Concedes to Secularists*, *N.Y. TIMES* (Oct. 27, 2014) [hereinafter Gall I], <http://www.nytimes.com/2014/10/28/world/africa/nidaa-tounes-ennahda-tunisian-parliamentary-election.html> (“Many Ennahda members had emerged from prison or had returned from exile after the revolution and were afforded some sympathy. Yet they proved largely inexperienced and unable to manage the mounting instability, and alienated many by allowing a rapid spread of Islamist groups, some of which turned to violence.”).

42. Kéfi, *supra* note 38, at 239–40 (“A marathon of meetings from September to December 2013 allowed them to reach a solution acceptable to all parties, which consisted in dissolving of the government, establishing a technocratic government entrusted with managing daily affairs and creating the conditions for holding legislative and presidential elections by the end of 2014, and accelerating the adoption of the new constitution.”).

43. Borger, *supra* note 16.

44. *Id.*; Kéfi, *supra* note 38, at 239–40.

45. *See Tunisia Signs New Constitution*, *GUARDIAN* (Jan. 27, 2014, 10:38 AM), <https://www.theguardian.com/world/2014/jan/27/tunisia-signs-new-constitution-progressive>; *Tunisia Signs New Constitution into Law*, *AL JAZEERA* (Jan. 27, 2014), <http://www.aljazeera.com/news/africa/2014/01/tunisia-assembly-approves-new-constitution-201412622480531861.html> (“The new constitution, seen as one of the most progressive in the region, guarantees equal rights for men and women.”). Furthermore, then President Moncef Marzouki stated: “With the birth of this text, we confirm our victory over dictatorship.” *Id.*

above, the Quartet received the 2015 Nobel Peace Prize Award for its efforts.<sup>46</sup>

Now, more than six years removed from the start of the Arab Spring, Tunisia is the only country that emerged as a democratic state.<sup>47</sup> Across North Africa and the Middle East, popular uprisings gave way to authoritarian resilience, military coups, and civil war.<sup>48</sup> Despite the democratic promise of the initial protests, many commentators now question whether the region is worse than it was before the uprisings began.<sup>49</sup> Darker and more pessimistic narratives have replaced those that all but guaranteed a revitalized Arab world rooted in democracy and human rights.<sup>50</sup> Likewise, narratives focused on Tunisian exceptionalism abound, as scholars and analysts attempt to explain how Tunisia succeeded where other states failed.<sup>51</sup>

This Part continues by arguing for a more critical understanding of the Arab Spring that challenges simplistic narratives and addresses the more unsettling outcomes created by these popular uprisings.<sup>52</sup> It also explores Tunisian exceptionalism and the history, evolution, and governance of Ennahda.<sup>53</sup> A fuller comprehension of the Arab Spring, Tunisian exceptionalism, and Ennahda, are necessary to understand the success of women's rights activists in maintaining and then advancing women's rights in Tunisia after the revolution.

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46. *The Nobel Peace Prize for 2015*, *supra* note 16.

47. See Soumaya Ghannoushi, *Tunisia is Showing the Arab World How to Nurture Democracy*, *GUARDIAN* (Oct. 25, 2014, 6:00 PM), <https://www.theguardian.com/commentisfree/2014/oct/25/tunisia-arab-world-democracy-elections>; Ariel Zilber, *Has Tunisia Replaced Israel as the Middle East's Only Genuine Democracy?*, *JERUSALEM POST* (Apr. 2, 2016, 3:37 AM), <http://www.jpost.com/Middle-East/Has-Tunisia-replaced-Israel-as-the-Middle-East-s-only-genuine-democracy-449905> (discussing Tunisia's status as the sole democratic state in the Middle East).

48. See *The Arab Winter*, *ECONOMIST* (Jan. 9, 2016), <http://www.economist.com/news/middle-east-and-africa/21685503-five-years-after-wave-uprisings-arab-world-worse-ever>.

49. See, e.g., *id.*; Michael J. Totten, *Year Four: The Arab Spring Proved Everyone Wrong*, *WORLD AFF. J.* (2014), <http://www.worldaffairsjournal.org/article/year-four-arab-spring-proved-everyone-wrong>.

50. See, e.g., Kamel Daoud, *The Sexual Misery of the Arab World*, *N.Y. TIMES* (Feb. 12, 2016) [hereinafter Daoud I], <http://www.nytimes.com/2016/02/14/opinion/sunday/the-sexual-misery-of-the-arab-world.html> ("Those movements have come to look imperfect, even ugly: For one thing, they have failed to touch ideas, culture, religion or social norms, especially the norms relating to sex. Revolution doesn't mean modernity.").

51. See Zilber, *supra* note 47.

52. See *infra* Sections II.A–II.B.

53. See *infra* Section II.C.

## A. *Toward a More Critical Understanding of the Arab Spring*

### 1. Reductionist Narratives

Dichotomies are seldom helpful in understanding political dynamics or social change. This is certainly true in post-Arab Spring countries.<sup>54</sup> For example, although often relied upon to explain social tension and political violence, simplistic democratic-versus-Islamist narratives do not adequately describe the complex and evolving nature of the political economies within these states. As Ashraf El Sherif argues, “it makes no sense today to divide Arab politics into neatly crafted opposites, the ‘Islamist’ versus the ‘civil democratic’ blocs.”<sup>55</sup> Indeed, Islamist movements in the post-Arab Spring Middle East and North Africa show significant diversity and include reformists, members of the old Islamist guard, militants, and revisionists.<sup>56</sup>

Likewise, Paola Rivetti argues that scholarly assessments of the Arab Spring tend to fall between a binary dynamic of democratic change or authoritarian continuity.<sup>57</sup> Instead, she argues that, when examining any revolutionary process, “there should also be an emphasis on what has not suddenly changed from one day to the next, and more attention should be paid to long term processes of change, whose culminating moments are revolutions, instead of conceptualising revolutions as unexpected and sudden events.”<sup>58</sup>

### 2. Who Says the Revolution Is Over?

While reductionist narratives fail to advance a sound understanding of the complex situation within the Arab Spring-affected countries, so too does shortsighted analysis that attempts to make final pronouncements on the success or failure of the uprisings. The tendency to make such pronouncements was especially evident in the weeks and months that immediately followed the Arab Spring. Thus, Magid Shihade argues that even scholars sympathetic to the struggles

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54. Nadia Marzouki, *Tunisia’s Rotten Compromise*, MIDDLE E. RES. & INFO. PROJECT (July 10, 2015), <http://www.merip.org/mero/mero071015> (“The approach of Western countries to the Arab world often fluctuates between indifference and indiscriminate applause.”).

55. Ashraf El Sherif, *Islamism After the Arab Spring*, 110 CURRENT HIST. 358, 358 (2011).

56. *Id.* at 359–62.

57. Paola Rivetti, *Continuity and Change Before and After the Uprisings in Tunisia, Egypt and Morocco: Regime Reconfiguration and Policymaking in North Africa*, 42 BRIT. J. MIDDLE E. STUD. 1, 1 (2015).

58. *Id.*

of the Arab people have “rushed quickly to claim expertise on the Arab revolution, and to make early judgments on it weeks or [a] few months after it started, as if it is something that ended, rather than seeing it as something that is in the making.”<sup>59</sup> As a comparison, Shihade notes that the French Revolution took ten years to complete, only to become a force of colonial oppression and foreign intervention within the Third World.<sup>60</sup> Thus, Shihade finds that it is much more useful to view these revolutions as a “continuous process,” rather than a neatly defined event that ended as soon as the crowds dispersed or the leaders fled.<sup>61</sup>

Rivetti arrives at a similar conclusion, finding that “no regime surviving the uprisings has remained the same and no ‘new’ regime in place after the uprisings is entirely new.”<sup>62</sup> Insightfully, she notes that “elements of both rupture and stability are present at the same time.”<sup>63</sup> Olfa Youssef, a Tunisian professor and linguist, takes a different position, arguing that the Tunisian Revolution was not in fact a revolution.<sup>64</sup> Instead, Youssef concludes that Tunisia experienced “an uprising staged by marginalized and unemployed people, subsequently hijacked by intellectuals and youths who were eager to gain freedom, whilst the uprising was then backed by foreign powers and fulfilled by the flight of the former president.”<sup>65</sup>

Although disconcerting, Youssef’s interpretation of the uprisings invites a more critical and perhaps more thoughtful analysis of these events. For example, her assertion of what amounts to a social class co-option of street level protests and the charge of strategic foreign support problematizes less nuanced readings of these events.<sup>66</sup> Social class issues in particular create a challenge that Tunisia has yet to

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59. Magid Shihade, *On the Difficulty in Predicting and Understanding the Arab Spring: Orientalism, Euro-Centrism, and Modernity*, 17 INT’L J. PEACE STUD. 57, 60 (2012).

60. *Id.*; cf. Marzouki, *supra* note 54 (“The encomia are often based on the patronizing assumption that Tunisia’s achievements are ‘good enough’ for an Arab country, or on the Western-centric consideration that it took France and America two centuries to achieve several of the democratic goals that underpinned their respective revolutions.”).

61. Shihade, *supra* note 59, at 67.

62. Rivetti, *supra* note 57, at 5.

63. *Id.* at 6. Furthermore, she notes that determining when the uprisings “actually started and when they terminated is a rather difficult, if not impossible task.” *Id.* at 7.

64. Adel al-Toraifi, *Is Tunisia Really an Exception?*, AL ARABIYA NEWS (June 12, 2012), <http://english.alarabiya.net/views/2012/06/12/220157.html>.

65. *Id.*

66. *Id.*

address in a satisfactory manner following the revolution.<sup>67</sup> Ben Ali’s repressive government did not allow Tunisians to work through these and other issues, and instead forced a false image of unification and social homogeneity that did not exist beyond a superficially imposed level.<sup>68</sup> Monica Marks makes this point as well, stating: “Forced to look into regime-manufactured funhouse mirrors that showed only images of progress, stability, and unification, Tunisian society was unable to truthfully confront itself before the revolution, let alone grapple with its long-repressed issues of discontent and difference.”<sup>69</sup>

### B. *Unsettling Outcomes*

In addition to these difficult questions, it is important to address the negative and often violent outcomes that accompanied or followed popular uprisings throughout the Middle East and North Africa. The decline of human rights, fractured communities, failed economies, and loss of security throughout the region showed the dark side of these popular uprisings, and provides a stark reminder that the fall of regimes—even those as repressive as that of Muammar Gaddafi or Hosni Mubarak—can result in arguably worse conditions for the citizens of these states.<sup>70</sup> Although Tunisia escaped the civil wars of Syria and Yemen, the chronic violence of Libya and Iraq, and the revitalized repression of Egypt and Bahrain, it nonetheless

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67. See Michael Robbins, *Five Years After the Revolution, More and More Tunisians Support Democracy*, WASH. POST: MONKEY CAGE (May 20, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/20/are-tunisians-more-optimistic-about-democracy-after-5-years-living-under-it/> (discussing the Tunisian population’s embrace of democracy and struggle to improve its economy and unify the different sections of Tunisian society).
68. Monica L. Marks, *Convince, Coerce, or Compromise? Ennahda’s Approach to Tunisia’s Constitution*, BROOKINGS DOHA CTR. 11 (2014) [hereinafter Marks II], <https://www.brookings.edu/wp-content/uploads/2016/06/Ennahda-Approach-Tunisia-Constitution-English.pdf>; see also Ahmed Medien, *Ben Ali’s Political Propaganda Conspicuously Absent*, TUNIS. LIVE (Nov. 7, 2011), <http://www.tunisia-live.net/2011/11/07/november-7th-2011-ends-up-with-ben-alis-political-propaganda/> (discussing Ben Ali’s manipulation of media and other sources as a mechanism for maintaining superficial homogeneity and unification).
69. Marks II, *supra* note 68, at 11.
70. See, e.g., Joshua Keating, *Cairo Quiet on Anniversary of Uprising*, SLATE (Jan. 25, 2016, 3:37 PM), [http://www.slate.com/blogs/the\\_slatest/2016/01/25/cairo\\_quiet\\_on\\_anniversary\\_of\\_uprising\\_that\\_brought\\_down\\_mubarak.html](http://www.slate.com/blogs/the_slatest/2016/01/25/cairo_quiet_on_anniversary_of_uprising_that_brought_down_mubarak.html) (“Five years after the revolution, Egypt’s military-backed government is firmly in control, and in some ways more repressive than the Mubarak regime ever was.”).

encountered serious obstacles that threatened its transition to a democratic state.<sup>71</sup>

A weak economy and persistent socioeconomic concerns provided the greatest structural and long-term obstacles to Tunisia's democratic transition, but the rise of a militant Salafist movement presented a more immediate obstacle.<sup>72</sup> Long repressed under Ben Ali's secular authoritarianism, ultraconservative Salafis used the departure of Ben Ali to reassert themselves into Tunisia's social discourse and political debate.<sup>73</sup> Of course, Salafi itself is a problematic term that many conflate with militancy or violence.<sup>74</sup> In contrast, numerous conservative Muslims identify as Salafist in some way without resorting to violence. Nonetheless, a small militant Salafist movement emerged in Tunisia, threatening the country's peace and security.<sup>75</sup>

Shortly after the revolution, Salafis began attacking alcohol stores and destroying Sufi shrines.<sup>76</sup> Self-identified Salafis also attacked the Tunisian General Labor Union during peaceful demonstrations.<sup>77</sup> The role of Islam in Tunisia's post-revolutionary state remained the most divisive aspect of the transition, and many felt that Ennahda could have done more to prevent these attacks and acted with too

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71. Christian Åhlund, *Four Years After the Revolution: Tunisia Still Upholds the Values of the Arab Spring*, INT'L LEGAL ASSISTANCE CONSORTIUM: BLOG (Jan. 13, 2015), <http://www.ilacnet.org/blog/2015/01/13/four-years-after-the-revolution-tunisia-still-upholds-the-values-of-the-arab-spring/>.
  72. See Lisa Watanabe, *Tunisia: The Challenges of Transition*, CTR. FOR SECURITY STUD. ANALYSIS 1–3 (2013), <http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CSS-Analysis-135-EN.pdf> (discussing the political, socioeconomic, and other challenges facing the Tunisian people in the wake of their revolution).
  73. Monica Marks, *Who are Tunisia's Salafis?*, FOREIGN POL'Y (Sept. 28, 2012) [hereinafter Marks III], <http://foreignpolicy.com/2012/09/28/who-are-tunisia-s-salafis/>.
  74. Stephen Zhou, "Salafi" Does Not Equal "Terrorist": Stop Assuming all Conservative Muslims Are Violent Extremists, SALON (Dec. 21, 2015, 6:58 PM), [http://www.salon.com/2015/12/21/salafi\\_does\\_not\\_equal\\_terrorist\\_stop\\_assuming\\_all\\_conservative\\_muslims\\_are\\_violent\\_extremists/](http://www.salon.com/2015/12/21/salafi_does_not_equal_terrorist_stop_assuming_all_conservative_muslims_are_violent_extremists/).
  75. See *Tunisian Court Jails Salafists for Burning Sufi Shrine*, VOICE AM. NEWS (June 18, 2013, 1:31 PM) [hereinafter VOA], <http://www.voanews.com/content/tunisian-court-jails-salafists-for-burning-sufi-shrine/1684244.html> (discussing the increased risk of violence in areas where Salafist groups are present).
  76. Marks II, *supra* note 68, at 8; see also VOA, *supra* note 75 (discussing the increased risk of violence in areas where Salafist groups are present).
  77. Ahmed Charai & Joseph Braude, *Tunisia Is No Exception*, NAT'L INT. (Feb. 15, 2013), <http://nationalinterest.org/commentary/tunisia-no-exception-8108> ("Islamists were largely absent from the 2010–2011 demonstrations that led to the ouster of former president Ben Ali . . .").

much leniency afterwards.<sup>78</sup> Counterinsurgency strategists note that groups target cultural artifacts and religious shrines for a variety of reasons, including to reassert power by “rewriting history and obliterating alternative religious and ideological narratives.”<sup>79</sup> Perhaps unsurprisingly, the Salafist attacks on Sufi shrines triggered a strong Islamist backlash.<sup>80</sup>

This backlash reached its peak following the assassinations of leftist politicians Chokri Belaïd and Mohamed Brahmi.<sup>81</sup> Although the animus toward Islamist groups has largely subsided, religious extremism persists, as demonstrated by the March 18, 2015 attack on the Bardo Museum that left twenty-two people dead and an even deadlier mass shooting on June 26, 2015 at a tourist resort north of Sousse that resulted in thirty-eight deaths.<sup>82</sup> Furthermore, by the end of 2015, between 6,000 and 7,000 Tunisians had left the country to fight for ISIS, and as many as 15,000 Tunisians received an international travel ban because government officials suspected them of ISIS.<sup>83</sup> Incredibly, even a conservative estimate that 6,000 Tunisians joined ISIS is considerably more than the next two highest-

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78. See Carlotta Gall, *Islamist Party in Tunisia to Step Down*, N.Y. TIMES (Sept. 28, 2013) [hereinafter Gall II], <http://www.nytimes.com/2013/09/29/world/africa/islamist-party-in-tunisia-to-step-down.html> (noting the opposing parties’ increased frustration with Ennahda); VOA, *supra* note 75 (“But secularists say the Ennahda party, the Tunisian arm of the Muslim Brotherhood which governs in coalition with secular parties, has been too lenient on the Salafists, giving them the confidence to step up their demands.”).
79. Christopher Jaspardo, *The Case for Cultural Heritage Protection as an Element of COIN*, in THE FUTURE OF COUNTERINSURGENCY: CONTEMPORARY DEBATES IN INTERNAL SECURITY STRATEGY 91, 96 (Lawrence E. Cline & Paul Shemella eds., 2015).
80. Ishaan Tharoor, *The Beautiful, Historic Shrines that Islamists Try to Destroy*, WASH. POST (July 25, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/07/25/the-beautiful-historic-shrines-that-islamists-try-to-destroy/>.
81. See *supra* note 2 and accompanying text; see also Marks II, *supra* note 68, at 8 n.15, 29 (discussing the organization and challenges faced by Ennahda).
82. David D. Kirkpatrick, *Tunisia Museum Attack Is Blow to Nation’s Democratic Shift*, N.Y. TIMES (Mar. 18, 2015), [http://www.nytimes.com/2015/03/19/world/africa/gunmen-attack-tunis-bardo-national-museum.html?\\_r=1](http://www.nytimes.com/2015/03/19/world/africa/gunmen-attack-tunis-bardo-national-museum.html?_r=1); Farah Samti & Carlotta Gall, *Tunisia Attack Kills at Least 38 at Beach Resort Hotel*, N.Y. TIMES (June 26, 2015), <http://www.nytimes.com/2015/06/27/world/africa/gunmen-attack-hotel-in-sousse-tunisia.html>.
83. Yaroslav Trofimov, *How Tunisia Became a Top Source of ISIS Recruits*, WALL ST. J. (Feb. 25, 2016, 5:30 AM), <http://www.wsj.com/articles/how-tunisia-became-a-top-source-of-isis-recruits-1456396203>.



contributing countries combined: Saudi Arabia (2,500) and Russia (2,400).<sup>84</sup>

While Tunisia's democracy has so far managed to withstand this political violence, the large number of ISIS defections, as well as less obvious socioeconomic indicators, demonstrate that dissatisfaction remains high, at least within a particular segment of Tunisian society.<sup>85</sup> Whether this dissatisfaction will reach a point where it threatens Tunisia's democracy remains unknown.<sup>86</sup> At the very least, this violence frustrates Tunisia's transition toward a full-fledged and inclusive democracy and complicates the dominant narrative of Tunisia's exceptionalism.

### C. *Tunisian Exceptionalism*

Tunisia has proved to be the exception to the rule in the Arab Spring, as it remains the only country to transition successfully to a democratic state.<sup>87</sup> In 2015, Freedom House assessed Tunisia as free—the organization's "most free" country designation—marking the first time that a North African state received this designation since Freedom House began its annual assessment of political and civil rights in 1972.<sup>88</sup> Furthermore, Tunisia is the only Arab-majority country to receive Freedom House's "free" designation since Lebanon did between 1974 and 1976.<sup>89</sup>

Tunisian exceptionalism, in addition to whether this outcome is replicable within other Arab states, has become an incredibly popular topic for academics, policymakers, and journalists, as demonstrated by an already substantial academic and popular literature, as well as numerous academic conferences and symposia dedicated to this topic.<sup>90</sup> As the narrative of the Arab Spring darkens with ongoing

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84. *Id.*; *Foreign Fighters: An Updated Assessment on the Flow of Foreign Fighters into Syria and Iraq*, THE SOUFAN GROUP 9 (Dec. 2015), [http://soufangroup.com/wp-content/uploads/2015/12/TSG\\_ForeignFightersUpdate3.pdf](http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf).

85. See Trofimov, *supra* note 83.

86. For an argument that Salafists will not have a lasting effect on Tunisia, see El Sherif, *supra* note 55, at 363 (finding that the Salafists and the Islamic Liberation Party "[a]re not likely to make much noise" because "they are past their prime").

87. Fagan, *supra* note 15.

88. *Id.*

89. Puddington, *supra* note 15, at 1.

90. For a few of the numerous books and articles discussing this question, see Kéfi, *supra* note 38, at 237 ("In the devastated landscape of what has rather hastily been called the Arab Spring, Tunisia is an exception.") (characterizing Tunisia as "a relative island of stability in a chaotic region" and "a sort of solitary democracy lost in an ocean of autocratic regimes and failed states"); Owen Bennett-Jones, *Is Tunisia a Role Model for the Arab World?*, BBC NEWS (Dec. 2, 2014), <http://www.bbc.com/news/world-africa-30273807>; Kamel Daoud, *Tunisia Is the*

civil wars and the resurgence of repressive governments overshadowing earlier and more hopeful moments, some commentators have expressed doubt that Tunisia’s democratic government will avoid a similar fate.<sup>91</sup> Although these gloomy predictions have not occurred, a replication of the Tunisian exception seems unlikely, especially in the short-term.<sup>92</sup>

Moreover, Tunisian exceptionalism does not always benefit the country. For example, Tunisia’s successful democratic transition, in conjunction with the failure of other Arab states to become democratic and secure, has made Tunisia a target of Islamist militants, including ISIS, as these militants have filled power vacuums left from unsuccessful transitions.<sup>93</sup> Tunisia’s geography only increases these security concerns, as it is “sandwiched between

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*Exception, Not the Model*, N.Y. TIMES (Oct. 27, 2015) [hereinafter Daoud II], <http://www.nytimes.com/2015/10/28/opinion/tunisia-is-the-exception-not-the-rule.html> (“Tunisia is less a model than a unique case.”); Bruce Maddy-Weitzman, *Tunisia: Exemplar or Exception?*, FOREIGN POL’Y RES. INST. (Jan. 2011), <http://www.fpri.org/docs/media/201101.maddy-weitzman.tunisia.pdf> (“Tunisia seems to be more of an exceptional case, rather than an applicable model and a trigger for cascading popular democratic movements elsewhere.”). For two recent examples of academic events taking up this topic, see Frej Stambouli, *Is Tunisia an Exception Within the “Arab Spring”?*, U. HELSINKI, SWED. SCH. SOC. SCI. (Jan. 27, 2015, 2:15 PM), [http://sockom.helsinki.fi/ceren/aktuell/Stambouli\\_270115.pdf](http://sockom.helsinki.fi/ceren/aktuell/Stambouli_270115.pdf); *International Symposium on Democratic Transition*, DEAKIN U. (Sept. 11, 2015), <http://www.deakin.edu.au/alfred-deakin-institute/news/news-archive/2015-archive/democratic-transition-in-tunisia>.

91. *But see* Richard Cincotta, *Will Tunisia’s Democracy Survive? A View from Political Demography*, NEW SECURITY BEAT (May 12, 2015), <https://www.newsecuritybeat.org/2015/05/tunisi-as-democracy-survive-view-political-demography/> (“From political demography’s statistical perspective, Tunisia is far from the anomaly that Middle East analysts too often portray it to be.”). Cincotta further argues that by applying an age-structural model to predict whether states will attain liberal democracy, political demographers predicted Tunisia would become a liberal democracy in 2010. *Id.*
92. Joshua Keating, *Why Was Tunisia the Only Arab Spring Country that Turned Out Well?*, SLATE (Jan. 28, 2015, 3:58 PM), [http://www.slate.com/blogs/the\\_slatest/2015/01/28/why\\_was\\_tunisia\\_the\\_only\\_arab\\_spring\\_country\\_that\\_turned\\_out\\_well.html](http://www.slate.com/blogs/the_slatest/2015/01/28/why_was_tunisia_the_only_arab_spring_country_that_turned_out_well.html) (“Tunisia is still the Arab Spring’s lone success story. The problem, for those who would seek to apply lessons of the ‘Tunisia model’ elsewhere, is that the circumstances that allowed this to happen are pretty specific and hard to replicate.”).
93. Michael D. Rich & K. Jack Riley, *Tunisia in the Crosshairs*, U.S. NEWS & WORLD REP. (June 22, 2015, 1:30 PM), <http://www.usnews.com/opinion/blogs/world-report/2015/06/22/tunisia-arab-spring-success-story-is-a-key-target-of-islamic-state-group> (“Tunisia, which gave birth to the Arab Spring more than four years ago, stands out as a notable exception, making it an inviting target for threats from the Islamic State group.”).

two larger, and substantially less secure, neighbors (Algeria and Libya).<sup>94</sup>

Given the failure of other Arab states to achieve a similar transition, it is worth considering which factors contributed most strongly to Tunisia's positive and markedly different outcome. Historian L. Carl Brown notes that unlike some Arab states, "Tunisia is ethnically, religiously and linguistically unified."<sup>95</sup> Fellow historian Bruce Maddy-Weitzman also notes the relatively strong degree of social cohesion within Tunisian society: "Tunisia's pre-colonial and colonial eras had already laid the groundwork for a compact, well-defined entity which evolved into a relatively homogenous national state, one with a high degree of legitimacy and collective consciousness."<sup>96</sup> In addition, a sizable middle class, a large industrial sector, and very limited oil and gas reserves did not allow for the establishment of a rent-seeking regime similar to nearby Libya or Sudan, and instead contributed to a society less likely to be susceptible to divisive tactics during a national uprising.<sup>97</sup> Of course, political activists and civil society organizations also played crucial roles during the uprisings—a topic addressed more fully below.<sup>98</sup> Finally, the restraint of the Tunisian Army was crucial.<sup>99</sup> Never a significant part of President Habib Bourguiba or President Ben Ali's political apparatus, the commander of the Tunisian Army refused Ben Ali's order that the army confront the protestors.<sup>100</sup> Indeed, unlike in Egypt, Tunisia's army remained "solidly off stage."<sup>101</sup>

While Tunisia is very much an exception, an uncritical reliance on this narrative carries risk as well. In 2015, former Tunisian Minister of Communications Oussama Romdhani argued that, as a cultural exception, Tunisia "has been atrophying for decades now."<sup>102</sup>

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94. *Id.*

95. L. Carl Brown, *The Tunisian Exception*, INFORMED COMMENT (Oct. 14, 2014), <http://www.juancole.com/2014/10/the-tunisian-exception.html>

96. Maddy-Weitzman, *supra* note 90.

97. *Id.*

98. *See infra* notes 238–41 and accompanying text.

99. Brown, *supra* note 95.

100. *Id.*

101. *Id.*; *see also* Francis Ghilès, *Tunisia: The Arab Exception's Test*, OPEN DEMOCRACY (Dec. 21, 2014), <https://www.opendemocracy.net/francis-ghil%C3%A8s/tunisia-arab-exception-s-test> ("The army played a decisive role by not intervening; its refusal to fire on demonstrators contrasted with the response of militaries in other Arab states. It has played a key role in helping maintain the peace during the past four turbulent years.").

102. Oussama Romdhani, *The Sousse Terrorist Episode and the Tunisian Exception*, NEW AFR. MAG. (July 6, 2015), <http://newafricanmagazine.com/the-sousse-terrorist-episode-and-the-tunisian-exception/>.

Romdhani also argued that for a subsection of the population, Tunisia’s values of moderation and openness “have proved to be no match to the onslaught of religious extremism brought about by Middle Eastern preachers and amplified by satellite television and the [I]nternet.”<sup>103</sup>

Finally, by uncritically regarding Tunisia as exceptional, Orientalist narratives suggesting that Tunisia’s exceptionalism proves a larger rule of the incompatibility between Arab states and democracy may take root.<sup>104</sup> As Marzouki and Meddeb note: “Since December 2014, Western officials and analysts have very actively, almost aggressively, celebrated the Tunisian ‘success,’ which is alternatively defined as an ‘exception’ or a ‘model’ in a chaotic Arab world.”<sup>105</sup> Simply labeling Tunisia exceptional for showing an absence of chaos does not adequately reflect the struggle and achievement of reaching and maintaining democracy. Furthermore, such a perspective implicitly equates chaos as the norm, suggesting that Tunisia is an outlier, whereas authoritarianism or lawlessness is expected. Lastly, celebrating Tunisia’s procedural democracy without critically appraising whether conditions have improved substantively risks conflating successful elections with root change, which is rarely, if ever, true. Thus, Marzouki emphasizes: “The narrative of Tunisian success based on compromise should thus be employed with extreme caution. Despite great achievements since 2011, the country is very far from having robust political pluralism or finding political channels for social grievances.”<sup>106</sup>

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103. *Id.*

104. See, e.g., Robert Springborg, *Egypt: Confronting the Challenge of Low Level Insurgency*, in *THE FUTURE OF COUNTERINSURGENCY: CONTEMPORARY DEBATES IN INTERNAL SECURITY STRATEGY* 236, 239 (Lawrence E. Cline & Paul Shemella eds., 2015) (“With the apparent exception of Tunisia, Arab states seem incapable of reform and relatively peaceful democratic transitions.”). *But see The Guardian View on Tunisia’s Transition: A Success Story*, *GUARDIAN* (Dec. 26, 2014, 2:03 PM) [hereinafter, *A Success Story*], <http://www.theguardian.com/commentisfree/2014/dec/26/guardian-view-tunisia-transition-success-story> (“But Tunisia’s success so far confirms that democracy and Islam are in no way a contradiction.”).

105. Nadia Marzouki & Hamza Meddeb, *Tunisia: Democratic Miracle or Mirage?*, *JADALIYYA* (June 11, 2015), [http://www.jadaliyya.com/pages/index/21863/tunisia\\_democratic-miracle-or-mirage](http://www.jadaliyya.com/pages/index/21863/tunisia_democratic-miracle-or-mirage).

106. Marzouki, *supra* note 54.

D. *Ennahda: History and Evolution, Governance and Compromise*

Although the National Quartet rightfully received the Nobel Peace Prize, Ennahda also deserves significant credit for its contribution to Tunisia's democratic transition.<sup>107</sup>

1. Political History and Evolution

Ennahda's strong commitment to democracy, tolerance, and pluralism, as well as its willingness to re-examine its positions and evolve, distinguish it not only from other Islamist political parties, but also from the majority of political parties within the Middle East and North Africa (MENA).<sup>108</sup> Particularly after the revolution, many Tunisians viewed Ennahda as a legitimate alternative to the repressive governance that defined the Bourguiba and Ben Ali regimes.<sup>109</sup> Additionally, Ennahda developed good working relationships with human rights organizations, labor unions, and other opposition parties by enduring similar experiences of repression.<sup>110</sup> Although post-revolution electoral politics strained these relationships, these shared experiences allowed for an initial spirit of trust and cooperation that was absent in similar dealings within other Arab states.

Ennahda began as the *Mouvement de la Tendance Islamique*, before a Ben Ali-era law disallowing political party names to contain religious references forced the party to change its name.<sup>111</sup> Rachid Ghannouchi and other Islamic leaders founded Ennahda in 1981.<sup>112</sup> From its inception, Ennahda was markedly different from most other Islamist parties. As El Sherif notes, in 1981, Ennahda became the first Islamist movement within the MENA region to "declare its full

107. Bennett-Jones, *supra* note 90 ("Tunisia's version of the Muslim Brotherhood, the moderate Islamist Ennahda party, should also take some of the credit.").

108. See Christopher Alexander, *Tunisia: The Best Bet, in THE ISLAMISTS ARE COMING: WHO THEY REALLY ARE* 39, 39 (Robin Wright ed., 2012) ("Ennahda has evolved into an influential exemplar of moderate, pragmatic Islamism that pledges to support human rights, pluralism, and democracy.").

109. *Id.* at 42–43.

110. Marks II, *supra* note 68, at 9 (noting a "shared history of ideological struggle against and brutal oppression under Ben Ali's regime"); see also Alexander, *supra* note 108, at 41 (noting that the repression of the Islamic Tendency Movement during the 1980s led to stronger ties with the human rights league, labor movement, and opposition political parties).

111. Alexander, *supra* note 108, at 41. Moreover, whether Ennahda is a political party or movement is a contested issue for Ennahda supporters. Throughout this article, I refer to Ennahda as a party for clarity. See Marks II, *supra* note 68, at 8.

112. Alex Stark, *Arab Exceptionalism? Tunisia's Islamist Movement*, (Jan. 31, 2011) (unpublished essay, Wellesley College) (one file with E-Int'l Rel.), <http://www.e-ir.info/2011/01/31/arab-exceptionalism-tunisia%E2%80%99s-islamist-movement/>.

commitment to the values of democracy, multiparty politics, and pluralism.”<sup>113</sup> Because this movement was viewed as a symbol of political change, President Bourguiba ordered the arrest of Ennahda’s leaders only six weeks after the party’s founding.<sup>114</sup> Bourguiba then banned the party and persecuted its members.<sup>115</sup> Following Bourguiba’s removal from power in 1987, Ennahda leaders attempted to reconcile with the government.<sup>116</sup> Newly elected President Ben Ali was initially receptive to these conciliatory gestures and allowed Ennahda to pursue some political activities, culminating in Ennahda’s participation in the creation of Tunisia’s national charter in 1988.<sup>117</sup>

Ennahda’s emphasis on democracy and pluralism threatened Ben Ali, and the party quickly fell back out of favor.<sup>118</sup> Ghannouchi was forced to flee Tunisia in 1989, and Ben Ali refused to recognize Ennahda as a legal party when he created the “official opposition” in 1992.<sup>119</sup> Ben Ali’s government also initiated an incredible propaganda campaign against Ennahda, going so far as to characterize this moderate party as an enemy dangerous not only to his government, but also to civilized society.<sup>120</sup> Despite severe state repression and marginalization, Ennahda remained popular and relevant, especially within poor urban areas where its informal networks of assistance and social services met needs that the government did not.<sup>121</sup> Ghannouchi returned to Tunisia on January 30, 2011 after twenty-two years in exile, but declined to pursue a position in government, and instead remained head of Ennahda.<sup>122</sup>

Although the Ennahda of post-revolutionary Tunisia is, in the words of political scientist Shadi Hamid, “as ‘moderate’ as you can probably get in the Arab world and still call yourself Islamist,” the party was not always orientated this way.<sup>123</sup> As Marks notes,

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113. El Sherif, *supra* note 55, at 362; *see* Stark, *supra* note 112 (noting that Ennahda embraced democracy as a “universal heritage” and supported tolerance and pluralism).

114. Stark, *supra* note 112.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Gudrun Krämer, *The Integration of the Integrists: A Comparative Study of Egypt, Jordan and Tunisia*, in *DEMOCRACY WITHOUT DEMOCRATS? THE RENEWAL OF POLITICS IN THE MUSLIM WORLD* 200, 218 (Ghassan Salamé ed., 1994).

121. Stark, *supra* note 112 (citing Salwa Ismail, *The Paradox of Islamist Politics*, 221 *MIDDLE EAST REP.* 34, 37–38 (2001)).

122. Brown, *supra* note 95.

123. Keating, *supra* note 92.

Ennahda has undergone two significant shifts in ideology and political philosophy since its founding. In the 1980s, the party broke with its conservative Salafist wing, and in the 1990s, Ghannouchi and other Ennahda leaders re-articulated the party's views during a major re-evaluation.<sup>124</sup> Ennahda's political platform reflected these shifts and focused on community development, human rights, and civil society, rather than "the talismanic metapolitics of the 'Islamic state' and sharia."<sup>125</sup> Moreover, even though many commentators portrayed Ennahda as an incredibly well-organized and disciplined party, there was and still is considerable diversity among its members, even on key issues.<sup>126</sup>

## 2. Governance and the Politics of Compromise

Following the revolution, Ennahda emerged as the most effective and tested political party within Tunisia.<sup>127</sup> The 2011 elections reflected this standing, as Ennahda won the most seats (eighty-nine) and joined the liberal Congress for the Republic and the leftist Ettakatol Party to form a ruling coalition.<sup>128</sup> Nonetheless, after its success in the 2011 elections, Ennahda began to lose support due to the country's poor economic performance.<sup>129</sup> Dissatisfaction only grew as economic conditions worsened before the critical period of 2013 marked by the assassinations of Chokri Belaid and Mohamed Brahmi discussed above.<sup>130</sup> In February 2013, Prime Minister Hamadi Jebali resigned after he could not form a political coalition following Belaid's assassination.<sup>131</sup> This killing caused widespread protests and effectively ground the transitional government to a halt.<sup>132</sup> Together, the economic stagnation and political violence

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124. Marks II, *supra* note 68, at 16; see Francesco Cavatorta & Fabio Merone, *Moderation Through Exclusion? The Journey of the Tunisian Ennahda from Fundamentalist to Conservative Party*, 20 DEMOCRATIZATION 860–61 (2013).

125. El Sherif, *supra* note 55, at 360.

126. Marks II, *supra* note 68, at 3 (“[F]ar from being a tightly structured monolith with a clear, religiously driven agenda – the party is in flux.”).

127. Alexander, *supra* note 108, at 43.

128. *Tunisia's Election Winners Form Interim Government After Uprising*, GUARDIAN (Nov. 21, 2011, 8:33 PM), <http://www.theguardian.com/world/2011/nov/22/tunisia-election-winners-annahda-ettakatol> (noting that, together, the three parties held a comfortable majority of 139 of 217 seats).

129. Eileen Byrne, *The Rise and Fall of the Islamists*, NATIONAL (Nov. 3, 2014), <http://www.thenational.ae/world/tunisia/the-rise-and-fall-of-islamists-in-tunisia#full>.

130. See *supra* notes 38–41 and accompanying text.

131. *Tunisia Prime Minister Hamadi Jebali Resigns*, BBC NEWS (Feb. 19, 2013), <http://www.bbc.com/news/world-africa-21508498>.

132. *Id.*

proved too divisive, and Ennahda and its secular opposition reached a political impasse that became insurmountable.<sup>133</sup>

In an attempt to restart the political process, the National Quartet intervened in the summer of 2013.<sup>134</sup> By late September, Ennahda agreed to step down after months of difficult negotiation with its political opposition.<sup>135</sup> Ennahda ceded power to an independent caretaker government tasked to run the country until elections in the spring of 2014.<sup>136</sup> Importantly, neither Ennahda nor its secular rivals attempted unilateral or exclusive measures to resolve this impasse, instead choosing negotiation, as both sides realized that a prolonged political stalemate would seriously harm the country and undermine the people’s trust in democratic governance.<sup>137</sup> Even after agreeing to dissolve the government, Ennahda exceeded many expectations by gracefully accepting defeat and respecting the will of the Tunisian people.<sup>138</sup> Indeed, the influential Algerian writer Kamel Daoud argues that Ennahda’s decision to step down secured stability and warded off violence, even though the interim government was “an elite consensus that trumped the electoral majority.”<sup>139</sup> Thus, somewhat counterintuitively, Ennahda arguably preserved Tunisian democracy by allowing an unelected body to manage the state’s daily operations until a more permanent solution became available.<sup>140</sup>

In addition to doing what it felt was best for the country, Ennahda’s political actions supported a larger strategic decision.<sup>141</sup> Indeed,

133. Gall II, *supra* note 78.

134. *The Nobel Peace Prize for 2015, supra* note 16. The National Dialogue Quartet is comprised of four key organizations in Tunisian civil society: Tunisian General Labour Union; Tunisian Confederation of Industry, Trade and Handicrafts; Tunisian Human Rights League; and the Tunisian Order of Lawyers. *Id.*

135. *Id.* For a critical appraisal of Ennahda’s two years of governance, see Ghilès, *supra* note 101 (“During the two years they governed Tunisia in 2012–13, the Islamists demonstrated their lack of interest, or inability, in addressing the economic and social problems of a modernising society.”).

136. Gall II, *supra* note 78.

137. *Id.* (calling Ennahda’s “willingness to concede power for the good of the country . . . a trait that deserves praise and not criticism”).

138. *A Success Story, supra* note 104 (“Indeed, whatever their earlier mistakes, the Islamists of the Ennahda movement that came to power in 2011 accepted their defeat at the ballot, allowing genuine political alternation.”); *see also* Gall I, *supra* note 41 (explaining the unpopularity of the Ennahda after the revolution).

139. Daoud II, *supra* note 90.

140. *See id.*

141. Despite Ennahda’s strategic thinking, many Western accounts simply emphasize the “country’s penchant for consensus in general, and the conciliatory nature of the Islamist party in particular.” Sarah Chayes, *How a Leftist Labor Union Helped Force Tunisia’s Political Settlement*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 27, 2014), <http://carnegieendowment.org/2014/03/27/how-leftist-labor-union-helped->



perhaps the best explanation for Ennahda's decision to relinquish power was the party's belief in a "civilizational project"—a long-term strategy that believes "Islam's principles, broadly interpreted, are not only compatible with but edifying for democratic governance."<sup>142</sup> Ennahda's confidence in its long-term approach allows it to take the long view and remain patient.<sup>143</sup> Moreover, Ennahda was undoubtedly rattled by the events in Egypt that saw a swift and terrible change of fortune for the Muslim Brotherhood, another formerly repressed and banned Islamist party that won elections after a popular uprising.<sup>144</sup> As Kasper Ly Netterstrøm notes, after years of exile, imprisonment, and a corresponding fear and distrust of the Tunisian state, for Ennahda, gaining power was "less a question of being able to govern than of being able to survive."<sup>145</sup> Achieving power also legitimized the party, which the Bourguiba and Ben Ali regimes had excluded from Tunisia's official history and treated as "backward and inferior."<sup>146</sup>

As Part III illustrates, Ennahda's willingness to compromise after it achieved a legitimating amount of power ultimately contributed to the success of women's rights activists in maintaining and strengthening their rights in post-revolutionary Tunisia.<sup>147</sup>

### III. ISLAMIC FEMINISM AND THE STRUGGLE FOR GENDER EQUALITY

#### A. *Challenging Tradition*

Islamic feminists seek to achieve gender equality while maintaining adherence to Islam.<sup>148</sup> To do so, Islamic scholars have reinterpreted the legal sources of shari'a, particularly the Qur'an and the Sunna, arguing that while Islam requires gender equality, centuries of

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force-tunisia-s-political-settlement; see also "Tunisia: Caid Essebsi – A President Has to Unify All the People Without Exception, ALL AFRICA (TUNIS AFRIQUE PRESSE), (Dec. 21, 2014), <http://allafrica.com/stories/201412220165.html> ("Shortly after the announcement by his campaign manager of his win in the presidential runoff, Beji Caid Essebsi thanked all those who have backed his candidacy and also those who voted for his opponent Moncef Marzouki in this election.").

142. Marks II, *supra* note 68, at 8.

143. *Id.* at 17 (noting a focus on long-term viability and advancing political agenda slowly, while retracting controversial positions when necessary).

144. See Kasper Ly Netterstrøm, *The Islamists' Compromise in Tunisia*, 26 J. DEMOCRACY 110, 118 (2015).

145. *Id.* at 121.

146. *Id.*

147. See *infra* Part III.

148. Elizabeth Segran, *The Rise of the Islamic Feminists*, NATION (Dec. 4, 2013), <https://www.thenation.com/article/rise-islamic-feminists/>.

patriarchal interpretations and misogynistic custom have distorted this egalitarian directive and fundamental legal principle.<sup>149</sup> Thus, rather than rejecting their faith, Islamic feminists seek to reclaim it.<sup>150</sup> As Elizabeth Segran notes: “Throughout the Muslim world, a groundswell of feminist sentiment is growing among women who are seeking to reclaim Islam and the Koran for themselves.”<sup>151</sup>

While Islamic feminists have existed to various degrees throughout Islamic civilization, modern Islamic feminism developed alongside second and third-wave feminism.<sup>152</sup> Scholars such as Leila Ahmed, Fatima Mernissi, Amina Wadud, and Amina Barlas developed sophisticated legal arguments showing the flexibility of Islamic legal interpretation, while remaining rooted within the Islamic tradition.<sup>153</sup> Another aspect of this intellectual project was to demonstrate that Islamic law could be subject to debate.<sup>154</sup> Indeed, Islamic legal feminists reaffirmed the divineness of the Qur’an as the immutable word of Allah spoken through the prophet Muhammad.<sup>155</sup> However, they also stressed that while the Qur’an is divine, the men and women seeking to understand it are fallible, and as a result, their interpretations are subject to debate.<sup>156</sup> This strategy was especially important in the 2004 Mudawana reforms in Morocco.<sup>157</sup>

B. *Scholarly Excellence Versus Grounded Reality: The Need for Outreach and Education*

Despite this exemplary scholarship and persuasive legal arguments, gender inequality remains a daily experience for many women living in Muslim-majority and Islamic states.<sup>158</sup> Patriarchal social norms and misguided legal interpretations drive inequality and can lead to harassment, abuse, violence, and even death. As Daoud states: “In some places, women are veiled, stoned and killed; at a minimum, they are blamed for sowing disorder in the ideal society.”<sup>159</sup>

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149. *Id.*

150. *Id.*

151. *Id.*

152. *See id.*

153. *See* John Hursh, *Advancing Women’s Rights Through Islamic Law: The Example of Morocco*, 27 BERKELEY J. GENDER L. & JUST. 252, 292 (2012).

154. Segran, *supra* note 148.

155. Hursh, *supra* note 153, at 291.

156. *Id.*

157. *Id.* at 292.

158. *See* Segran, *supra* note 148.

159. Daoud I, *supra* note 50.

Of course, gender inequality is hardly confined to Arab countries or Islamic states. No society has yet achieved gender equality, and women's rights remain imperfect in all states. Nonetheless, the concurring invisibility and centrality of women within Arab and Muslim societies raise especially challenging gender issues. Veiling is the most obvious social practice, particularly to non-Muslims, but this practice is only one of many that simultaneously centralizes gender while marginalizing women.<sup>160</sup> Thus, Daoud observes:

Women are a recurrent theme in daily discourse, because the stakes they personify—for manliness, honor, family values—are great. In some countries, they are allowed access to the public sphere only if they renounce their bodies: To let them go uncovered would be to uncover the desire that the Islamist, the conservative and the idle youth feel and want to deny. Women are seen as a source of destabilization—short skirts trigger earthquakes, some say—and are respected only when defined by a property relationship, as the wife of X or the daughter of Y. These contradictions create unbearable tensions.<sup>161</sup>

To counter this problematic discourse, women's rights activists have utilized a variety of grassroots, social mobilization, and lobbying efforts. As Liv Tønnessen notes, “the [MENA] region has a rich and long history of women's activism, whether protesting in the streets, participating in political and religious movements, charity networks or NGOs.”<sup>162</sup> Islamic feminists form an important aspect of this history, both working alongside secular human rights-based activists and making their own contributions through determined outreach, legal education, and other strategies and activities.<sup>163</sup>

Two of the most well-known and successful examples of Islamic feminist organizations are Sisters of Islam and Musawah (Equality), founded in Malaysia in 1988 and 2009, respectively.<sup>164</sup> Musawah is likely the most influential transnational organization working for gender equality in the Muslim world.<sup>165</sup> As Segran notes, “Musawah

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160. *See id.* (“Although women are veiled, they are at the center of our connections, exchanges and concerns.”).

161. *Id.*

162. LIV TØNNESSEN, MARRIAGE IS POLITICS: PROSPECTS FOR GENDER EQUALITY AFTER THE ARAB SPRING, CMI INSIGHT 1 (2013), <https://www.cmi.no/publications/file/4761-marriage-is-politics.pdf>.

163. *See id.* at 4.

164. Segran, *supra* note 148.

165. TØNNESSEN, *supra* note 162, at 2.

operates on the belief that Islam is not inherently biased toward men: patriarchy within Muslim countries is a result of the way male interpreters have read Islamic texts.”<sup>166</sup> This belief informs both the organization’s vision, “[a] world where equality, non-discrimination, justice, and dignity are the basis of all human relations,” and its goal, “[a] global movement for equality and justice in the Muslim family, which advances human rights for women in Muslim contexts, in both their public and private lives.”<sup>167</sup> By insisting on gender equality and arguing that patriarchy is attributable to male interpreters, Segran concludes that, “Musawah empowers women to shape the interpretations, norms and laws that affect their lives, then push for legal reform in their respective countries.”<sup>168</sup>

Musawah’s engagement strategy is quite different from that of most Western advocacy campaigns or international NGOs. By advocating for gender equality through engagement with Islamic law and feminist readings of Islamic scripture, Musawah finds that “equality in the family laws in the Muslim world is both necessary and possible without stepping outside the boundaries of religion.”<sup>169</sup> The deep-seated patriarchy of many Muslim-majority and Islamic states requires significant outreach and education before men (and women) accept this position. However, this initial reluctance does not mean that there is not substantial support for this position once it is presented and understood. Zainah Anwar, the founder of Sisters of Islam and a key architect of Musawah, notes that when women realize Islam does not justify the neglect or abuse that they endure, the reaction is cathartic.<sup>170</sup> She states: “When they are exposed to this new knowledge, they feel duped . . . they believed that their suffering in the form of abandonment, polygamy and beatings was all in the name of God.”<sup>171</sup> In contrast, Islamic feminists demonstrate that these misogynistic practices contradict the principle of gender equality found within Islamic law, thus removing the religious justification for such harmful acts.

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166. Segran, *supra* note 148.

167. *About Musawah*, MUSAWAH.ORG, <http://www.musawah.org/about-musawah> (last visited Dec. 19, 2016).

168. Segran, *supra* note 148; see Mulki Al-Sharmani & Jana Rumminger, *Understanding Qiwamah and Wilayah Through Life Stories*, in *MEN IN CHARGE?: RETHINKING AUTHORITY IN MUSLIM LEGAL TRADITION* 219, 222 (Ziba Mir-Hosseini et al. eds., 2015).

169. TØNNESEN, *supra* note 162, at 2.

170. Segran, *supra* note 148.

171. *Id.*

## IV. WOMEN'S RIGHTS IN TUNISIA

Although women's rights activists received considerable attention for their courageous acts and tireless organizing efforts throughout the Arab Spring protests, the history of women's rights activism, organizing, and leadership within the MENA region extends much further than the past few years. Modern women's rights movements in the MENA region emerged as women participated in the struggle for national independence during the post-World War II period, though there are many important precursors to these movements.<sup>172</sup> In many examples, once these nationalist movements succeeded in ousting colonial rulers, they often sacrificed women's rights in the interest of "national unity."<sup>173</sup> Likewise, women made key contributions to the struggle against the oppressive regimes that took hold in the decades following national independence, but rarely received the same recognition that men did for leading civil society efforts, human rights initiatives, and political campaigns to bring about social and political change.<sup>174</sup>

Women received more attention and recognition for their leadership during the Arab Spring, as cable television reporting, Internet news platforms, and social media provided women activists "unprecedented visibility," which in turn helped to "shatter stereotypes" that many viewers unfamiliar with the MENA region held.<sup>175</sup> As the International Federation of Human Rights (FIDH) stated: "From Tunisia to Bahrain, from Egypt to Syria, women from all backgrounds demanded democracy, social justice, freedom, dignity, and equality."<sup>176</sup> Repressive regimes targeted—and continue to target—the leaders and activists that led these popular uprisings, often with brutal tactics and lethal force.<sup>177</sup> Moreover, while both men and women were arrested, detained, tortured, and killed by these regimes during and after the protests, women were often targets of additional violence including abduction, virginity tests, sexual harassment, and rape.<sup>178</sup>

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172. NADJE S. AL-ALI, WOMEN'S MOVEMENTS IN THE MIDDLE EAST: CASE STUDIES OF EGYPT AND TURKEY 4–5 (2002).

173. Segran, *supra* note 148.

174. INT'L FED'N OF HUM. RIGHTS, WOMEN AND THE ARAB SPRING: TAKING THEIR PLACE? 3–4 (2012) [hereinafter FIDH], <https://www.fidh.org/IMG/pdf/femmesarabangbasdef.pdf>.

175. *Id.* at 3.

176. *Id.*

177. *Id.*

178. *Id.* at 3, 8–9.

Finally, it is important to note that women’s rights activism and the struggle for stronger women’s rights and gender equality in the MENA region is marked by tensions. These tensions include the disparity in effort and recognition discussed above, as well difficult negotiations of personal belief and entrenched patriarchal social norms. In Tunisia, women’s rights leaders also confronted oppressive governments that attempted to co-opt women’s rights as part of their foreign policy and state building initiatives. Part IV examines these tensions by assessing women’s rights before and after the Tunisian Revolution.<sup>179</sup> First detailing the legal tradition and development of women’s rights before the revolution, it then discusses how women’s rights leaders maintained and ultimately strengthened women’s rights after the revolution.<sup>180</sup> This outcome is evident in numerous legal acts, the most important of which are the Personal Status Code, the 2011 electoral law, the 2014 Constitution, and the withdrawing of key reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>181</sup> Lastly, this Part concludes by assessing remaining legal issues that hinder women’s rights and the pursuit of gender equality in Tunisia.<sup>182</sup>

#### A. *Women’s Rights in Tunisia: Before the Revolution*

##### 1. A Progressive Legal Tradition

Tunisia’s history of strong women’s rights is at least partially due to its progressive legal tradition. Tunisians abolished slavery in 1846, long before many other Arab states, and established their first modern constitution in 1861.<sup>183</sup> Not only was this constitution the first modern constitution in the Arab world, it was also very progressive and forward-looking.<sup>184</sup> Furthermore, this constitution is part of a longer progressive legal tradition, including the 1857 *Ahd Al Iman* (Charter of Faith), which one scholar describes as “a path

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179. See *infra* Sections IV.A–B.

180. See *infra* Sections IV.A–B.

181. See *infra* Sections IV.B(3)(a)–(d).

182. See *infra* Part IV.

183. Kéfi, *supra* note 38, at 238 (noting that Tunisia’s 1861 Constitution was the first in the Arab World).

184. Shajahan Madampat, *An Arab Exception Called Tunisia*, OUTLOOK (May 13, 2015), <http://www.outlookindia.com/article/an-arab-exception-called-tunisia/294305> (“Although steeped in Islamic terminology, *Qanun Al-Dawla Al Tunisiyya* (The Law of the State of Tunisia) was a remarkable document far ahead of its time and reflected a deep commitment to the creation of a constitutional order.”).

breaking document that stressed on equal rights under the law for the non-Muslims (Jews and Christians) in various walks of life.”<sup>185</sup> This legal tradition both reflects and advances Tunisian norms of acceptance and tolerance.

Following independence, President Bourguiba forcefully imposed several progressive acts to advance women’s rights. In 1956, Tunisian women gained formal equal rights in most areas of the law, and in 1961, Bourguiba introduced family planning throughout the country.<sup>186</sup> These two reforms not only advanced women’s rights, but also contributed to a strong Tunisian middle class in the first few decades after independence.<sup>187</sup> Although his government became increasingly authoritarian,<sup>188</sup> Bourguiba nonetheless demonstrated a strong commitment to advancing women’s rights both legally and through socioeconomic advancement.

Bourguiba also cultivated a modern mindset of women’s rights and women’s roles in society. Kamel Dhif gives the following assessment: “[Bourguiba] introduced far-reaching, modernising reforms – despite the strong-arm nature of his government – in particular in the areas of family law and women’s rights and in modernising mindsets. These reforms became very deeply engrained in the new Tunisian civic spirit, not just in legislation but also in people’s mentalities.”<sup>189</sup> Indeed, in 2014, the staid British newspaper *The Guardian* complimented Bourguiba’s presidency, which lasted from 1959 until 1987, for leaving “an important legacy of public education, social reform and female emancipation.”<sup>190</sup>

In contrast to Bourguiba’s rule, which descended into semi-authoritarianism after several years of progressive, if heavy-handed governance, Ben Ali’s presidency almost immediately became a full-fledged autocracy, where corruption and elite enrichment decimated

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185. *Id.*

186. Francis Ghilès, *Tunisia: The Arab Exception’s Test*, OPEN DEMOCRACY (Dec. 21, 2014), <https://www.opendemocracy.net/francis-ghil%C3%A8s/tunisia-arab-exception%27s-test>.

187. *Id.*

188. Madampat, *supra* note 184 (“While blaming Bourguiba for the authoritarian turn in Tunisia’s post-independence history and for the creation of an elaborate bureaucratic infrastructure whose misdeeds ultimately triggered the revolutions, we must appreciate the role he played in instilling liberal ethos at all levels of the country’s polity.”).

189. Kamel Dhif, ‘*Tunisian Exception*’ Teaches Democratic Lessons, SWISS INFO (May 14, 2015, 11:00 AM), [http://www.swissinfo.ch/eng/global-forum-in-tunis\\_-tunisian-exception--teaches-democratic-lessons/41426492](http://www.swissinfo.ch/eng/global-forum-in-tunis_-tunisian-exception--teaches-democratic-lessons/41426492).

190. *A Success Story*, *supra* note 104.

Tunisia’s middle class.<sup>191</sup> Ben Ali utilized a combination of repressive domestic policy to stifle internal dissent and manipulative foreign policy to consolidate power and strengthen his authority.<sup>192</sup> Repressive domestic tactics included co-opting political challengers, intimidating and harassing critics through a well-trained and expansive security apparatus, and when these tactics were not enough, using physical violence and torture.<sup>193</sup> Ben Ali’s foreign policy was more subtle and focused on portraying Tunisia as a stable, secular stronghold amongst a bevy of radical and dangerous Islamist regimes.<sup>194</sup>

The goal of this policy was to garner international support and—just as importantly—large donor commitments from key geopolitical partners, including the United States.<sup>195</sup> The supposed safeguarding of women’s rights played an important part in this larger foreign policy strategy.<sup>196</sup> Ben Ali often invoked human rights generally and women’s rights specifically, as well as his centrality to protecting these rights, as an important reason for continued political and financial support of his regime.<sup>197</sup> He was particularly keen to contrast relatively strong women’s rights in Tunisia with weak women’s rights in other Arab and Islamic states, particularly within international forums.<sup>198</sup>

This manipulation was never more evident than in the lead-up to the historic 1995 United Nations Conference on Women in Beijing. Fearing that women’s rights organizations would expose the regime’s many human rights abuses, as well as its self-serving and selective enforcement of women’s rights, Ben Ali created a state-run alternative, the Rihana Network, to control dissent and dominate civil

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191. See, e.g., Abdellatif al-Hanashi, *Party Cadres Surpassed Their Leaderships During the Revolution*, in *REVOLUTIONS, REFORM, AND DEMOCRATIC TRANSITION IN THE ARAB HOMELAND: FROM THE PERSPECTIVE OF THE TUNISIAN REVOLUTION* 12, 12 (Doha Inst., 2011) [hereinafter *REVOLUTIONS, REFORM, AND DEMOCRATIC TRANSITION*], <http://english.dohainstitute.org/file/get/3166a949-4468-41ae-8b9e-3096ab0d911a.pdf> (noting that Ben Ali’s development policies “effectively produced unprecedented levels of corruption and socio-economic problems”).

192. See Stark, *supra* note 112.

193. See ALEXIS ARIEFF, CONG. RESEARCH SERV., RS21666, *POLITICAL TRANSITION IN TUNISIA* 23 (2011), <http://fpc.state.gov/documents/organization/161570.pdf>.

194. See *id.* at 22–23.

195. See *id.* at 7–8, 27–28.

196. See Charrad & Zarrugh, *supra* note 18.

197. Stark, *supra* note 112 (arguing that the Ben Ali regime cultivated an image of democratic reforms and sensitivity to human rights issues not only to gain support domestically, but also to promote the image of a modern Arab state abroad).

198. See *id.*



society messaging during the conference.<sup>199</sup> The Rihana Network forced women's rights organizations into a very difficult position, as they weighed the negative outcomes of missing such an important event with concerns over contributing to a misrepresentation of women's rights in Tunisia should they participate.<sup>200</sup> Indeed, these organizations understood that Ben Ali's regime would work tirelessly to co-opt their message and control their activities.<sup>201</sup> As one commentator notes, instead of enabling Tunisian civil society, the Rihana Network "functioned as a thinly veiled attempt by the state to control all Tunisian NGO activities at the Beijing Conference."<sup>202</sup>

Ultimately, the regime largely succeeded in its co-optation of women's rights. As Sarah Gilman noted, although many autonomous feminist activists decided to participate in the [Rihana] Network to actively engage the state and avoid isolation and possible irrelevance, many of the same activists later regretted this participation believing that it led to even greater "co-optation and marginalization."<sup>203</sup> Furthermore, after the 1995 Conference, Ben Ali's manipulation of women's rights continued in the domestic sphere, where civil society organizations and women's rights leaders struggled to complete meaningful activities within an increasingly repressive state while also avoiding co-optation by the regime.<sup>204</sup> Gilman demonstrates how this tension required one of Tunisia's leading women's rights organizations, Femmes Démocrates, to negotiate "both the state and transnational linkages so as to avoid the extremes of co-optation and irrelevance."<sup>205</sup>

Despite the very serious problems discussed above, women still benefitted from legal protections and participation in the legal profession, further reflecting Tunisia's progressive legal tradition. Women have served as judges since 1968, and in 2010, women represented 27 percent of judges and 31 percent of attorneys.<sup>206</sup>

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199. Sarah E. Gilman, *Feminist Organizing in Tunisia: Negotiating Transnational Linkages and the State*, in FROM PATRIARCHY TO EMPOWERMENT: WOMEN'S PARTICIPATION, MOVEMENTS, AND RIGHTS IN THE MIDDLE EAST, NORTH AFRICA, AND SOUTH ASIA 97, 110–12 (Valentine M. Moghadam ed., 2007).

200. *Id.*

201. See, e.g., SHELLEY DEANE, INTERNATIONAL ALERT, TRANSFORMING TUNISIA: THE ROLE OF CIVIL SOCIETY IN TUNISIA'S TRANSITION 8–9 (2013), <http://www.international-alert.org/sites/default/files/publications/Tunisia2013EN.pdf> ("State security organisations repressed CSOs acting beyond the strict parameters of corporatist civil society in Tunisia.").

202. Gilman, *supra* note 199, at 111–12.

203. *Id.* at 111.

204. See *id.*

205. *Id.* at 119.

206. FIDH, *supra* note 174, at 12.

Thus, despite the deeply problematic legacies of Bourguiba and Ben Ali, there is no doubt that these two leaders advanced and strengthened women’s rights—even if from a non-inclusive, top-down approach and for questionable, if not outright self-serving motives.<sup>207</sup> This tension between authoritarian rule and a progressive legal tradition is difficult to resolve, creating a complicated legacy for postcolonial Tunisia.<sup>208</sup> The following section examines this legacy more closely.

## 2. A Complicated Legacy

Within postcolonial Tunisia, the tension between a strong, centralized government and a progressive legal tradition emerged, or perhaps solidified, during Tunisia’s struggle for independence. Likewise, the simultaneous inclusion and exclusion of women from this struggle demonstrates the uneven and at times even contradictory nature of the Tunisian state-building project. This project ultimately resulted in Ben Ali’s autocratic regime, which although repressive and immensely corrupt, also featured expanded women’s rights that significantly outpaced similarly situated countries in the region.<sup>209</sup>

Similar to women throughout the Middle East and North Africa, Tunisian women made significant contributions to the country’s nationalist struggle for independence following World War II.<sup>210</sup> While these contributions were necessary to achieve independence, women quickly found themselves largely shut out of political life after colonial forces conceded and these former colonial states gained independence.<sup>211</sup> In turn, this political absence negatively affected women’s rights in postcolonial states. As Tønnessen notes, “[w]hen the revolutionary dust cleared and constitutions were decided upon after independence from colonial rulers, women were by and large side-lined.”<sup>212</sup> This absence was especially damaging for women’s rights in Muslim majority states that codified conservative interpretations of Islamic law. Here, Tunisia’s regional neighbor Morocco, which gained independence that same year, offers a striking example.<sup>213</sup>

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207. See *infra* Part IV.A(2).

208. See MOUNIRA M. CHARRAD, STATES AND WOMEN’S RIGHTS: THE MAKING OF POSTCOLONIAL TUNISIA, ALGERIA, AND MOROCCO 201–02 (2001).

209. See FIDH, *supra* note 174, at 10–11.

210. See, e.g., CHARRAD, *supra* note 208, at 218.

211. TØNNESSEN, *supra* note 162, at 1.

212. *Id.*

213. See, e.g., Valentine M. Moghadam, *Global Feminism, Citizenship, and the State: Negotiating Women’s Rights in the Middle East and North Africa*, in MIGRATIONS

In contrast to Morocco and other Muslim-majority states that would later gain independence, Tunisia featured a codification of Islamic law that was shockingly progressive at the time, and remains arguably the most gender equitable of all Islamic family codes nearly sixty years later.<sup>214</sup> However, this progressive character was not due to a well-organized women's rights movement or outspoken feminist activists. Rather, the drafting and implementation of this progressive Code was due largely to President Bourguiba, whose vision of Tunisia most closely aligned to that of secular Turkey. Bourguiba's mark on Tunisian women's rights is as unmistakable as it is auspicious, as he declared himself both "'father' of independent Tunisia" and "'father' of Tunisian women's liberation."<sup>215</sup> Finally, the fact that "Liberator of Women" is one of only three epitaphs found on the door to Bourguiba's mausoleum demonstrates how serious an issue he considered women's rights to be.<sup>216</sup>

While Bourguiba deserves praise for ensuring a progressive codification of Islamic family law that benefitted women and strengthened women's rights, it remains highly problematic that he did so almost unilaterally, with women playing little role within this process. As Gilman notes, a male interpretation of women's rights and imposition of a progressive legal code onto a decidedly conservative population resulted in something of an irony: "Tunisian women played no role in the promulgation of the family law legislation that ultimately propelled them, rather ironically, into the spotlight as symbols of the 'emancipated' Arab woman."<sup>217</sup>

Bourguiba's near unilateral imposition of the Personal Status Code provided women a critical opening to professional life and increased autonomy. Nonetheless, this Code outpaced social and religious mores, and calls for more conservative interpretations of Islamic law soon began to surface, including from younger Tunisians and even women.<sup>218</sup> One particularly interesting example occurred in 1975, when President Bourguiba and his guests gathered for a scholarly lecture during Ramadan.<sup>219</sup> Bourguiba had made this lecture a

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AND MOBILITIES: CITIZENSHIPS, BORDERS, AND GENDER 255, 266–67 (Seyla Benhabib & Judith Resnik eds., 2009); *see also* ROBIN WRIGHT, DREAMS AND SHADOWS: THE FUTURE OF THE MIDDLE EAST 360 (2008) (explaining the two sets of laws in Morocco); Hursh, *supra* note 153, at 259 (explaining the social and political reforms in Morocco after independence).

214. *See, e.g.*, FIDH, *supra* note 174, at 10.

215. Gilman, *supra* note 199, at 97.

216. Maddy-Weitzman, *supra* note 90, at 1.

217. Gilman, *supra* note 199, at 97.

218. *See* al-Toraifi, *supra* note 64.

219. *Id.*

tradition since his ascension to power in 1956, but this was the first time that he appointed a female scholar to give it.<sup>220</sup> Instead of praising Bourguiba and the progressive Personal Status Code, renowned philosophy professor Hind Shalabi criticized key provisions of the Code and called for a return “to the fundamental foundations of [Islam].”<sup>221</sup> Although this criticism outraged Bourguiba, he quickly learned that this sentiment was prevalent throughout Tunisia’s universities and the country’s youth.<sup>222</sup> Thus, Adel al-Toraifi notes that “[w]ith considerable bitterness, Habib Bourguiba felt that what he had achieved through education, and through the promotion of Western systems and laws, was vanishing amidst what he deemed to be a ‘reactionary’ discourse.”<sup>223</sup>

Bourguiba’s labeling of this discourse as “reactionary” is particularly interesting, since conservative critics could argue that his Personal Status Code was equally reactionary, albeit with a progressive aim that “reacted” against traditional Islamic values by displacing the mosque and religious leaders with state courts, secularly trained judges, and bureaucratic officials.<sup>224</sup> Indeed, the codification of Islamic family law that Bourguiba oversaw was nearly as progressive as Shalabi’s call for a return to fundamental Islamic values was conservative.<sup>225</sup> Between these two disparate positions, independent women’s rights organizations struggled to find a middle path.<sup>226</sup> Furthermore, throughout the 1970s, the government’s growing intolerance of dissent made finding this middle ground even more difficult, and state influence, if not outright control, of many aspects of civil society increased, resulting in what was deemed a “monolithic state feminism.”<sup>227</sup> And while Tunisia officially continued as a secular state that hardly tolerated political Islam, including Islamic feminism, beneath the surface, various forms of

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220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *See id.*

225. Compare Gilman, *supra* note 199, at 97 (describing the Personal Status Code, enacted under Bourguiba as “a document that broke with Islamic law,” which “radically reform[ed] Muslim family law”), with Al-Toraifi, *supra* note 217 (noting that Hind Shalabi viewed the new family law “as a complete contradiction to Islam” and that Tunisia should “return to the fundamental foundations of [Islam]”).

226. *See Segran, supra* note 148.

227. Gilman, *supra* note 199, at 98.

political Islam were taking root and gaining support, especially in Tunisia's underdeveloped south.<sup>228</sup>

While women's rights in Tunisia remained strong, particularly compared to its regional neighbors, discouraging trends also continued, even if not immediately apparent. As one scholar notes, the 1980s saw a "male-dominated political left and [a] homogenizing, authoritarian state" continue to shrink the space for women's rights activists and feminists (whether secular or religious) to pursue their own objectives or to challenge existing laws or social norms.<sup>229</sup> Complicating this relationship, Tunisia's political elite, whether progressive or conservative, and including the women's movement, remains geographically concentrated and predominantly urban.<sup>230</sup> Indeed, political elites of all persuasions remain "centered exclusively in the capital city of Tunis."<sup>231</sup> This concentration itself speaks to the non-inclusive nature of political groups and civil society organizations throughout the Bourguiba and Ben Ali governments, raising the unsettling possibility that at least within a subset of postcolonial states, women's rights are achieved not through broad consensus or grassroots efforts, but through strong centralized governments, or even authoritarian regimes.

#### B. *Women's Rights During and After the Tunisian Revolution*

As noted above, women's rights movements and women-led activism is not new to the Middle East and North Africa.<sup>232</sup> Within Tunisia, just as women played an important role in the struggle for national independence, they also played a crucial role in the popular uprisings that coalesced into the Tunisian Revolution and forced Ben Ali to flee the country.<sup>233</sup> Indeed, throughout the MENA region, women organized, protested, and fought alongside men in the popular

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228. See Noah Feldman, *Islamists' Victory in Tunisia a Win for Democracy*, BLOOMBERG (Oct. 30, 2011, 7:00 PM), <http://www.bloomberg.com/view/articles/2011-10-30/islamists-victory-in-tunisia-a-win-for-democracy-noah-feldman>. Perhaps unsurprisingly, Ennahda's "intellectual leader" Rached Ghannouchi hails from Gabes in southern Tunisia. Marwa, *Rached Ghannouchi*, TUNISIALIVE (Dec. 5, 2011), <http://www.tunisia-live.net/whoswho/rached-ghannouchi-2/>.

229. Gilman, *supra* note 199, at 97–98.

230. *Id.* at 103.

231. *Id.*

232. TØNNESSEN, *supra* note 162, at 4 ("Women activism is not new. It has a long and rich history in the MENA region.")

233. See Women's Learning Partnership, *Women's Rights and the Arab Spring: Middle East/North Africa Overview and Fact Sheet*, INT'L WOMEN'S DEMOCRACY NETWORK (Nov. 4, 2011, 3:18 PM), <http://www.iwdn.learningpartnership.org/2011/11/womens-rights-and-the-arab-spring-middle-eastnorth-africa-overview-and-fact-sheet/>.

uprisings that later became known as the Arab Spring.<sup>234</sup> As the Arab Spring protests subsided and transitional governments began to form, questions arose as to whether women would retain the voice and influence exhibited during the protests.<sup>235</sup> Further complicating this question was the rise of political Islam. Although there are exceptions, and it is important to recall that political Islam has many variations within even a single country,<sup>236</sup> historically, this school of political thought has sought to exclude women from the public sphere and to maintain separate roles for men and women, while also upholding a patriarchal interpretation of Islam.<sup>237</sup>

These questions quickly came to the fore in Tunisia, after Ennahda dominated the October 2011 elections for the Constituent Assembly by winning 89 of 217 seats.<sup>238</sup> Numerous commentators expressed strong concerns that, despite Ennahda’s stated commitment to upholding women’s rights, the party would act differently once in power.<sup>239</sup> While Ennahda insisted that it would respect women’s rights and the professional gains that women made under the Bourguiba and then Ben Ali governments, a vocal Salafist minority made no such promises and introduced a deeply conservative interpretation of Islam into Tunisia’s public sphere.<sup>240</sup> Although this deeply conservative perspective was undoubtedly present before the revolution, both Bourguiba and Ben Ali refused to allow this perspective to enter public debate.<sup>241</sup> Without a strong government

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234. *Id.* (noting that “[w]omen have been an integral part of these revolutions”); see also MIDDLE EAST PROGRAM, REFLECTIONS ON WOMEN IN THE ARAB SPRING: WOMEN’S VOICES FROM AROUND THE WORLD (Kendra Heideman & Mona Youssef eds., 2012), [https://www.wilsoncenter.org/sites/default/files/International%20Women%27s%20Day%202012\\_4\\_0.pdf](https://www.wilsoncenter.org/sites/default/files/International%20Women%27s%20Day%202012_4_0.pdf).
235. See MIDDLE EAST PROGRAM, *supra* note 234, at 11.
236. See, e.g., Liv Tønnessen, *The Many Faces of Political Islam in Sudan: Muslim Women’s Activism for and Against the State* (2011) (Ph.D. dissertation, University of Bergen) (on file with author).
237. See Margot Badran, *Political Islam and Gender*, in *THE OXFORD HANDBOOK OF ISLAM AND POLITICS* 112, 114 (John L. Esposito & Emad El-Din Shahin eds., 2013).
238. *Final Tunisian Election Results Announced*, AL JAZEERA, (Nov. 14, 2011), <http://www.aljazeera.com/news/africa/2011/11/20111114171420907168.html>.
239. Women’s Learning P’ship, *supra* note 233 (“While party leaders have said they will uphold women’s rights achieved under Ben Ali, women’s rights and democracy activists are seriously concerned that the party [Ennahda] will act differently once in power.”).
240. See Marie-Louise Gumuchian, *Arab Spring Puts Women’s Rights in the Spotlight*, REUTERS (Dec. 20, 2011, 9:48 AM), <http://www.reuters.com/article/us-arabs-women-idUSTRE7BJ0QW20111220>.
241. See Alice Fordham, *Tunisia’s Revolution and the Salafi Effect*, NATIONAL (Sept. 11, 2012), <http://www.thenational.ae/news/world/africa/tunisi-as-revolution-and-the-salafi-effect#page2>.

authority to check these groups, this perspective began to reenter public discourse. Thus, Tunisia's transition to democratic rule offered these conservative, and often undemocratic groups, an opportunity to participate in public life that simply was not available since independence.<sup>242</sup>

While the conservative beliefs of the Salafists certainly were not allowed in political debate or public discourse throughout Bourguiba and Ben Ali's rule, neither were more moderate versions of political Islam. Moreover, despite sometimes stark differences in viewpoint between Islamist groups, Bourguiba and especially Ben Ali effectively treated all Islamist groups as threats to Tunisia's secular state. Often brutally repressed throughout Tunisia's postcolonial statehood, Islamist activists gained religious and political freedoms that far exceeded their rights during Tunisia's authoritarian past.<sup>243</sup> The expression of these rights included outcomes that conflicted with strong secular perspectives on women's rights. For example, following the revolution, Tunisia witnessed a notable increase in women wearing the *hijab* and *niqab*, as many women considered this decision "a long-awaited 'freedom' after decades of religious oppression."<sup>244</sup> In contrast, Bourguiba banned wearing the *hijab* in state offices in 1981, and Ben Ali considered the *hijab* "a sign of extremism," banning it altogether in the 1990s.<sup>245</sup> Interestingly, and reflective of the many different perspectives on feminism and women's rights within Tunisia, while some secular commentators characterized this change as a worrisome development, others reporting within Tunisia showed that wearing the *hijab* simply was not "a big issue among locals."<sup>246</sup>

This final section examines women's rights in Tunisia during and especially after the revolution. Considering the political and social context discussed above, it explores how civil society and the National Dialogue shaped women's rights in post-revolutionary Tunisia. It then turns to the legal outcomes that followed to assess women's rights more than six years after the dramatic events that plunged Tunisia onto its democratic, but uncertain path.

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242. See, e.g., Shadi Hamid, *Why Jihadists Fight*, FOREIGN POLICY (June 13, 2016), <http://foreignpolicy.com/2016/06/13/why-jihadists-fight/> (noting that "[f]or decades, Tunisia had little space for overt expressions of religion" and "Tunisia was the only country in the Arab world that experienced both forced secularization and brutal authoritarian rule, a particularly noxious combination").

243. See, e.g., TØNNESSEN, *supra* note 162, at 3.

244. *Id.*

245. *Id.* at 3.

246. Byrne, *supra* note 129.

### 1. Contestation and Reaffirmation: Women’s Rights, Political Discourse, and Law

Following the revolution, both civil society organizations and National Dialogue participants, and indeed perhaps the National Dialogue process itself, contributed to a reaffirmation of robust women’s rights in Tunisia. This reaffirmation actually served to strengthen women’s rights, since activists and women’s rights defenders needed to secure these rights in an open public discourse and contested political process. Although women’s rights and their legal expression ultimately increased after the revolution, they had not been subject to public scrutiny and the political process in this manner due to the initial top-down imposition of these rights in the late 1950s.<sup>247</sup> The fact that women’s rights withstood this scrutiny and won widespread political support demonstrates a broad social acceptance of these rights, even if certain topics remain contentious among some social groups. In essence, the revolutionary process subjected women’s rights to an unexpected test, as the authoritarian regime that protected these rights and maintained their fixity could no longer do so. Put to this test, civil society organizations and women’s rights activists quickly mobilized to protect their rights to ensure that they would remain a defining part of Tunisian life following the revolution.

#### a. *Citizens and civil society*

During the revolution, women from nearly all segments of Tunisian society participated in the protests and contributed to political organization and social mobilization efforts that resulted in Ben Ali’s ouster. Long-standing civil society organizations dedicated to women’s rights, as well as bloggers, journalists, activists, trade union members, students, mothers, and others all participated in these protests.<sup>248</sup> The diversity of women participating in the protests and popular uprisings suggests at least a temporary break in social norms and gender expectations, providing for moments of almost complete gender equality. As FIDH observed, “[t]hroughout the Tunisian [R]evolution, women and men were equal.”<sup>249</sup>

Although it is difficult to overstate the contributions of “ordinary” Tunisian people—women and men—toward ensuring the success of

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247. See, e.g., TØNNESEN, *supra* note 162, at 3.

248. FIDH, *supra* note 174, at 8 (“Women of all ages, from all backgrounds and all [sic] walks of life participated in strikes and demonstrations.”).

249. *Id.*



the revolution, it is equally important to appreciate the huge sacrifices made by independent Tunisian civil society organizations. Despite near constant suppression and attempts of co-option under Bourguiba and Ben Ali, these organizations remained vital and active.<sup>250</sup> Indeed, civil society organizations began to mobilize in the first hours of the revolution following Mohamed Bouazizi's protest of self-immolation on December 17, 2010.<sup>251</sup> Ali Bouazizi, Mohamed's cousin and an active member of the political opposition, stated, "[t]hat was the beginning, and the Revolution began with that small family, which was embraced by civil society."<sup>252</sup> Civil society organizations and Tunisian citizens worked together and created a popular uprising that was simply too much for Ben Ali's regime to withstand. Nonetheless, the rapid pace of this uprising and political change was astonishing, as Ben Ali fled to Saudi Arabia on January 14, 2011, less than a month after the revolution began.<sup>253</sup>

Shelley Deane refers to this cooperative ethos as a "spirit of solidarity," and argues that this spirit functioned as the "source of the Tunisian [R]evolution."<sup>254</sup> Formal political actors also realized the importance of this spirit. As Deane notes, Ennahda sought to maintain "the united civil engagement of CSOs" after winning a strong plurality in the 2011 elections.<sup>255</sup> Likewise, the interim government attempted to institutionalize this engagement by creating the Higher Authority for the Realization of Revolutionary Objectives, Political Reform, and the Democratic Transitions on February 18, 2011.<sup>256</sup> The creation of this body demonstrates just how important citizens and civil society were to the revolution, as political leaders began reforming Tunisia's state institutions in this mold of engagement. Additionally, it also illustrates how closely intertwined the political and legal spheres are in revolutionary moments, where citizens and civil society attempt to reimagine the state and its institutions.

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250. Kéfi, *supra* note 38, at 238; *see also* al-Hanashi, *supra* note 191, at 12 (noting the contribution of labor parties and civil society organizations to the revolution).

251. *See* Arab Ctr. for Research & Policy Studies, *supra* note 191, at 30 (statement of Ali al-Bouazizi).

252. *Id.*; *see also* Arab Ctr. for Research & Policy Studies, *Tunisian Party Leaders on Democratic Transition and Their Visions for the Future*, in *REVOLUTIONS, REFORM, AND DEMOCRATIC TRANSITION*, *supra* note 191, at 35 (statement of Abd al-Azeez al-Masudi) (describing the revolution as "a mass movement against injustice and humiliation" and noting that unions and civil society organizations "participated in the revolution with effectiveness and fervor").

253. *See Tunisia: Ex-President Ben Ali Flees to Saudi Arabia*, *supra* note 33.

254. DEANE, *supra* note 201, at 11.

255. *Id.* at 10–11.

256. *Id.*

Transforming highly repressive states, such as Tunisia under Ben Ali, into open societies requires a process of reimagination that can only occur when there is a reopening of public space.<sup>257</sup> As Charles Tripp rightly observes, like all revolutions, the Tunisian Revolution is best thought of as “an ongoing process of political struggle, ambition, and contestation, as different visions for the country take shape.”<sup>258</sup> In these revolutionary moments, it is only through what Tripp calls the “re-appropriation of public space” that allows for “a practical restatement of republican ideals,” where citizens can come together and reclaim state institutions “from the hands of the small elite who had made it a vehicle for the domination of the majority.”<sup>259</sup>

Despite its best efforts to reimagine and reclaim these institutions, the interim government reached an impasse, if not paralysis, after the assassination of secular politicians Chokri Belaid and Mohamed Brahmi in 2013.<sup>260</sup> Moreover, while civil society activists had succeeded in uniting a disparate opposition against the regime, economic instability and ideological competition—particularly over sensitive topics such as women’s rights—began to hinder cooperation.<sup>261</sup> The only briefly reopened public space that had allowed citizens to begin this process of reclamation began to close. Popular protest was again unwelcome, as the government returned to tear gas and batons to suppress protestors and check dissent.<sup>262</sup> Legally, as well as symbolically, this closing was most evident in the unfinished drafting of the constitution. The incomplete constitution loomed over women’s rights, as despite recent victories, including the preservation of the Personal Status Code and the drafting and enactment of a progressive electoral law, constitutional questions regarding shari‘a and women’s role in society supplanted these gains and again stirred deep concerns among feminists and women’s rights activists.

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257. CHARLES TRIPP, *BATTLEFIELDS OF THE REPUBLIC: THE STRUGGLE FOR PUBLIC SPACE IN TUNISIA* 6 (2015), [https://www.academia.edu/20202530/Battlefields\\_of\\_the\\_Republic\\_the\\_struggle\\_for\\_public\\_space\\_in\\_Tunisia](https://www.academia.edu/20202530/Battlefields_of_the_Republic_the_struggle_for_public_space_in_Tunisia).

258. *Id.* at 10.

259. *Id.*

260. *See supra* note 41 and accompanying text.

261. DEANE, *supra* note 201, at 15–16 (“Tunisia’s civic activists succeeded in bonding similar groups, while simultaneously bridging the gap between diverse groups around their opposition to the regime, and their demands for the free exercise of their rights as citizens.”).

262. TRIPP, *supra* note 257, at 16.

b. *The national dialogue*

The success of the Quartet's National Dialogue, including its award of the 2015 Nobel Peace Prize, is well-known.<sup>263</sup> Established in the summer of 2013 through tedious, tense, and sometimes exasperating negotiations, the Quartet prodded Tunisia's political parties toward compromise and eventually succeeded in allowing for the drafting and adoption of Tunisia's landmark constitution in 2014.<sup>264</sup> This slow and at times unsteady process again demonstrates the uncertainty of legal rights after a revolutionary moment. Moreover, women's rights seemed especially vulnerable at times, particularly in the darkest moments of this period when the country appeared headed toward war. Nonetheless, the Quartet was determined that the dialogue would succeed, and it ultimately upheld the promise of the inclusive constitution that citizens and civil society called for at the beginning of the revolution.<sup>265</sup>

Despite the political nature of the National Dialogue, it is important to recall that this process was designed to facilitate a legal outcome, namely a new constitution. Moreover, of the four organizations comprising the Quartet, two of these organizations, the Tunisian Human Rights League (*La Ligue Tunisienne pour la Défense des Droits de l'Homme*) (LTDH) and the Tunisian Bar Association (*L'Ordre National des Avocats de Tunisie*), are legal organizations.<sup>266</sup> When accepting the award, Tunisian Bar Association President Mohammed Fadhel Mafoudh stressed the need for dialogue and peaceful resolution of conflict.<sup>267</sup> Similarly, political commentator

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263. See *supra* note 16 and accompanying text.

264. Joshua Keating, *Tunisia National Dialogue Quartet Gets 2015 Nobel Peace Prize*, SLATE (Oct. 9, 2015, 7:44 AM), [http://www.slate.com/blogs/the\\_slatest/2015/10/09/tunisia\\_s\\_national\\_dialogue\\_quartet\\_gets\\_2015\\_nobel\\_peace\\_prize\\_a\\_recognition.html](http://www.slate.com/blogs/the_slatest/2015/10/09/tunisia_s_national_dialogue_quartet_gets_2015_nobel_peace_prize_a_recognition.html) (noting that Tunisia's "slow and often messy progress gets a lot less attention than the outright anarchy engulfing other countries in the region").

265. *The Nobel Peace Prize for 2015*, *supra* note 16 ("It established an alternative, peaceful political process at a time when the country was on the brink of civil war. It was thus instrumental in enabling Tunisia, in the space of a few years, to establish a constitutional system of government guaranteeing fundamental rights for the entire population, *irrespective of gender, political conviction or religious belief.*") (emphasis added).

266. See Chayes, *supra* note 141 (noting that of the four organizations, the Tunisian Bar Association, founded in 1887, is the oldest).

267. Tribune Wire Reports, *Nobel Peace Prize Boosts Struggling Tunisian Democracy*, CHI. TRIB. (Oct. 9, 2015, 1:37 PM), <http://www.chicagotribune.com/news/nationworld/ct-nobel-peace-prize-tunisia-20151009-story.html> (statement of Mohammed Fadhel Mafoudh) ("It's a message to all parties present in certain political conflicts, to tell them that everything can be

Khaled el-Dakheel concluded that “[i]t was neither ideology nor gunpowder that allowed [Tunisia] to survive but rather politics and dialogue . . . .”<sup>268</sup>

When explaining its decision, the Nobel Committee stated that the Quartet made a “decisive contribution to the building of a pluralistic democracy” following the revolution.<sup>269</sup> Furthermore, it found that the National Dialogue “show[ed] that Islamist and secular political movements can work together to achieve significant results in the country’s best interests,” and that “the transition in Tunisia shows that civil society institutions and organizations can play a crucial role in a country’s democratization.”<sup>270</sup> This last point is worth reiterating, as despite the involvement of the country’s highest political leaders, it was ultimately a group of four civil society organizations that played the biggest role in the country’s successful democratic transition. More broadly, this intensely political process, which carried the ultimate aim of facilitating the passage of the country’s constitution, further emphasizes just how closely related politics and law are in revolutionary moments. Indeed, the border between politics and law is typically very porous during these moments, and while citizens and civil society are certainly not infallible—and in some cases can even hinder democratic transformation<sup>271</sup>—when working together, they can bridge this gap and resolve what first seem to be irreconcilable differences.

### 3. Legal Outcomes

Despite the concerns that many commentators raised, women’s rights were not only maintained, but ultimately expanded following the revolution.<sup>272</sup> This expansion of rights is evident throughout Tunisia’s post-revolution legal system. Within this system, four legal acts provide the greatest contribution to this result: (1) preserving the progressive Personal Status Code; (2) drafting and implementing a groundbreaking electoral law; (3) a post-revolution constitution enshrining gender equality; and (4) the government’s decision to

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settled with dialogue and all can be settled in a climate of peace, and that the language of weapons leads us nowhere.”).

268. *Why Tunisia Missed Out on the Problems in Egypt and Libya*, NATIONAL (ARABIC NEWS DIGEST) (Nov. 3, 2014, 6:15 PM), <http://www.thenational.ae/opinion/comment/why-tunisia-missed-out-on-the-problems-in-egypt-and-libya> (Carla Mirza trans.).

269. *The Nobel Peace Prize for 2015*, *supra* note 16.

270. *Id.*

271. DEANE, *supra* note 201, at 5.

272. See FIDH, *supra* note 174, at 3.

withdraw its reservations to CEDAW.<sup>273</sup> This section examines each of these outcomes.

a. *Preserving the Personal Status Code*

As discussed above, Tunisia's Personal Status Code (PSC), which addresses family law, children's rights, and inheritance, among other legal areas, provides the strongest legal statement of women's rights in any Arab or Muslim-majority state. And, as Suad Joseph notes, family law codes remain "a benchmark of the feminist struggle" in the Arab and Muslim-majority world.<sup>274</sup> Accordingly, the importance of this code to women's rights leaders and activists, both in Tunisia and throughout the MENA region, is difficult to understate.

The symbolic importance of this code, as well as the substantive rights that it provides, helps to explain why Tunisian feminists, secular and Islamist, voiced serious concerns over possible alterations after Ennahda won the majority of parliamentary seats in the 2011 election.<sup>275</sup> Historically, Ennahda had opposed expanding women's rights when it viewed these legal acts as inconsistent with Islamic legal principles.<sup>276</sup> Thus, Ennahda strongly criticized President Bourguiba's strengthening of the PSC in 1985, which provided Tunisian women additional legal rights and demanded a public referendum on this matter.<sup>277</sup> However, the party changed course, and by 1990, it had accepted the PSC.<sup>278</sup> More recently, Ennahda had openly supported the Code and pledged that it would not seek to change it.<sup>279</sup> As Alexander notes, Ennahda has repeatedly shown its support for women's rights by stating its respect for the PSC, supporting expanded opportunities for women, eliminating workplace

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273. HUMAN RIGHTS COUNCIL, REPORT OF THE WORKING GROUP ON THE ISSUE OF DISCRIMINATION AGAINST WOMEN IN LAW AND IN PRACTICE ON ITS MISSION TO TUNISIA 9–13, 18 (2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2\\_AEV\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_AEV_English.pdf).

274. Suad Joseph, *Gendering Citizenship in the Middle East*, in GENDER AND CITIZENSHIP IN THE MIDDLE EAST 3, 20 (Suad Joseph ed., 2000).

275. Ines Bel Aiba, *Women on the Back Foot in the Arab Spring*, in INTERNATIONAL HUMAN RIGHTS: THE SUCCESSOR TO INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS AND MORALS 7 (Philip Alston & Ryan Goodman eds., 2013).

276. See, e.g., Netterstrøm, *supra* note 144, at 115.

277. *Id.*

278. *Id.*

279. Monica Marks, *Can Islamism and Feminism Mix?*, N.Y. TIMES (Oct. 26, 2011), <http://www.nytimes.com/2011/10/27/opinion/can-islamism-and-feminism-mix.html>.

harassment, and calling for women to decide whether they want to wear the veil (*hijab*).<sup>280</sup>

While feminists’ long-standing mistrust of Ennahda’s position toward women’s rights did not always reflect the party’s evolving views, the feeling that Ennahda would reverse course and seek to undo these legal rights proved difficult for the party to overcome.<sup>281</sup> Many foreign commentators echoed these concerns.<sup>282</sup> Further, while most foreign commentators offered reasonable perspectives on the need for Ennahda to preserve the strong legal rights found within this Code, some commentators made unhelpful ideological arguments that dismissed Ennahda before it even began to govern.<sup>283</sup> Because of this combination of domestic and international attention, safeguarding the progressive nature of the PSC became a key priority of feminists within the MENA region and from further afield.

Ultimately, this concern proved to be something of a moot point, as Ennahda did not attempt to alter the PSC during its governance of Tunisia. Whether the party did not attempt to alter the Code due to domestic political opposition or a longer-term strategy of social and political change remains debatable. Regardless, more than six years after the revolution, Ennahda does not seem to have much, if any, desire to alter the PSC. Indeed, like Tunisia’s other major political parties, Ennahda has focused on economic and security issues, rather than broader social and cultural points, as Tunisia’s poor economic performance and growing security threats now dominate political debate.<sup>284</sup>

While the preservation of the Personal Status Code was a crucial outcome for upholding women’s rights in Tunisia, it is important to remember that the Code is imperfect.<sup>285</sup> Inheritance remains the most

280. Alexander, *supra* note 108, at 45.

281. See Marks, *supra* note 279 (noting that Ennahda critics “accuse the party as a whole of purveying a ‘double discourse,’ adopting a soft, tolerant line when speaking to francophone secularists but preaching a rabidly conservative message when addressing its rural base”).

282. *Id.*

283. See, e.g., Daniel Pipes, Opinion, *PIPES: Turmoil in Tunisia*, WASH. TIMES (Jan. 17, 2011), <http://www.washingtontimes.com/news/2011/jan/17/turmoil-in-tunisia/> (stating that Islamism constitutes “the civilized world’s greatest enemy” and calling for allies of the United States to “fight this blight”).

284. See, e.g., Hiba Safi, *Libya or Tunisia: Who Needs the Other More?*, CIPE DEVELOPMENT BLOG (Apr. 17, 2015), <http://www.cipe.org/blog/2015/04/17/libya-or-tunisia-who-needs-the-other-more/#.V98J4DuBJbk> (describing the economic and security consequences of the ongoing Libyan conflict on Tunisia).

285. See, e.g., *Tunisia: Landmark Action on Women’s Rights*, HUMAN RIGHTS WATCH (Apr. 30, 2014, 11:55 PM), <https://www.hrw.org/news/2014/04/30/tunisia-landmark->

glaring legal inequality between women and men within the Code, as women still generally receive half the inheritance that men receive.<sup>286</sup> In addition, restrictions on women's rights after divorce and remarriage are also problematic. For example, Article 58 prohibits a mother from allowing her children to live with her after she remarries, even though this same prohibition does not apply to fathers.<sup>287</sup> Thus, even though the PSC remains an undisputedly important contribution to advancing women's rights in the MENA region, even this landmark Code contains provisions that frustrate full gender equality.

b. *Electoral law*

While debate over the PSC centered on maintaining women's rights, the 2011 electoral law established new women's rights with the intent of making the Tunisian government more gender representative.<sup>288</sup> This law "established full parity and compulsory alternation of male and female candidates" for the October 2011 Constituent Assembly elections.<sup>289</sup> In essence, this "extremely progressive" law required political parties "to make women at least half of their candidates."<sup>290</sup>

Unfortunately, the gender inclusive intent of this law and its importance to women's rights was undermined by the overwhelming tendency of political parties to list male candidates first on electoral lists. Indeed, political parties listed male candidates first 94 percent of the time.<sup>291</sup> Despite this undermining tactic, female candidates still performed well and won a significant number of seats within the assembly. In total, women won 59 of 271 seats, 27.2 percent of the National Constituent Assembly.<sup>292</sup> In comparison, women hold 19.5 percent of the seats in the U.S. House of Representatives and 20.0

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action-womens-rights ("The personal status code still makes women second-class citizens in their families and this needs to change.").

286. *See id.*

287. *Id.*

288. Women's Learning P'ship, *supra* note 233 (stating that the interim government passed this law on April 11, 2011).

289. *Id.*

290. Marks, *supra* note 279 (noting that despite concerns over its "double discourse" on women's rights, Ennahda fielded more female candidates than any other political party and therefore strongly supported this law, even if only for strategic reasons); *see also* Alexander, *supra* note 108, at 45 (noting that Ennahda was one of the first to support the electoral rule that required an equal number of men and women on their candidate lists).

291. Women's Learning P'ship, *supra* note 232.

292. FIDH, *supra* note 174, at 12.

percent of seats in the U.S. Senate, making up 19.6 percent of the entire U.S. Congress<sup>293</sup>

c. *The post-revolution constitution*

Writing a new constitution quickly became a shared goal of many political actors and activists after President Ben Ali fled the country and resigned from office on January 14, 2011.<sup>294</sup> After some initial turmoil, on March 3, 2011 the interim government announced that an election for the Constituent Assembly would take place on October 23, 2011.<sup>295</sup> Ennahda won the majority of seats and formed a comfortable plurality with the Congress for the Republic and Ettakatol parties, claiming 139 of 217 seats.<sup>296</sup> The assembly’s responsibilities included creating a new constitution for post-revolution Tunisia. Following the Constituent Assembly elections, Ennahda leader Rachid Ghannouchi stated that the party would honor its commitment to produce a new constitution within one year.<sup>297</sup>

From the outset of these elections, the assembly’s efforts to draft a constitution and transition Tunisia into a democratic state received significant attention both in the MENA region and more broadly.<sup>298</sup> Of course, drafting and adopting this constitution took much longer than the expected one year, as political crisis engulfed the country between July and December 2013.<sup>299</sup> Only after the timely intervention by the National Quartet and an additional fifteen months of negotiation did the country finally adopt a new constitution on January 26, 2014. Despite the dark moments where Tunisia appeared closer to chaos and civil war than security and a democratic

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293. Ctr. for Women and Am. Politics, *Women in the U.S. Congress 2016*, RUTGERS UNIV., EAGLETON INST. OF POLITICS, <http://www.cawp.rutgers.edu/women-us-congress-2016> (last visited Dec. 19, 2016).

294. *See supra* note 37 and accompanying text.

295. *See supra* note 34 and accompanying text.

296. *Tunisia’s Election Winners Form Interim Government After Uprising*, *supra* note 128.

297. *Tunisian Coalition Government ‘In 10 Days,’* AL JAZEERA (Oct. 28, 2011), <http://www.aljazeera.com/news/africa/2011/10/2011102810143529175.html>.

298. *Tunisia’s Election Winners Form Interim Government After Uprising*, *supra* note 128 (“As the country that set off the wave of pro-democracy movements that engulfed the Arab region, Tunisia’s efforts to build a democracy are being closely watched around the world.”).

299. Int’l Crisis Grp., *The Tunisian Exception: Success and Limits of Consensus* (June 5, 2014), <http://www.crisisgroup.org/en/regions/middle-east-north-africa/north-africa/tunisia/b037-l-exception-tunisienne-succes-et-limites-du-consensus.aspx> (stating that this crisis had two possible outcomes: consensus or violence).



transition, the adoption of the constitution signaled to many that compromise prevailed over division.<sup>300</sup>

Indeed, political compromise, particularly by Ennahda, became the focal point of the praise that Tunisia's political class received after the adoption of the constitution. For example, Daoud found that Ghannouchi yielded to political pressure and "in the name of the national interest embraced a policy of dialogue."<sup>301</sup> Likewise, Ennahda leadership also recognized that drafting and adopting a new constitution served a crucial need for the party's long-term objectives.<sup>302</sup> Thus, Netterstrøm notes that while Ennahda sought to leave "as large and deep an Islamist imprint" on the new constitution as possible, compromise was always its first priority.<sup>303</sup>

Although commentators generally praised Ennahda for its compromise over the constitution, questions of motive and hidden agendas also surfaced.<sup>304</sup> These questions arose in large part over the party's acceptance of secular legal values over Islamic legal and social norms within the constitution. Ennahda showed a pragmatic attitude by accepting these preferences, but it also needed to assuage its core supporters that the party was not compromising its Islamist identity. To do so, it offered Islamic legal interpretations that supported the concessions the party made during the constitutional drafting process.<sup>305</sup> Thus, Netterstrøm concludes that, for Ennahda, "political calculation not only trumps religious doctrine, but determines the very interpretation of religion itself."<sup>306</sup> In contrast, Marks argues that Ennahda's greatest constitutional concern did not pertain to religious values, but to the structure of the government.<sup>307</sup> Given the oppression that the party endured under Tunisia's two strongman presidents, Ennahda most opposed a strong presidential model of governance, fearing that this model could devolve into authoritarianism.<sup>308</sup> According to Marks, the party ceded more ground on this point than any other issue.<sup>309</sup>

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300. *Id.* ("The January 2014 adoption of a new constitution confirmed that compromise had prevailed [over violence].").

301. Daoud II, *supra* note 90.

302. Netterstrøm, *supra* note 144, at 118.

303. *Id.*

304. *See, e.g., id.* at 121 (arguing that adaptation to political realities, not a hidden agenda drove this outcome).

305. *Id.* at 122.

306. *Id.* at 121.

307. Marks II, *supra* note 68, at 27–28.

308. *Id.* at 27.

309. *Id.*

Despite the long and complex negotiations this constitutional drafting process required, the result was one of nearly unequivocal praise. As writer and cultural critic Shajahan Madampat states: Of all the Arab countries, “Tunisia has arguably the most progressive, most secular and least misogynistic constitution, approved near-consensually last year.”<sup>310</sup> Likewise, Marks notes that Tunisia’s 2014 Constitution was “the first constitution freely created by a representative, democratically elected assembly anywhere in the Arabic-speaking world.”<sup>311</sup> Still, other commentators caution against overemphasizing the importance of the constitution at the expense of overshadowing other key reforms. For example, Nadia Marzouki remarks that “[t]he collective fixation on the constitution and the subsequent elections had a downside . . . [since] [i]t sidelined three subjects—the renewal of the political field, legislative reform and transitional justice—that were just as important to the transition.”<sup>312</sup>

From a women’s rights perspective, the most important legal outcomes in the new constitution are the decisions not to include a reference to shari‘a and to include an article that establishes the state’s role in protecting and strengthening women’s rights, while also recognizing gender equality. The debate over including a shari‘a clause—even a symbolic reference—became protracted and at times contentious, both between secular and Islamist actors and within Ennahda, by far the country’s most significant Islamist party.<sup>313</sup> Ultimately, Ennahda relented on this point, but justified its decision to do so on Islamic legal principles and not political calculations.<sup>314</sup> The inclusion of gender equality, as opposed to the more familiar concept of gender complementarity found within many other constitutions in Arab and Muslim-majority states, was a key point for feminists. Ennahda also figured prominently in this debate, first creating a firestorm of criticism for its initial mishandling of this issue before quickly retracting this position and supporting full gender equality.

#### i. Shari‘a

Secular political parties quickly rejected including a reference to shari‘a within the constitution, but Ennahda engaged in a protracted internal debate over the importance of including a clause or article

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310. Madampat, *supra* note 184.

311. Marks II, *supra* note 68, at 3.

312. Marzouki, *supra* note 54.

313. *Id.*

314. Marks II, *supra* note 68, at 22.

referencing shari'a.<sup>315</sup> Some secular politicians, such as Mohsen Marzouk of the Nidaa Tounes party, rejected these deliberations as unnecessary, arguing that the 1959 Constitution's omission of shari'a was "perfectly fine," and that this debate was simply a strategic tactic to gain time.<sup>316</sup> Likewise, some academic commentators exhorted "emerging democracies," such as Tunisia, to frame their "new national identities" on "unqualified grants of religious freedoms as well as specifically enumerated human rights consistent with international law."<sup>317</sup>

Although well-intentioned, such calls ignore Tunisia's pluralist past and that the denial of religious freedoms and human rights stemmed not from Islamist groups or an inadequate constitution, but almost entirely from Tunisia's authoritarian secular governments. Indeed, statements such as, "[c]hanging the text of a constitution will not immediately change a culture, but it can guide it in future generations as legislatures and courts look to their founding documents in interpreting the laws," read at best as naïve, as this statement minimizes the responsibility of previous governments for past injustices and overlooks the country's rich legal tradition.<sup>318</sup> Furthermore, it is debatable what legal effect, if any, a nonbinding reference to shari'a would have had on the constitution, particularly since Ennahda identified with a tolerant and progressive version of shari'a.<sup>319</sup> As Marks notes, Ennahda leader Rachid Ghannouchi rejected rigid legal codes and argued for a progressive interpretation of shari'a that focused "on more expansive notions of Islamic ethics, including social justice, equality between persons, and the like."<sup>320</sup>

Ennahda eventually relented on "the sharia question," although the more conservative party members have expressed concerns that this concession goes too far.<sup>321</sup> Nonetheless, Tunisia's post-revolutionary constitution defines Tunisia as a civil state, and while it references the teachings of Islam, it does not reference shari'a.<sup>322</sup> Even more surprisingly, "the constitution grants the right to 'freedom of conscience and belief,'" the latter, according to one scholar,

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315. *Id.* at 21.

316. *Id.*

317. Brian O'Connell, *Constitutional Apostasy: The Ambiguities in Islamic Law After the Arab Spring*, 11 NW. J. INT'L HUM. RTS. 83, 103 (2012).

318. *Id.*

319. Marks II, *supra* note 68, at 20–21.

320. *Id.* at 20. Like many of the progressive Islamic legal scholars discussed in Part III, Ghannouchi called for the application of *maqasid* (high objectives) and *masalah* (human interests) to trump *hudud* (rigid rules). *Id.* at 26.

321. *Id.* at 20–22.

322. Netterstrøm, *supra* note 144, at 110.

represents a “truly revolutionary” legal principle within the Arab world.<sup>323</sup>

ii. Gender equality

Like the inclusion of an article or clause referencing shari‘a, the issue of gender created a rift between Ennahda and secular political parties. Article 22 of the first draft of the constitution affirmed the equality of all citizens, but Article 28 provided for complementarity between men and women.<sup>324</sup> Critics seized on this point to argue that Ennahda intended to undermine women’s rights, just as they had warned.<sup>325</sup> A “firestorm of criticism” ensued, which was exacerbated by uncritical reporting by foreign journalists who understood Article 28 to mean that women served as “men’s complements,” whereas the article actually stated that “[men and women’s] roles complement one another within the family.”<sup>326</sup>

Ennahda quickly retracted this article, and likely did not intend to produce the gender inequality that this clause could have caused, but as Marks notes, this gaffe occurred at a terrible time and resulted in a missed opportunity for Ennahda to build trust on a crucial issue.<sup>327</sup> As she states: “Many of Ennahda’s fiercest opponents—already fearful that the party would scale back critical pieces of women’s rights legislation—felt they had seen the party’s true colors, and vowed to fight even harder against Ennahda.”<sup>328</sup> The controversy that this article created was hardly the only contentious issue to the first draft of Tunisia’s post-revolution constitution, which the drafters released in Arabic on August 8, 2012.<sup>329</sup> Nonetheless, it proved to be a persistent obstacle to the drafters and was only resolved through several subsequent revisions.

In contrast, Tunisia’s post-revolution constitution, finally adopted on January 26, 2014, provided strong protections for women’s rights and a guarantee of gender equality.<sup>330</sup> Article 46, which details these protections, contains the following four provisions:

1. The state commits to protect women’s accrued rights and work to strengthen and develop those rights.

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323. *Id.* at 110–11.

324. Marks II, *supra* note 68, at 22–23.

325. *See* TRIPP, *supra* note 257, at 15.

326. Marks II, *supra* note 68, at 22–23 (alteration in original).

327. *Id.* at 23.

328. *Id.*

329. *Id.* at 22.

330. *Id.* at 1, 23–24.

2. The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains.
3. The state works to attain parity between women and men in elected Assemblies.
4. The state shall take all necessary measures in order to eradicate violence against women.<sup>331</sup>

Human Rights Watch was one of several prominent human rights organizations to praise the constitution's inclusion of strong women's rights, stating: "[The constitution] makes Tunisia one of the few countries in the Middle East and North Africa region with a constitutional obligation to work toward gender parity in elected assemblies."<sup>332</sup> Likewise, Marks notes that the constitution's inclusion of gender parity was a "first . . . in the Arab world."<sup>333</sup>

Although many commentators expressed surprise that Ennahda would agree to such a strong statement of women's rights within the constitution, the party's previous actions suggested that it would be amenable to this outcome. For example, in 2005, Ennahda "agreed to a joint platform of demands" that included its commitment to "multiparty democracy and to the progressive rights that Tunisian women by then enjoyed."<sup>334</sup> Furthermore, women historically have played an active role in Ennahda.<sup>335</sup> Despite these commitments to supporting women's rights, Ennahda has never fully convinced Tunisian women that it does not harbor ulterior motives, and as Alexander notes, "[n]o single constituency has expressed greater concern about Ennahda's rise than Tunisian women."<sup>336</sup> Moreover, while the party takes pains to profess its public support of women's rights, it also continues to undercut these statements through, at best, carelessness and insensitivity and, at worst, slippages of a duplicitous agenda. For example, following the revolution, Ennahda continued to stress its commitment to maintaining the rights of women, but in 2011 and 2012, high-ranking party officials made several statements that raised questions over the sincerity of this commitment.<sup>337</sup>

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331. *Tunisia's Constitution of 2014*, CONSTITUTE  
[https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en) (last visited Dec. 19, 2016).

332. *Tunisia: Landmark Action on Women's Rights*, *supra* note 284.

333. Marks II, *supra* note 68, at 26.

334. Alexander, *supra* note 108, at 43.

335. *Id.* at 45.

336. *Id.*

337. FIDH, *supra* note 174, at 10.

Until Ennahda refrains from these lapses of trust, it will not convince Tunisian women of its genuine commitment toward establishing and maintaining women’s rights. Still, despite predictions of obstruction or worse, Ennahda supported the new constitution even though it enshrined many principles that the party had previously opposed.<sup>338</sup> Accordingly, Ennahda has rebuked its critics, at least for the time being.

d. *Withdrawing reservations to CEDAW*

Throughout the MENA region, women’s rights activists recognize CEDAW as a critical tool for pressuring governments to advance women’s rights.<sup>339</sup> Indeed, this landmark treaty defines what constitutes discrimination against women and establishes minimum steps that countries must take to end such discrimination. Although many MENA and Muslim majority countries have signed CEDAW, they typically did so while making significant reservations and declarations to offset treaty provisions perceived to conflict with Islamic law, thereby undermining the intent of the treaty.<sup>340</sup> Tunisia offers a case in point. Under President Bourguiba, Tunisia ratified CEDAW on September 20, 1985, but also made a declaration to Article 15(4) and reservations to Articles 9(2), 16(c), (d), (f), (g), (h), and 29(1).<sup>341</sup>

Feminists and women’s rights organizations fought to remove the declarations and reservations that Bourguiba made and advocated for better implementation of CEDAW during Bourguiba’s rule and Ben Ali’s subsequent reign. Given the repressive political atmosphere and constraints on civil society, these efforts often ended in frustration and impasse. The Tunisian Revolution injected these efforts with new hope, as the stunning speed of political change suggested that a window for meaningful progressive change had opened. To capitalize on this opportunity, women’s rights activists and feminists from across the region met in Morocco in May 2011 to find the best strategy for achieving full implementation of CEDAW,

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338. Netterstrøm, *supra* note 144, at 110.

339. Women’s Learning Partnership, *supra* note 233, at 1.

340. See, e.g., Fatima Sadiqi, *Morocco*, in *WOMEN’S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AMID RESISTANCE* 311, 316 (Sanja Kelly & Julia Breslin eds., 2010) (“When it ratified the convention in 1993, Morocco, like many other Arab and Muslim countries, made multiple reservations and declarations covering portions that were thought to conflict with Islamic or national law.”).

341. U.N. CEDAW, *DECLARATIONS, RESERVATIONS, OBJECTIONS AND NOTIFICATIONS OF WITHDRAWAL OF RESERVATIONS RELATING TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN* 52–53 (2010).

particularly as several countries began political transitions following the Arab Spring.<sup>342</sup>

A few months after this important meeting, the Tunisian Council of Ministers adopted a draft decree to lift the country's CEDAW reservations on August 16, 2011.<sup>343</sup> The transitional government adopted this decree into law on October 24, 2011, publishing Decree-Law 103 in the country's official legal journal.<sup>344</sup> However, the newly elected government did not send the withdrawal notification to the U.N. Secretary-General, who acts as the depository of the convention.<sup>345</sup> Under international law, this lack of notification meant that this Act had no legal effect at the international level, and the declaration and reservations remained in effect.<sup>346</sup> It was not until April 17, 2014—more than two and a half years later—that Tunisia officially withdrew its reservations to the CEDAW, thereby binding itself to making the legal changes necessary to support this decision.<sup>347</sup> Again, women's rights organizations and civil society helped to secure this outcome through persistent campaigning and advocacy efforts.<sup>348</sup>

The Tunisian reservations to CEDAW had primarily concerned gender equality issues in family matters. Lifting these reservations provided women stronger rights inside and outside the family, including (1) confirming a woman's ability to pass her nationality onto her children; (2) clarifying rights and responsibilities in marriage and divorce, as well as matters relating to children and guardianship; (3) demarcating personal rights for husbands and wives with regard to family name and occupation; and (4) affirming the same rights applied to both husband and wife in ownership of

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342. Women's Learning Partnership, *supra* note 233.

343. *Tunisia: Government Lifts Restrictions on Women's Rights Treaty*, HUM. RTS. WATCH (Sept. 6, 2011, 11:45 PM), <https://www.hrw.org/news/2011/09/06/tunisia-government-lifts-restrictions-womens-rights-treaty>.

344. *Tunisia: Landmark Action on Women's Rights*, *supra* note 285; *see also Décret-loi n° 2011-103 du 24 octobre 2011*, 82 J. OFFICIEL DE LA RÉPUBLIQUE TUNISIENNE 2321, 2325 (Oct. 28, 2011), <http://www.legislation.tn/sites/default/files/journal-officiel/2011/2011F/Jo0822011.pdf>.

345. *Tunisia: Landmark Action on Women's Rights*, *supra* note 285.

346. *Id.*

347. U.N. Secretary-General, *Tunisia: Withdrawal of the Declaration with Regard to Article 15(4) and of the Reservations to Articles 9(2), 16(C), (D), (F), (G), (H) and 29(1) Made Upon Ratification*, U.N. Doc. C.N.220.2014.TREATIES-IV.8 (Apr. 23, 2014), <https://treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf>.

348. *See TUNISIA: CEDAW Reservations Officially Withdrawn*, FIDH (Apr. 29, 2014), <https://www.fidh.org/en/region/north-africa-middle-east/tunisia/15372-tunisia-cedaw-reservations-officially-withdrawn> ("FIDH, with its member organisations, ATFD, LTDH and Doustourna, carried out a huge and sustained advocacy campaign to obtain the lifting of these reservations.").

property.<sup>349</sup> Numerous human rights organizations noted the importance of withdrawing these reservations. For example, Human Rights Watch called this Act “an important step toward realizing gender equality.”<sup>350</sup> Likewise, women’s rights researcher Rothna Begum stated: “The Tunisian government, by lifting major reservations to CEDAW, is proclaiming its commitment to advance women’s rights.”<sup>351</sup>

Although human rights organizations rightfully noted the importance of this decision, they also urged Tunisia to do more than simply drop its CEDAW reservations.<sup>352</sup> Without meaningful implementation, this decision will have little practical effect for advancing women’s rights. Likewise, Tunisia remains one of the relatively few African Union member states that has not signed the protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, commonly referred to as the Maputo Protocol.<sup>353</sup> This important legislation provides additional rights to CEDAW and helps to counter longstanding critiques of human rights as an inherently “Western” project.<sup>354</sup>

Academic debate over whether human rights are “Western” or “universal” are both relentlessly cyclical and of little substantive value to those most in need of stronger human rights. In addition, debates over human rights treaties such as CEDAW often do not resonate with Muslim women. As Islamic feminist and human rights activist Zainah Anwar notes, a human rights framework will not have meaningful significance to many Muslim women, especially within rural areas, such as the villages within Anwar’s native Malaysia.<sup>355</sup> Instead, Islamic law and religious matters matter most to women. Thus, she concludes:

Invoking CEDAW is not enough to convince these women of their rights, because it has no resonance to them. Islam, on the other hand, is a source of values and principles. We

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349. *Tunisia: Landmark Action on Women's Rights*, *supra* note 285.

350. *Id.*

351. *Id.*

352. *Id.*

353. *Ratification Table: Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS, <http://www.achpr.org/instruments/women-protocol/> (click “Ratification Table” link) (last visited Dec. 19, 2016).

354. *See, e.g.*, Adamantia Pollis & Peter Schwab, *Human Rights: A Western Construct with Limited Applicability*, in HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES 1 (Adamantia Pollis & Peter Schwab eds., 1979).

355. Segran, *supra* note 148.



needed to engage with religion and provide answers to these questions in ways that were relevant to their lives.<sup>356</sup>

## V. CONCLUSION

The Arab Spring uprisings remind us that revolutions are periods of immense uncertainty, providing moments of great hope as well as moments of great despair. The outcomes that followed the Arab Spring also remind us that positive change is not inevitable and that authoritarian leaders often reassert themselves rather than give way to democratic change. Revolutions can lead to peaceful transitions and an inclusive reimagining of the state and its institutions—effectively a reordering of society—or they can result in terrible violence and protracted conflict and instability.<sup>357</sup> While the Arab Spring produced outcomes on both ends of this spectrum, the mostly discouraging results offer a blunt reminder that not all popular uprisings will succeed and that authoritarian rule seldom goes away quietly.

Although the Tunisian Revolution ultimately produced a democratic government based on the rule of law and a progressive constitution, this result was anything but certain. Indeed, such an outcome seemed all but impossible during the darkest days of the transition when the country teetered on the brink of armed conflict and political collapse.<sup>358</sup> Women's rights followed a similar trajectory and reached a similar result, as feminists and women's rights activists eventually succeeded in not only maintaining, but also strengthening women's rights in post-revolution Tunisia. Likewise, this outcome was not assured and required the persistence and commitment of numerous individuals and organizations to secure these advances.

To achieve this outcome, women's rights leaders drew on the progressive legal history of Tunisia, while also deftly negotiating the tension that came from previously suppressed conservative Islamist groups. Feminists and women's rights activists suddenly found themselves defending Tunisia's progressive women's rights in political debate and public discourse without the backing of an authoritarian government that simply denied this challenging, and at times, even confrontational perspective.<sup>359</sup> That women's rights advocates succeeded in maintaining the progressive Personal Status

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356. *Id.*

357. *See supra* notes 49, 191, 251 and accompanying text.

358. *See supra* notes 9, 70, 91 and accompanying text.

359. *See supra* note 20 and accompanying text.

Code, passing a groundbreaking electoral law, including gender equality within the constitution, and overseeing the government withdraw its declaration and reservations to CEDAW shows the broad acceptance of strong women’s rights within Tunisia.

Whether Tunisia’s approach to expanding women’s rights could succeed in other Islamic or Muslim-majority states remains a contested debate. However, Tunisian exceptionalism suggests that this approach is not easily repeatable. Indeed, the strong legal protections and progressive legal system that Tunisian women have enjoyed for decades as well as the political dominance of an Islamist party as progressive and as willing to compromise as Ennahda make this approach difficult to replicate.<sup>360</sup> Thus, Tunisia is an outlier both to the rest of the Arab Spring uprisings and to women’s rights in the MENA region.<sup>361</sup> While Tunisia represents a successful outcome and perhaps a motivating example for women’s rights activists to consider, these actors should ground their efforts for legal and political reform in their histories and cultures. In this sense, Tunisian women’s rights should serve more as an approach than as a blueprint in the struggle for advancing women’s rights and achieving gender equality in the MENA region and beyond.

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360. *See supra* notes 184–90 and accompanying text.

361. *See supra* note 105 and accompanying text.

