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al-raida

Conference Proceedings: Part 1

Arab Countries in Transition:
Gender Rights and Constitutional Reforms

Arab Countries in Transition:
Gender Rights and Constitutional Reforms - Part 1

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INSTITUTE FOR
WOMEN'S STUDIES
IN THE ARAB WORLD

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The Institute for Women's Studies in the Arab World at the Lebanese American University

The Lebanese American University founded the Institute for Women's Studies in the Arab World (IWSAW) in 1973. The history of the Institute is closely linked to that of the first women's college in the Middle East, the American Junior College for Women, which was established in 1924 by the Presbyterian Mission. The College, which educated Middle Eastern women for half a century, became co-ed in 1973. In order to honor the college's unique heritage as the first educational institution for women in the region, the Institute for Women's Studies in the Arab World was established that same year.

Mission
• Engage in academic research on women in the Arab world.
• Develop and integrate women's studies in the Lebanese American University curriculum.
• Empower women in the Arab world through development programs and education.
• Serve as a catalyst for policy changes regarding the rights of women in the Arab world.
• Facilitate networking and communication among individuals, groups, and institutions concerned with women in the Arab world.
• Extend ties with international organizations and universities working on gender issues.

Al-Raida Journal

Al-raida first appeared in May 1976, 3 years after the founding of the first institute for women's studies in the Arab world (i.e. IWSAW). It started off as a thin newsletter consisting of a dozen stenciled pages, with the modest and limited purpose of reporting on the activities of IWSAW. With time, however, *al-raida* grew in size and scope, a development that was also gradually reflected in its appearance. Whereas initially it consisted mostly of profiles of women, conference reports, and summaries of studies, by the mid 1980s an important addition was made, i.e. research-based articles, thus making a qualitative and quantitative leap in terms of content and mandate. By 1994, *al-raida* reached a new level of maturity with the introduction of a specialized section or "file" which focuses on cutting edge themes and often controversial issues related to women in the Arab world. In 2002, and in line with the technological advances that swept the publishing world in the last decade, the Institute made *al-raida* available online in both English and Arabic, thus allowing researchers and activists worldwide to have easy and instantaneous access to it. In 2007, *al-raida* was revamped in both appearance and content. It became smaller in size and new sections were introduced, namely the "young scholars" section and an original "book reviews" section.

More than three decades after its first appearance, in 2013, *al-raida* was turned into a bi-annual interdisciplinary peer-reviewed academic journal that contains scholarly articles of international standards as well as non-academic articles. *Al-raida* will thus continue to invite submissions that enrich the debate on women in the Arab world, whether in the form of interviews, opinion pieces, testimonials, short stories, poems, or essays.

Submission Guideliens

All submitted academic articles are reviewed by two blind reviewers. IWSAW reserves the right to accept or reject the articles submitted. Those articles that are accepted will be edited according to journal standards.

For more details about our submission guidelines kindly visit our website at:
http://iwsaw.lau.edu.lb

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Al-Raida's previous issues

INSTITUTE FOR WOMEN'S STUDIES IN THE ARAB WORLD

Hard copies of recent and back issues of Al-Raida are available in English at the Institute.
Online copies of issues, 2001 onwards, are available online in English and Arabic (free of charge).

01

Contents

al-raida

Editorial

Arab Countries in Transition:

Gender Rights and Constitutional Reforms

Samira Aghacy

Al-Raida is pleased to launch a special thematic issue in two parts that grew out of the international conference titled "Arab Countries in Transition: Gender Rights and Constitutional Reforms" organized by the Institute for Women's Studies in the Arab World at the Lebanese American University in partnership with the Women and Memory Forum-Egypt, Konrad Adenauer Stiftung, Rule of Law Program MENA Region, and the Danish Centre for Research and Information on Gender, Equality, and Diversity (KVINFO).

In November 2013, I met with Professor Suad Joseph at the MESA convention held in New Orleans. We discussed the explosive events in the Arab world and the possibility of having a conference related to these events. Joseph suggested that we focus on the Arab constitutions, and we both agreed that it is a very pertinent and important topic worth highlighting and investigating. What made the topic particularly attractive to us is the fact that we would be able to invite activists who had first hand information. We thought of Dr. Hoda Elsadda from Egypt who participated in drafting Egypt's 2014 Constitution and felt that her views and contribution as a woman activist would be vital. We also thought of a large number of NGOs, and other organizations within the Arab world that are well-suited to contribute to our conference.

This issue of *Al-Raida* has its genesis in the International Conference on "Arab Countries in Transition: Gender Rights and Constitutional Reforms" held at the Lebanese American University June 23-25, 2014. The conference was organized by the Institute for Women's Studies in the Arab World in partnership with Konrad Adenauer Stiftung, Rule of Law Program MENA Region; the Danish Centre for Information on Gender, Equality and Diversity, KVINFO; and The Women and Memory Forum in Egypt.

The conference brought together scholars, social workers, activists, legal specialists, and UN representatives interested in probing the current status of women in the Middle East and North Africa in the wake of the uprisings/revolutions. The conference focused on women's rise to power, their active and indispensable role

in the overthrowing of authoritarian regimes and their role in the decision-making processes. In this light, the conference explored debates that ensued as a result of the revised/new constitutions (Egypt, Tunisia, Libya, Morocco, and Jordan), particularly issues related to gender equality and feminist concerns during and after the uprisings. Simultaneously, the conference focused on the marginalization and the disempowerment of women as well as on the serious human rights violations they were subjected to during and in the aftermath of the uprisings. It also highlighted the rise to power of Islamist movements with conservative agendas that augmented the pressure on women. Many papers focused on the role of the political system in determining the parameters of women's political and social roles. The conference aimed at engaging scholars in debating and analyzing these transforming conditions, and produced animated and fruitful discussions and debates.

Owing to the large number of insightful, germane and timely presentations, we chose to compile these papers in two successive issues of *Al-Raida*. The first issue has a more theoretical orientation focusing on the genesis and meanings attached to constitutions in general and Arab constitutions, in particular in the aftermath of the Arab uprisings and the gendered dimensions of these constitutions and what they tell us about engrained social and religious values within Arab societies. The second issue of *Al-Raida* deals with human rights violations as well testimonials that authenticate such abuses.

In her inspiring presentation titled "Constitutional Matters: Women, State, Law, Constitutions in the Aftermath of the Arab Uprisings", keynote speaker Professor Suad Joseph focused on the role of constitutions as 'founding myths' that define and map the structures and principles of society. She argues that in the Arab region the

Participants during the conference

family (rather than the individual) is the fundamental unit through which citizens interact with the constitutional discourse, thus excluding unmarried men and women.

Our second keynote speaker was Dr. Hoda Elsadda, Professor of English and Comparative Literature at Cairo University, co-founder and Chairperson of the Board of Trustees of the Women and Memory Forum, and member of the 50-committee that participated in revising the constitution. In her keynote speech, Elsadda briefed the audience on her role in drafting the 2014 Egyptian Constitution after the overthrow of President Mohamed Morsi in July 2013 and the suspension of the 2012 Constitution drafted by an Islamic majority. She focused on the framework within which the Egyptian Constitution was drafted, the historical circumstances, the legal context, and the history of Egyptian women's attempts to amend their constitution.

Another insightful presentation is one by Professor Valentine M. Moghadam titled "Democratization and Women's Political Leadership in North Africa". Moghadam contended that countries that witnessed progress in women's political participation prior to the Arab Spring, such as women in North Africa, are more likely to continue to advance successfully to democracy. She explored the factors that allow for women-friendly democracies and focused on endogenous and exogenous forces that can enhance or inhibit women's progress. Lilia Labidi's article titled "Tunisian Women in the Arab Spring: The Singularity of Article 46 in the 2014 Constitution" reinforced Moghadam's view by focusing on a long history of commitment by women to political activism through their contributions to secularization and the reinterpretation of religious thinking in Tunisia. Having herself served as Minister for Women's Affairs in the provisional Tunisian government following the fall of the Ben Ali regime, Labidi sees the Arab spring through a long history of political engagement by Tunisian women. "Negotiating Gender Rights and Gender Relations in the Constitution-Making Process in Egypt: Towards a 'Thick' Constitutional Guarantee for Women's Rights" by Naoko Kuwahara examined the constitution-making process from comparative constitutional law and gender perspectives. She maintained that the controversy over women's legal rights is entrenched in tradition and the fear of the erosion of one's cultural values. In "Women's Fight for the Constitutionality of Gender Equality in Morocco", Nadia Nair dealt with Moroccan women's struggle to legalize gender equality.

In addition to these enlightening presentations, the conference served as an important platform to expand and strengthen cooperation among women's rights activists in the Arab world and to build the necessary coalitions among them with the common aim to counter the hegemonic patriarchal pattern and its manifestations in the lives of women everywhere.

During the four days of the conference several priority areas of concern were singled out. The key conclusions and recommendations included:
- safeguarding all the gains that were previously achieved and guaranteeing that women's rights are protected in the Arab constitutions;
- ensuring women-friendly outcomes of the democratic transitions by recognizing women's societal roles and guaranteeing women's political participation during and after the Arab uprisings/revolutions by adopting gender quotas (parliamentary/

Booklet of the conference

political party quotas); increasing the number of women in trade unions, cabinet positions, etc.;
- criminalizing all forms of gender-based violence such as abuse, sexual violence, trafficking, forced marriages, femicide, and honor crimes (combatting sexual violence in Egypt, mobilizing to end sexual violence against refugees and internally displaced women and children in Syria, Iraq, Libya, etc.);
- establishing international solidarity through linking the work of civil society groups on the ground across national boundaries and exerting pressure on international and national bodies to promote equality as a priority issue on their political agendas;
- working on the refugee crisis and ameliorating the miserable situation of refugees and in particular women and girls;
- assessing the impact of the refugee crisis on the host countries where the crisis created and/or exacerbated political divisions within the host countries;
- highlighting the role of religion and the family in raising awareness on gender rights;
- engaging men in gender rights reform processes;
- understanding the role of the state as both protector of citizens and part of the problem (endorsing dictators, engaging in human rights abuses, promulgating discriminatory laws, etc.);
- examining the role of Islamic law, including the place of *shari'a* in constitutions

and family law, and the sectarian divisions and multiple family laws in Lebanon;
- launching of a network that joins local, regional, and transnational actors where
scholars and participants exchange information and expertise (the network was
launched in September 2014 and serves as a forum for exchange of ideas and
expertise regarding human rights and women's issues).

It is hoped that through the conference proceedings published in two issues of
Al-Raida, one can understand the gendered implications of social transformations
in the Middle East and North Africa and how they contribute to change. Injustices
that women face take place not only locally or regionally, but globally. Hence, the
importance of networking transnationally and supporting one another's work to
improve the status of women globally.

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Conference Proceedings

Constitutional Matters:

Women, State, Law, and Constitutions in the Aftermath of the Arab Uprisings

Suad Joseph

The Approach

Following the Arab Spring in 2011, constitutions and constitutional reforms were everywhere in the air in the Arab world. Constitutional matters were a must in critical conversations on women and gender rights in the Arab world at that historic moment. Egypt has reworked its constitution more than once since 2011. Constitutional debates mixed with debates about law and family codes were engaging diverse publics in Algeria, Iraq, Morocco, Tunisia — and always in Lebanon — as well as many other Arab countries. Regardless of whether in a particular Arab country constitutions are changing or even the possibility of constitutional change is being discussed, it remains the case that constitutions are useful projects to think with and to think through for understanding gender, rights, and other key social issues. Here I raise some of the questions and issues that can be productively engaged with through the lens of constitutions. I focus on some of the framing questions that might productively be considered in conjunction with, or perhaps juxtaposed with, the idea of constitutions.

Why Constitutions

No other social project sheds light on the framing issues of a society more than its constitution. In American studies, we tend to talk about the "framers" of the constitution, recognizing that those who write constitutions are engaged in large social construction projects about the very architecture of a society. Constitutions map out a vision of society, its structure, its people, and its fundamental principles. They speak not only of who belongs in the society, but of the very nature of the people's being, their relationship to other members of society, and most pointedly, their relationship to the political project which they invent and which invents them as a people — the "state". Constitutions address the organization and distribution of power in a society, including protecting the citizenry from the very state that constitutions instantiate (Gordon, 1999). Constitutions, in mapping the social domain, narrate the sites of power, authority, rights, and responsibilities. They offer a vision of decision-making on behalf of the body politic, a vision of decision-making defined as "for the social good". I use constitutions as a point of departure to suggest a lens for re-figuring questions about women, gender, and the women's location in the political maps of their societies. The intervention I hope to make here is less about the specificities of particular constitutions, and more about the work that the idea of constitutions does in framing social matters. The discussion below at times conflates constitutions and laws. Certain matters are addressed in constitutions in some countries, while in other countries they are addressed in laws.

That constitutions are a critical lens through which to map, track, and understand gender issues was recognized by the United Nations when it launched, in 2013, the first-ever database on constitutions which locates all provisions relevant to gender in all constitutions globally.[1] Independently, Duke Law School graduates Laura Lucas and Taryn Marks developed the Women and Constitutions Project to analyze constitutional provisions that mention women in all constitutions that have been written since World War II.[2] Analyzing women's strategies towards constitutions, Alexandra Dobrowolsky and Vivien Hart (2004) compare women's efforts to affect change through constitutional interventions in several countries, including the United Kingdom, South Africa, the United States, and Canada – one of many such studies emerging, particularly in the last decade or so.

Constitutions as Civic Myths: Originary Tales

At some level, constitutions operate at the level of "civil myths". Brook Thomas (2007) argues that civic myths are the stories we tell about ourselves as a society: about a society's values, membership, and origin. Rogers M. Smith (1997) contends that citizenship laws are based on such civic myths. It is telling that Brook Thomas, unlike political scientists, turns to foundational literature to find these stories about the nature of civic myths in the United States. He turns to stories such as *The Scarlet Letter* (1850) by Nathaniel Hawthorne (the good citizen, transgression, and civil society); *The Man Without a Country* (1863) by Edward Everett Hale (the patriotic citizen, Lincoln, and civil liberties); *The Adventures of Huckleberry Finn* (1884) by Mark Twain (the independent citizen and civil rights) to identify foundational stories about what it means to be a good citizen, to transgress, to belong to civil society, to be patriotic, to be independent, and exercise your civil rights. It is noteworthy that these texts are required readings in most American high schools.

Stories such as these embody myths about who we are. In such civic myths we talk to ourselves and to each other about who we are as a people. We tell ourselves that we are a secular democracy; or we tell ourselves that we are a state founded on Islamic principles; or we tell ourselves that we are a state organized around a specific ethnic community. We tell ourselves that everyone within the state is equal with equal rights and capacities; or we tell ourselves that some members of the state need protection because they lack certain competencies. We tell ourselves that color does not matter; or we tell ourselves that color conditions social positionality. We tell ourselves that membership in the state is by blood; or we tell ourselves it is by land; or we tell ourselves it is both. We tell ourselves that anyone meeting fairly accessible criteria can become a member of the political body; or we tell ourselves that membership in our political body is exclusive or nearly exclusive. Constitutions embody these stories that we tell ourselves about ourselves. They are foundational narratives of origins – the narrative embodiment of the imagined community (Anderson, 1983). In some sense they are part of the originary tales which transform the "abstract society of strangers" into an "embodied community" of people who feel they belong together (James, 1996, p. 34).

Constitutional Recognition

On the global stage, constitutions are certificates of recognition: They are the union cards for membership in the international community. They are one of the lenses through which states view, see, recognize, and evaluate each other. A Google search

for "constitutions of the world" brought up 13,300,000 links.[3] Wikipedia lists the constitutions of nearly 170 countries, in addition to partially recognized countries and territories.[4] The Constitution Finder at the University of Richmond offers links to multiple constitutions of a host of countries, with the United States having the largest number.[5] HeinOnline, an online source for legal information, boasts the most complete list of historical and contemporary constitutions. Additionally, a host of publications have emerged about Arab constitutions in the wake of the Arab Spring.[6]

Constitutions as Compulsory: Mapping Membership in Nations/States

Constitutions frame social structure and social relations in the contemporary world — on a global stage. They paint the landscape of the modern concept of the "nation/state" vis-à-vis other nations/states. Constitutions are critical, because, as Sami Zubaida pointed out sometime ago, the nation/state has been a "compulsory" model for former colonies (1988, p. 121). One must belong to a nation/state to have a political identity and to have rights to resources, services, travel, and protection vis-à-vis other states. Citizenship is compulsory. If citizenship in a nation/state has become the venue for defining membership in the world community, then the manner in which nations/states define citizenship and structure membership in their body politic becomes crucial for understanding women's positions globally and women's positions vis-à-vis the globe. Constitutions are the starting point for defining the political community; they are the stories which define positionality on the global stage. Constitutions establish the rules for "intersubjective recognition" domestically and internationally (Habermas, 1993).

Who Gets to Write the Narrative

Constitutions are stories told most often by a small segment of society. They represent the narrative construction of those who are authorized to speak — or authorize themselves to speak through — on behalf of the society. They demarcate whose voices are authoritative, who is authorial, who gets to speak on behalf of the whole. Constitutions represent the order of speech in a society. Constitutions are often framed through the lens of gender and class — and they can be framed through the lens of religion, race, ethnicity and other forces which shape privilege and power.

One question then becomes, who gets to speak on behalf of society? Who gets to tell us who we are, what kind of beings we are, where we belong, and how we are to relate to each other? We know that these myth makers, globally, are most often males and males from privileged classes. In the case of Arab states, constitutions have been almost exclusively written by men — men with privileged access to power. The inclusion of women in the writing of several of the new post-2011 constitutions has been a door-opening experiment, the outcome of which is still unfolding.

Arab constitution writing has received intense scrutiny since 2011. A Google search of "Arab constitutions post Arab Spring" brought 10,200,000 responses, whereas a similar search of "Arab constitutions and women" brought up 21,500,000 responses.[7] Particularly interesting has been the role of the five Egyptian women who were appointed to the Egyptian Constitution writing in 2014. Among the most interesting analysis of women and the writing of the 2014 Egyptian Constitution is the work of Hoda Elsadda, herself one of the five women.[8] Perhaps indicative of the interest in women's role in the writing of the 2014 Egyptian constitution is the endless demand

for public talks and seminars Elsadda has been subjected to.[9] Though only five, the active role played by these Egyptian women leaders was a watershed in constitution writing in the Arab world.

Constitutional Change

Constitutions are fought over and changed not only because they no longer represent society. Representing society is itself a problematical assertion. Rather, or in addition, constitutions are contested and changed because social narratives become contested. New narratives emerge; new stories, new frames, new landscapes and maps are charted. As new forms of privilege or new access to power allow new storytellers to write the narratives, they too must position themselves as writing on behalf of society. New constitutions can tell us we are now different kinds of people, different kinds of beings, and we can create different kinds of relationships. The complexity of methods for changing constitutions and the social transformations they either represent or induce has spawned blogs and websites such as Constitutional Change.[10]

Constitutional Disconnect

As with any myth, constitutions may be disconnected from reality. They may tell us we are something we are not; they may tell us we have rights which we never experience; they may tell us our leaders are something they are not; they may tell us the state is something it is not; they may tell us about values which often do not guide the practice of lived lives.

Constitutional disconnect is ever greater in societies with high rates of illiteracy, especially legal illiteracy. In most Arab societies, vast numbers of citizens are uninformed about their own constitutions and what rights they have or do not have. For a number of Arab societies which lived under emergency laws for decades (such as Egypt and Syria), the constitutional disconnect was structural and purposeful. Perhaps a majority of the citizens of the United States and Europe are also not fully aware of their own constitutions and what rights they have or do not have. Constitutional illiteracy is global — a money making machine for lawyers. While constitutions can often act as façade for authoritarian governments, even the façade tells a story of self-conception (Sartori, 1994).

Materiality of Constitutional Stories

Though constitutions may be civic myths and though they may be stories told by the hegemons of an era, constitutions are not bedtime stories. They carry the weight of the state, with its monopoly on power and force and coercion. Constitutional stories are materialized through laws, codes, courts, and through enforcement agencies like schools, the media, the police, the militaries, prisons — and even families. As Ranabira Samaddara argues (2007), the materiality of constitutions translates into life and death realities for citizens and non-citizens alike.

It is this materiality of constitutions that concerns us. It is the materiality of constitutions that makes them a site of contestation. It is the materiality of constitutions that makes them so critical for women's rights and women's lives. The key areas in which constitutions materialize themselves in the lives of women — and men — in the Arab region are discussed briefly below.

Unit of Society

Any society must define the units that compose it: What are those units? What do they look like? How do they relate to each other? How does the state relate to them? Most Arab constitutions define the basic unit of society to be the "family" and not the "individual" citizen. It is a logical premise for a political treatise about Arab societies: Arab constitutions define Arab societies as composed of families.[11] They see their citizens through families. They recognize humanity through families. They know their people exist when they know who their families are. This narrative assertion, that society is made up of families, operates not just as an ethnographic description of society. It also does work as a political command — that to be recognized by the state, one must be or become a member of a family. And while most constitutions do not lay out the precise parameters of what a "family" is, the cumulative impact tells a straight story for gays, lesbians, and even single men and women who are unattached to extended families. It tells them that they do not belong; they cannot be recognized.

It is not accidental that most human rights narratives are written around the concept of the individual (Brems, 2001). Problematical as the project of individualism is, it has discursively allowed for possibilities of a variety of ways of being in the world which may not be encompassed by the categorical mandate that we must all belong to families — especially given the many different kinds of families implied in many legal codes. While the concept of individualism is problematical and must be historicized, it merits mentioning that a major struggle for recognition has formed itself in Arab countries among those who do not see themselves mirrored in the notion of "family" that is implied in constitutional discourse.

Nationality Law

One of the most crucial powers of constitutional definition — though sometimes the specifics are written in laws outside the constitution — are the narratives of who manages to become a member of the body politic and how. Sometimes these are written as nationality laws outside the constitution and sometimes the definitions of membership in the body politic are within the constitutions themselves.

Most Arab countries prioritize blood, especially male blood, as the leeway to political membership. While a number of Arab states in the past decade have given women the right to pass citizenship on to their children (often circumscribed by specific conditions) and some have given them the right to pass citizenship on to their non-national husbands — nevertheless male privilege remains central to the definition of membership within the state.

Many scholars have analyzed the implications for gender equality of male blood privilege and its multiple sources in patriarchy and religion. Here I draw attention to the implication of constitutional law around nationality — that there are different kinds of blood in the state community. Certain blood is a reliable source for the production of citizens; and other blood cannot be trusted to produce citizens. There is blood that cannot change — it always belongs to the state. There is blood that can change and can betray the state — and thus must be guarded and controlled. These bloodlines are organized around gender, race, ethnicity, and other critical metrics of inclusion/exclusion.

Family Law: Personal Status Codes

While states in the region define themselves mostly as made up of "family units", family law is often derived from both the civic realm of the state and the realm of religion. Most Arab states deploy family codes informed by, based on, or directly derived from religious codes. Perhaps no other area of women's rights has been more struggled over and written about than that of family law or personal status codes. Deference to religious law for family law implies that the foundational narratives of statehood revolve around the sense that states conceive of themselves as embodying religion; they conceive of their citizens through the lens of religion; they define being-hood through god-hood. They conceive of the "family" as god-made. The implications of family law for the kind of social being that is being written into constitutions and statehood is that the social being must have a religious character. It is that foundational narrative that we are all god-creatures and can only be recognized by the state through our god-credentials that has largely transformed gender battles into religious wars. The political privileging of religion in the foundational narratives of statehood and people-hood opened the palace to the clergy, the men of religion. Nowhere in the Arab world, does family law based on religious codes view women as equal to men. In most of the countries of the Arab world, men are defined as head of the family. In many countries men have authority over women's right to work; in some, men control women's right to travel; in others, men control women's right to own businesses. Some countries still require "*ta'a*" – a woman's obedience to the husband.[12] However, this is not solely an Arab issue, nor solely an Islamic issue. In much of the world, when family law is based on religious law, women are disadvantaged and placed in positions inferior to men.

Constitutionally Religious

Constitutions, by asserting a religion for the state, or promulgating religious law as family law and not offering civic alternatives, in effect are defining personhood as religious. In some Arab states, one cannot be an atheist. A Muslim cannot convert. A Muslim woman cannot marry a non-Muslim. Children of Muslim fathers must become Muslim. Children of Christian fathers must become Christian. This constitutional narrative of religious statehood prescribes a religious being-hood, which is a concomitant of the mandate that children follow the religions of their fathers (Billingsley, 2010). Under such narratives, citizens can be citizens only through a sect, through a religious sect. To be recognized by the state in one's humanity, in such states, citizens can only be seen through their religious personhood. Being non-religious is to be a non-person, unrecognizable as a citizen. Such primordial constructions of being-hood, under the prescriptions of religion, constrain political subjectivity and person-hood.

God-States

State deference to religious codes is an assertion of self-definition by states. States that defer family law to religious codes imply a definition of themselves as incapable of addressing fundamental questions as to the nature of their citizenry. That does not mean that they are not in fact defining their citizenry; rather it is an articulation of a public message, a message to their public as to their apparent deference to godly authorities. That message is not lost on many publics. One could argue that such a public message offers, in part, a public legitimacy for self-defined religious movements to make claims on political power in the state or over the state: When the state defines

itself as incompetent in a critical area of community life (personal status laws), it leaves itself open to public claims of its incompetency on other grounds as well. If the state must defer to godly authorities on matters of family law (which are foundational to society), then why should the public not accept and even expect the claims to legitimacy of godly authorities in other social/political/economic realms as well? It is not an accident that political Islamic movements focused on family law for so many decades. It was how they could claim legitimacy from the state. That wedge into public legitimacy based on religion, can be seen as a basis for the wider claims for god-states. Claims to god-states are on the rise and have broad-based support in many countries of the region, even in the more democratic states and states which have emerged from more secular traditions (Cesari, 2014).

Violence Against Women

When constitutions abstain from asserting women's equality with men, they inadvertently or intentionally assert or imply women's secondary status; women's dependency on men; women's incapacity to be self-directing and self-caring; women's incapacity for adult rationality – and indeed, women's incapacity for full citizenship before the state. Those intentional or unintentional narratives, viewed in the context of the constitutional primacy of the family, and in the context of the deference of family law to religious codes, have laid the groundwork for the hands-off policies of states towards domestic violence. If families are god-made, then who is the state to interfere with the goings-on within the family? If god has made women to serve their husbands sexually, then there can be no such thing as marital rape. If family honor is narrativized as central to masculine identity, then honor crimes become lesser forms of criminality. If women are not fully rational competent adults, then they must be guided, controlled, at times forcefully so. Such narrative logics underpin the widespread domestic violence in the region and the reluctance of states to intervene in domestic violence.

Political Violence: Domestic

The conditions for women's rights within and outside of constitutions are shaped by another kind of violence: political violence. Political violence works at numerous levels. Foremost, domestically, it is the violence of authoritarian, dictatorial, and military states. The suppression of the Arab uprisings in many states, the suppression of the media and the press, the suppression of non-governmental organizations, the aggressive suppression of political protest of any sort, is an issue for both women and men. When governments are fundamentally non-democratic, neither constitutions nor formal legal rights have much meaning.

In most states of the Arab region, judiciaries are not fully independent; judges are overwhelmingly male and overwhelmingly sexist; courts are highly politicized and/or are not seen as citizen-friendly recourses by most citizens; police and security forces serve at the whims of leaders and not laws, and are themselves overwhelmingly male and macho. Such political violence, as a daily chronicle of life in many countries, projects a narrative of the social body as unruly, unreliable, untrustworthy, dangerous, needing to be controlled, patrolled, and put under constant surveillance. The story casts society as a threat to the state, indeed, casts society as a threat to the citizen from which the state must "protect" the citizen.

The narrative of the ouster of the democratically elected Egyptian government of Mohamed Morsi by the military and the eventual election of General Abdel Fattah El Sisi as President was partially cast as a society at risk from its own members. It was narrativized as Egypt having to be rescued from itself (or from some of its members) by the national military who could only rescue society by suppressing all of society. The narrative of emergency law is a narrative that society is too dangerous for its own good; that the state must protect society from itself. Constitutions often provide for the possibility for emergency law or marshal law. How states justify emergency law for two to three decades, as the on-going state of life in the political body, is based on a story that society is unable to rule itself, unable to control itself, unable to be a rational adult – society is a woman needing to be guided, controlled, patrolled, and protected against itself.

Political Violence: International

External or international political violence is rampant in the Arab world and has been for decades: The more than 65 years of violence against the Palestinians; the many Arab-Israeli wars; the many Israeli wars on Lebanon; the wars on Iraq; the Iran/Iraq war; the war on Kuwait; the Arab uprisings; the war on Libya; the war in/on Syria and so forth. Wars that are regional and international, have a specifically gendered effect on women. Women lose their sons and husbands; they become single parents; they are disproportionally represented among refugees; domestic violence often increases during and after "hot wars"; at times states rewrite laws to favor men during and in the aftermath of wars, as Saddam Hussein did in the 1980s during and in the aftermath of the Iran/Iraq war.

Constitutional Culture and Political Participation

Constitutions do other kinds of violence, selectively. Constitutions define who are full participating members of the body politics: who can vote; who can run for office; how old a citizen has to be to vote or run for office; which offices can be held by which citizens – all examples of violence of exclusion. Increasingly over the past half-century women in Arab countries have won the right to vote, yet there are very few women in public office. Where countries have written quotas for women into laws or into constitutions, the percentages are improving – and at times are greater than those of women holding office in Western countries. Women, in most Arab countries, do in fact participate in politics in many forms. Yet few Arab countries have women in higher public offices, and none have women elected as heads of state. Constitutions do not always specify that the head of state must be a man or even that heads of high government offices must be men.

Rather there is what one might call constitutional culture: the unwritten, but understood notion that politics is the work of men. Sometimes it is sufficient that the male pronoun is used to refer to occupiers of higher office for the public message to be made. Gender inequality is so ingrained in these societies that not much public messaging is needed to reinforce what is already written into cultural codes. Viewing political participation through constitutions and constitutional culture, the narrative offers a reading that societies are composed of different kinds of personas: personas which have the capacity for dealing with public power; and personas which do not have the capacity to deal with public power, and those personas are embodied and gendered, as well as raced and classed.

Constitutional Work: Economic Rights/Work Rights

Constitutions often set the age for legal maturity which then affects the age of work. They may assert whether all persons are to be treated equally in places of work. They may articulate the conditions under which employers may discriminate or may not discriminate in places of work or conditions of employment. Regardless of whether these stipulations are part of constitutions or part of the law, it is clear that in the majority of Arab countries there is systematic discrimination against women in places of work. Discrimination can take the form of designating certain kinds of work as male only – dangerous, heavy work, and military, and police work. It can take the form of women receiving lower pay for the same work. It can take the form of women being admitted only into lower-paying jobs (what is sometimes called "sticky feet" – women are allowed in, but they are not allowed up). It can take the form of sexual harassment in the workplace. It can take the form of informal slavery, which is not uncommon in domestic service. It can take the form of gendered unemployment or underemployment. Women in the Arab world have the lowest rate of economic activity in the world. The constitutional narrative implied in these labor practices is that there are different kinds of laboring bodies in the body politic, that laboring bodies are gendered, and that the female body is systematically defined as cheaper, less reliable, less respected, less capable, less productive, less necessary, and less contributive to the social community.

Conclusion

There are more exclusions, inequalities, violences against women that need to be addressed, than can be addressed in this intervention. What I offer here is a set of suggestions for reading constitutions critically: Constitutions as founding myths, as civic myths, as stories a society tells about itself; stories that one segment of society tells about all of society. The narratives are real and have material effects. Seeing some of the issues around women's rights through the constitutional stories may open up questions on how conflicting segments of society, in their competition with each other over control of the state, are battling over the nature of who we are, what we are, and what we are to each other.

Constitutions are constitutive. Their material force can induce citizens into becoming what they construct citizens to be. That is their material power. Constitutions can open up possibilities of new ways of being for the social good and can shut down ways of being in the name of the social good. We cannot ignore this constitutive capacity of constitutions. Constitutional battles are battles we cannot afford to not understand. They are battles we cannot afford to not fight. They are battles we cannot afford to lose.

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ENDNOTES

1. See UN Women Constitutional Database. Retrieved from http://constitutions.unwomen.org/en
2. See the Women and Constitutions Project. Retrieved from http://law.duke.edu/capstone/index.html
3. Information searched on April 1, 2015.
4. For more information see the following website: http://en.wikipedia.org/wiki/List_of_national_constitutions
5. For more information see the following website: http://confinder.richmond.edu/
6. For more information see the following website: https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=arab%20constitutions
7. Information searched on April 5, 2015.
8. For more information see Article 11: Feminists negotiating power in Egypt. Open Democracy available at: https://www.opendemocracy.net/5050/hoda-elsadda/article-11-feminists-negotiating-power-in-egypt. For a list of Elsadda's other writings in Open Democracy, see: https://www.opendemocracy.net/author/hoda-elsadda
9. A google search of 'Hoda Elsadda constitution' brought up 3,240 responses (April 5, 2015).
10. For more information see: Group on Constitution Making & Constitution Change, available at: http://constitutional-change.com/
11. For comparative cases, see Joseph, 2000.
12. See Welchman (2007) for an extensive coverage of women and Muslim family Law.

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Women and Justice in the Egyptian Constitution: A Reading from within

Hoda Elsadda

Do constitutions safeguard the rights of women? What is the importance of constitutions in the context of defending women's rights? These questions are often raised within the framework of gender studies and organizations calling for women's rights. Why is this the case? There are three considerations to bear in mind. First, there is the critique aimed at liberal feminism, on the grounds of the latter's excessive focus on reforming and amending laws to secure women's rights, while ignoring, to a large extent, the prevalent authoritative system and social norms which can obstruct the implementation of just laws that are beneficial to society. This can lead to unanticipated results that may not necessarily be in the interest of women and may not achieve the expected goal. The second consideration is connected to the feminist debate on "the politics of rights", particularly the argument that implicates rights discourses in ideological struggles among conflicting world powers, making these discourses a source of conflict and doubt especially in southern countries. These countries often feel targeted because of the vagueness of world standards that are implemented in this context and because of the double standards applied by the global community. The third consideration is related to a cynical view of the possibility of implementing the laws and constitutional standards in a state of legal anarchy and an explosive situation in the Arab region as a whole.

I was appointed member of the 50-Committee in 2013 which drafted the Egyptian Constitution, endorsed in a referendum in January 2014, after the suspension of the Constitution of 2012, drafted by a constituent committee with an Islamist majority. I will share a few reflections and analysis of my experience in the 50-Committee, where I will attempt to answer some questions posed to feminist researchers and activists on defending women's rights and changing the cultural patterns antagonistic to women in societies. I will also tackle questions on the limits of the legal framework, the relationship between feminism and power, and on effective negotiation techniques.

In general, the majority of the commentaries or studies pertaining to constitutions will focus on the composition of articles and the philosophical framework, i.e. on the text itself. Analytical studies of constitutions always assume the presence of a well-defined approach, a ruling logic and a clear and consistent philosophy, and rarely pay attention to other influential variables, such as the historical development of the constitutional heritage in a given country, the prevailing context at the time of drafting, or incidental and circumstantial factors which might influence the drafting of a certain article

(see Brown, 1997). Here, I will not focus on the constitutional text, but rather on the process that determined the direction of texts, on what lies behind, or beyond the text. I will shed light on the negotiations, and highlight the balance of power which had a significant effect on the final constitutional product. My goal here is to cover two levels: The first is academic where I engage with feminist literature on ways to achieve gender-based justice. The second goal is to contribute to activist literature in the field of women's rights.

This presentation is divided into two parts: first, I will shed light on the contemporary historical context within which the Egyptian Constitution of 2014 has been drafted and offer some brief glimpses of the history of Egyptian women's attempts to amend constitutional texts related to women; second, I will focus on Article 11 of the Constitution, known in the media as the "women's article". I will share my experience regarding its drafting stages, the amendments it was subject to and the factors that intervened and led to the final wording of the article.

The Historical Moment: Challenges and Opportunities

The Egyptian Constitution of 2014 includes a set of fundamental principles governing the relationship between the state and citizens. Similar to other constitutions, it reflects the balance of power in society at a given moment in history. I will allow myself to generalize by saying that, at the time of drafting the Constitution at the end of 2013, there were four main powers on the ground: the Higher Council of the Armed Forces, the various Islamist powers, businessmen networks within the ruling or oligarchic elite, and the revolutionary movements, or the voices for change who were keen on laying the pillars of a justice-based Egyptian State. The constitutional text reflected the balance of powers among these groups in a consensual text, which, inevitably, did not meet all the expectations or desires of all parties involved.

The historical moment during which the Constitution was drafted, starting from September 2013 until December 2013, one year after the rule of the Muslim Brotherhood and in the wake of myriad failures and lost opportunities, was marked with divisions and unprecedented bitter partisanships within Egyptian society. It was characterized by an atmosphere of fear (real or imaginary) of seeing the country slip into mass chaos; a destructive economic deterioration; the rise of a theocracy or another dictatorship in the name of religion, the beginnings of an Islamization of the State and the alteration of its identity; the spread of regional wars in Iraq, Libya and Syria; and an increased sense of frustration and despair amongst large sectors in society. The moment was marred by political conflicts that turned into violence on the ground, including a conflict with extremist groups in Sinai, and a moral stalemate that was counter-balanced by a state of collective hysteria following the tragic carnage that took place in Rabi'a Square on August 14, 2014. The situation grew even more complicated because of the return of many figures from the former regime to the forefront of the political scene after having vanished for a significant period of time. That period was also characterized by the rise in the popularity of the Armed Forces, and the rise to power of then-Minister of Defence and Field Marshal Abdel Fattah El-Sisi, portrayed as the savior and protector of the Egyptian State. This period was also characterized by the launch of a widespread media campaign against the revolution and the voices for change: the "revolution" was made to carry the

burden of responsibility for the deteriorating economy, the poor living conditions and the collapse of security. Gradually, ordinary people came to harbor feelings of anger and resentment towards the idea of revolution, change or protest. "Stability" became the new ideal and was used, among other things, in opposition to ideas of change and revolution.

The year 2013 was radically different from 2011. In 2011, the voice of the revolution and change was louder and stronger; it had a clear goal that rallied most participants within political movements, while the old networks of interests, the corrupt oligarchy, were at their weakest. Had the Constitution been written in 2011, it would have certainly been different.

Notwithstanding, the revolution opened up new spaces in the public sphere for action and for the organization and launch of political, cultural and legal initiatives. Perhaps the greatest achievement of the revolutionary wave in Egypt was the restoration of confidence in the agency of Egyptians and their ability to make change happen and to contribute to political decision-making. The relationship between citizens and the political domain was reformulated and attitudes of apathy, indifference, and alienation, were replaced by a deep interest in political affairs. It is important to mention the entry of a large number of young people into political life and political parties. The political arena also welcomed a large number of young women and numerous platforms were open for them to speak up and express their views. Over and above, new alliances were forged and new powers and associations came into the limelight. One of the main gains of the revolutionary movement was the proliferation of talent and creativity in the shape of numerous theatre performances, songs, comedy shows and graffiti; all these are forms of cultural expression associated with the voices of freedom calling for change and dreaming of a better society.

The Legal Context

In addition to the political context, it is important to take into consideration the legal context. The textual starting point was key in determining the direction and wording of many articles. The 50-Committee was entrusted with modifying the 2012 constitution written by an Islamist majority, elected by the *Shura* Council that was then totally dominated by Islamists. The starting point was a draft document produced by a committee of 10 experts who were commissioned by the 30th of June alliance to rework the 2012 constitution with the purpose of producing a working draft to support the work of the 50-Committee. The expert committee comprised six senior judges appointed by the Supreme Constitutional Court, State Council and Court of Cassation, and four professors of constitutional law appointed by the Supreme Council of Egyptian Universities. The expert committee completed their task in one month and submitted a draft document to the appointed 50-Committee.

Although the formal starting point of the 50-Committee was the working draft written by the committee of 10 experts, the 2012 Islamist constitution was the de jure document that was being revised and modified and constituted a key stumbling block. Why? The 2012 Islamist majority constitutional assembly, in its attempt to take control of the state and society resorted to two strategies. First, it introduced articles that worked towards the Islamization of society by making the state the guardian of

morality, both in the public and private spheres. The most famous example of their attempt to ensure control over society was the insertion of the famous/infamous article 219 which opened the door for the enactment of orthodox and radical interpretations of *shari'a* in laws. Second, it allocated privileges and powers, to specific interest groups, to garner their support and allegiance. The 50-Committee was forced to contend with interest groups who battled to retain the benefits gained in the previous constitution. It also struggled to minimize the theocratic character of the previous document.

On another level, the Constitution of 2012 had another unintended, arguably positive impact on the 50-Committee. In 2012, following the lengthy and numerous negotiations and deliberations among civil society organizations working in the field of women's rights, the Constituent Assembly, with its Islamist majority, deleted the article stipulating equality between men and women and did not oblige the State to fight discrimination against women within society and State institutions. This sparked concerns regarding the status of women's rights in general and the gains achieved by Egyptian women in the twentieth century. Furthermore, these fears, real or imagined, for the situation of women in 2012 tipped the balance in favor of women's rights in the 50-Committee when Article 11 was discussed.

The constitution of the 50-Committee attempted a broad and diverse representation of various interest groups in society. Thirty-eight members represented institutions to which they were either appointed or elected: heads of professional syndicates, labor and farmers unions, trade unions, writers and artists unions, student unions (elected by their constituencies); national councils of human rights, women, children and the disabled (appointed); 8 representatives of political parties (elected by their parties); religious institutions, 3 for al-Azhar and 3 representing Egyptian Churches; one representative of the police and one representative of the army; and 10 public figures appointed by the cabinet to ensure expertise as well as the representation of marginalized groups.

Although the task of the 50-Committee was limited to amending the Constitution of 2012, the final product had numerous additions: of the total 247 articles, 105 were not amended and remained unchanged; 96 were amended; and 46 new articles were added, most of which   related to civil rights and freedoms. The amendment of the Constitution was achieved in 60 working days as per the Constitutional Declaration. The final draft was submitted to the acting President of the Republic, Adly Mansour, on December 3, 2013, and the new Constitution was adopted by a popular referendum on January 14, 2014: 39 percent of the citizens entitled to vote participated and 98 percent of them approved it.

Women and Legal Reforms in Constitutions: An Ongoing Battle

This section will present some significant examples from history showing the struggle of women to protect their rights within Egypt's constitutions. Legal reform was one of the most distinguished aspects of work by the advocacy groups defending women's rights in the twentieth century. Malak Hafni Nassef, Hoda Shaarawi, Nazira Zain Eddine, May Ziade, Labiba Hachem, all tried, in different ways, to call for a change of laws and constitutions in favour of women's rights. In 1956, Egyptian women gained the right to vote, the right to equality at work and in education, along with numerous

other advantages in the public sphere, which contributed to the improvement of the situation of women in society. However, these reforms did not cover personal status laws that organize women's lives in the private sphere. This led to a strange and contradictory situation where women enjoyed their rights in the public sphere but remained subjugated to their male family members in the private sphere.

The 1970s witnessed several initiatives aiming at amending personal status laws. These initiatives coincided with the first International Conference on Women in Mexico in 1975, sponsored by the United Nations. Dr. A'icha Rateb, Professor of Law at Cairo University and Minister of Social Affairs from 1971 to 1977, launched a reform initiative. The Family Organization Association in Cairo, led by Aziza Hussein, a civil society activist, launched the second initiative. Committees of experts drafted the two initiatives; however, these did not find their way to Parliament, as they faced fierce campaigns claiming to protect family values.

In 1979, the Parliament approved, in an extraordinary session, Law no. 44 with the majority of its clauses based on previously submitted draft laws. This law stipulated that the husband must inform his wife in case he wished to marry another woman, and gives the wife the right to ask for a divorce within a year after being so informed, without the need to prove damages. The law gave the mother who has custody of her children the right to stay in her marital house and solved the massive social problems caused by the housing crisis Egypt was witnessing. In 1984, the Higher Constitutional Court declared Law no. 44 of 1979 unconstitutional on procedural not substantial grounds. When the news about the revocation of Law no. 44 spread, a group of women formed the Committee to Defend Women and Families, which convened at the headquarters of the Hoda Shaarawi Association. The Committee announced its meetings in the newspapers and mobilized women from different classes and orientations to call for the passing of a new law that preserves the interest of women and families. Many attacks and accusations were levelled against the Committee, but it succeeded in shedding light on discrimination against women within the law. Additionally, the Committee submitted multiple practical and specific suggestions to the Council of Ministers. The Committee also benefited from the approaching second International Conference on Women in Nairobi in 1985 and the bad publicity surrounding the decision of the Higher Constitutional Court.

A new law was issued in 1985, but it contained some concessions to the benefit of conservatives as it stipulated that the first wife must prove damage in order to get divorce in case her husband marries another woman. Feminist activists criticized these concessions. However, this struggle gave the women's liberation movement a new impetus and paved the way for the emergence of new feminist rights associations in the second half of the 1980s. Activism in the field of constitutional law had, and continues to have, an important effect in calling for change. For example, activism in this field continued, into the last decade of the twentieth century, and led to important amendments in 2000 – the most important of which is known in the media as the *khula'* law (wife-initiated divorce under Islamic law).

In March 2011, in the aftermath of the Egyptian revolution, a coalition of feminist organizations was established, Majmu'at an-nisa' wal dustur i.e. the Group of Women

and the Constitution, and feminist and human rights organizations coordinated efforts for an effective participation in drafting the new Constitution of Egypt. The emerging coalition exploited the revolutionary momentum and the high expectations to raise awareness concerning women's issues and the discrimination they are subjected to. It started working seriously on drafting specific articles of the Constitution, in addition to adding remarks on the form and the methodology of the Constitution as a whole in preparation for the actual Constitution drafting process. The Group issued a working paper presented by the Constitution Committee demanding a fair political quota for women. The Group interacted with the Constituent Assembly in charge of drafting the Constitution of 2012, submitted suggestions, and attended hearing sessions.

It is to be noted that female members of the Group wrote opinion articles, organized discussions and workshops, and cooperated with other groups in order to draft the Constitution, such as the "*yalla nektib dusturna*" group ("Let's Draft Our Constitution") group. These efforts did not lead to positive results for numerous reasons, the most important of which were the bias of the Islamist Constituent Assembly against women's issues and the prevalence of a religious political discourse promoting ideas that were hostile to the presence of women in the public sphere. Following the adoption of the Constitution of 2012, the Group performed a critical reading of the Constitution from a gender perspective. In 2013, in cooperation with other feminist groups and organizations, all these feminist groups interacted with the 50-Committee, either through direct ties with its members or by sending suggestions and texts.

The Story of Article 11

To shed light on the complexities of gender policies in Egypt, I recount here the story of Article 11. Article 11 in the Constitution of 2014 states:

> The state commits to achieving equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution.
> The state commits to taking the necessary measures to ensure fair representation of women in the houses of parliament, as set forth by law. It grants women the right to hold public posts and positions in the higher administration in the state, and to appointment in judicial bodies and entities without discrimination.
> The state commits to the protection of women against all forms of violence, and guarantees a woman's ability to reconcile her duties toward her family with her work requirements".

Article 11 saw a fair share of debate and negotiations as it was caught up in ideological and power conflicts. Battles were fought, alliances were forged, and compromises were made to reach consensus on a text that promotes justice and guarantees women's rights.

The first version of the article deleted the expression "in a manner that does not go against the provisions of the Islamic *shari'a*", which appeared in the article on gender equality in the Constitution of 1971. The representative of the *Salafi* Nur Party opposed that deletion, as did the conservative group within the Committee and some members of the Committee of ten experts. A compromise was reached by inserting "as set forth by this Constitution". This expression allows for different interpretations.

A conservative interpretation will refer to Article 2 of the Constitution, i.e. that the Islamic *shari'a* is the main source of legislation, while a liberal interpretation will refer to articles on rights and freedoms, as well as to Article 53, which bars discrimination on any ground and which specifically mentions gender-based discrimination.

The first version bound the state to guaranteeing "fair" representation in Parliament. Once again, the word "fair" was met with objection from the conservative group because it may be interpreted to mean that the state is bound to guarantee 50 percent of the seats for women. Within the drafting committee, the word "fair" was replaced with the terms "appropriate" and "balanced". Even so, this amendment was not accepted, and the conservative wing, which included both Islamists and non-Islamists, insisted again on removing the term "balanced". The middle ground here consisted of maintaining the term "appropriate" and removing "balanced." Although the article does not guarantee concrete positive discrimination measures to ensure women's political participation, the word "appropriate" remains the first step towards achieving a quota for women in Parliament.

The issue of stating a specific gender quota was a source of debate and tense conflicts within the 50-Committee. The Committee adopted a quota of 25 percent of seats within local councils for women, and 25 percent for young people (while guaranteeing 50 percent representation for workers and farmers). Agreeing on a quota for women and young people in local councils was much easier than agreeing on one for the Parliament, on the grounds that local councils are venues for training and capacity building for future generations of politicians and social activists. As for the battle for representation within the Parliament, the centre of power and authority, it was much more difficult. A group within the 50-Committee tried to allocate 30 percent of the Parliamentary seats to women. This suggestion failed to garner the approval of the majority of the committee members for different reasons.

It is worth noting that objections to specifying a quota for women in parliament were not based only on prejudice against women. There was, of course, a level of bias against women, as some members raised questions about women's readiness and capacity to take on higher positions. One reason for the refusal of the quota was linked to the misuse of the quota in the pre-revolution times, and the fact that it was employed to tighten the grip of the ruling regime over Parliament. The unfortunate legacy of quotas in Egypt created a hostile atmosphere to the whole issue — a hostility that easily resonated amongst large sections of society. Another reason that lay behind objections was a sort of misunderstanding or a lack of knowledge of the meaning of positive discrimination; some insisted that it was a form of discrimination that went against the principles of equal opportunities and equality. This position ignored the important function of positive discrimination measures, which are invariably aimed at compensating marginalized groups for historical discrimination suffered by them, as a necessary step towards achieving equality. However, the most important reason that impeded an agreement on a gender quota was the idea that quotas for women and other social groups would have specific implications for the electoral system, especially for the first electoral round after June 30th.

To explain, the 50-Committee was entrusted with the task of designating the electoral system for the first round of parliamentary elections following the adoption of

the Constitution. The choices were as follows: proportional list systems, individual candidacy systems, or a mixed system that combined the two. Most parties (especially the main political parties founded after January 25, 2011) agreed that the proportional list system was the best way forward in helping to create a political climate in which parties can compete based on an announced program and orientations that allow voters to choose as they see fit, especially given that the new Constitution increased the powers of the head of the Parliament. In parallel, the trend within the state and its institutions leaned towards the individual system, claiming that the list system, and what it entailed in terms of vast electoral circumscriptions, would allow Islamists to take over the Parliament, due to their organizational and financial strengths, particularly in light of the relative financial and organizational weaknesses of the new parties. It was a complicated issue that led to serious conflict. But the important thing here is that it negatively affected the possibility of introducing particular percentages for women in the Constitution. Some members, who were not necessarily against a quota for women, but were advocates of the individual system instead, joined their voices to this opinion.

Finally, one of the key obstacles that hindered the introduction of positive discrimination measures in favor of women in the Constitution, was the disagreement about whether to keep allocating a 50 percent quota to workers and farmers within the Egyptian Parliament. The quota for workers and farmers first came into force in 1964, and aimed at widening the political participation of society's weakest categories. However, there is consensus that it did not meet its goal over the last fifty years; however, for political reasons, no government dared to cancel it. The 50-Committee voted to cancel the 50 percent quota for workers and farmers during a boisterous and highly contentious session. Nevertheless, for political and ideological reasons, some members insisted on including a transitional article in the Constitution, preserving the 50 percent quota for one round, in order to guarantee the support of these groups during the referendum, especially amidst multiple objections raised by the representatives of workers and farmers, joined by Nasserist members. This political position considered the quota to be an inalienable historical right. Therefore, those members opposed the allocation of a quota for women, or any other category, claiming that the 50 percent quota of workers and farmers could not be maintained if other quotas were to be allocated to other groups.

Groups that supported women's rights within the Committee tried to reach a consensual decision to allocate a reasonable quota for women, taking into account other marginalized categories of Egypt's political life. They suggested the following: that 20 percent of the seats would go to workers and farmers, that 20 percent to women, and 10 percent to Copts. This suggestion was met with some approval, but also with some staunch opposition. It was further discussed, voted upon, approved, and then withdrawn. Eventually, the final result was that no quotas were assigned to women or to any other category.

It is worthy of note that the section of the article requiring the state to fight against violence against women did not generate strong opposition. Feminist groups fought long and hard for years on end for the introduction of a law that criminalizes violence against women in the public and private spheres. Our endeavors were always met

with fierce opposition, in which arguments of religion, tradition, and other flimsy reasons were brandished. In 2013, and thanks to the efforts and activism of women's rights groups working on violence against women, in addition to the revolutionary movement that opened up new political spaces for discussing social issues that were taboo for a very long time, members of the 50-Committee agreed to commit the state to combating gender-based violence.

The final text of Article 11 includes the right of women to hold high positions and be appointed to judicial bodies. The insistence on excluding women from appointments to all judicial bodies was due to a persistent prejudice among members of the judiciary who rejected off hand accepting women's applications to join. The 50-Committee succeeded in making the state commit to ensuring women's access to judicial bodies.

Final Remarks

Going back to the debate around the usefulness of constitutions in achieving justice for women, there is no doubt that constitutions in themselves do not achieve justice; rather, they set the political climate that would foster the process of bringing about justice. As a test for the new Egyptian Constitution, a number of female graduates of the faculty of law applied for the position of Assistant Delegate at the State Council, a first step on the employment ladder of judicial bodies. The Council employees refused to receive their documents, claiming that the applications were restricted to male candidates. This refusal instigated condemnation by all women's rights organizations, and a confrontation took place between the President of the National Council for Women and the President of the Judicial Council. The female candidates' applications were finally accepted, but the confrontation was not resolved. Introducing new laws requires societies, advocates, and activists to monitor state institutions in order to guarantee that these laws are implemented.

Despite the difficulties that can impede the implementation of constitutional principles, the conflicts and debates revolving around the implementation of laws actively contribute to the spread of awareness and mobilization, and the need to lobby decision-makers to respect the rule of law. Many issues were raised during the drafting process of the Egyptian Constitution of 2014. These were related to civil liberties, the rule of law, and the independence of institutions from the executive power. Perhaps these causes were not resolved as desired in order to reach a truly democratic society, but discussing them led to the expansion of public debate, creating awareness about important issues that were not seriously dealt with in the past. There is consensus amongst women's rights activists that the 2014 Constitution is a step in the right direction.

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Democratization and Women's Political Leadership in North Africa

Valentine M. Moghadam

In the spring of 2011 citizens in one Arab country after another rose in defiance of authoritarian regimes to demand political change. It appeared that the region had caught up with the "third wave" of democratization — perhaps even ushering in a fourth one — and would embark on successful democratic transitions. After all, polls since 2000 had shown strong support for democracy in almost all Arab countries (Moaddel, 2007). The road since then, however, has been rocky with quite different trajectories that a burgeoning body of literature has analyzed.[1] Less researched has been the gendered nature of the uprisings, that is, how gender relations and women's mobilizations have shaped these trajectories, as well as how women and their rights have been affected.

The focus here is on North Africa — Algeria, Egypt, Libya, Morocco, and Tunisia — which experienced different protest dynamics and political outcomes subsequently. I offer three propositions: 1) women's preexisting legal status and social positions (including political participation and involvement in decision-making) — as well as the broader structural, institutional, and normative contexts — have helped to shape the course and immediate outcomes of the Arab Spring in Egypt, Libya, Morocco, and Tunisia; 2) women's growing political leadership will influence the quality of ongoing democratizations in the Maghreb countries of Algeria, Morocco, and Tunisia; and 3) those countries that saw advances in women's participation and rights prior to the Arab Spring are the ones most likely to transition successfully beyond mere democracies to more women-friendly ones.

The literature on and historical record of women and third wave democratic transitions reveal that not all transitions have seen women mobilizing as women, and not all transitions to democracy have been accompanied by policies and programs in favor of women's full citizenship, gender equality, and leadership.[2] Indeed, democratic transitions present risks for women and minorities (and not just for national and regional economies) because outcomes are dependent on a number of salient endogenous and exogenous factors. The relevant endogenous factors are: preexisting gender roles, women's legal status and social positions prior to the revolutionary outbreak or democratic transition, and the institutional legacy of the authoritarian regime; the degree of women's mobilizations and the number and visibility of women's networks, organizations, and other institutions; the nature of the transition and the political parties and movements involved in the transition; and

the ideology, values, and norms of the new state and its capacity and will for rights-based development. The relevant exogenous factors, which may have either positive or adverse effects on gender dynamics and outcomes, are international linkages (for example, to transnational advocacy networks or multilateral organizations) and the global diffusion of the women's rights agenda, as well as wars, invasions, and occupations.[3] In many cases, the imposition of forms of governance by outside actors or the presence of domestic resistance movements to foreign invasions and occupations has stalled or set back the advancement of women — as has occurred in Afghanistan and Iraq — and as was seen in Libya after 2011.[4]

In the prodigious mainstream literature on democratic transitions, scholars have identified cultural, socioeconomic, and institutional factors and forces as the major drivers of pro-democracy movements and consolidation.[5] Questions that have been posed include: Is economic development a prerequisite/causal factor, or is it meant to make democracies endure once they have been established through other means? Or, do pro-democracy movements and their consolidations presuppose a democratic culture, with citizens demonstrating and practicing "emancipative" or "self-expression values?"[6] For our purposes, the salient endogenous socio-economic and cultural factors and forces include the following: economic measures, such as level of economic development, national wealth, gross domestic product (GDP) per capita, and income; human and social capital measures, such as the level of homogeneity in a given population, an educated population with a large middle class, and a civil society and civic culture demonstrating human empowerment and emancipative values; and the concept of the "modernizing bourgeoisie" as posited by sociologist Barrington Moore (1966). To this I have added the presence of "modernizing women" (Moghadam, 2013). Exogenous variables that influence democratization via forces working globally and within a region include diffusion processes via media and international linkages and hegemonic impositions.[7] These factors generate or otherwise influence grievances, political opportunities, mobilizing capacities, and the ability of protesters or movement leaders to frame grievances and aspirations in a way that resonates with fellow citizens or a broader public. They shape the ability of movements to build and sustain new democratic institutions that are also women-friendly and enhance prospects for women's political leadership.

Gender and the Arab Spring

Applying the framework sketched above to elucidate the sociopolitical and cultural contexts that affected the women's rights agenda during and after the Arab Spring, I examine three sets of measures, beginning with the following composite measure: preexisting gender roles; women's legal status and social positions prior to the revolutionary outbreak/democratic transition; the institutional legacy of the authoritarian regime; the degree of women's mobilizations; and the number and visibility of women's networks, organizations, and other institutions.

Across the Middle East and North Africa (MENA) region, the 1990s saw the expansion of many types of women's organizations in a context of limited and managed political liberalization. In previous work, I have identified seven types of such organizations: service or charitable organizations; professional associations; women's auxiliaries of political parties; women's auxiliaries of trade unions; women-in-development

NGOs; research, policy centers, and women's studies institutes; and women's rights or feminist organizations (Moghadam, 1998).[8] There is scant information on women's rights organizations in Libya during the Gadhafi era, but in the Maghreb countries, they included the transnational Collectif 95 Maghreb Egalité formed in the run-up to the United Nation's Fourth World Conference on Women (which convened in Beijing in 1995); in Algeria, the state-affiliated l'Union Nationale des Femmes Algériennes (UNFA), the feminist groups Triomphe, Défense et Promotion, Emancipation, SOS Femmes en Détresse, Centre d'Information et Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF), and Réseau Wassila; in Morocco, l'Union de l'Action Féminine (UAF), Association Démocratique des Femmes du Maroc (ADFM), Réseau Anaruz, and the Springtime of Dignity Coalition; in Tunisia, the feminist groups Association des Femmes Tunisiennes pour la Recherche sur le Développement (AFTURD) and Association Tunisienne des Femmes Démocrates (ATFD), both formed in 1989, the women's policy agency Centre de Recherche, d'Etudes, de Documentation et d'Information sur la Femme (CREDIF), and Réseau Rihana. Tunis was also the headquarters of the Center of Arab Woman for Training and Research (CAWTAR), the region-wide women's research and policy agency. Egypt had the state-affiliated National Council for Women (NCW) along with smaller groups, such as the Egyptian Center for Women's Rights, which had become a prominent voice for action against sexual harassment; the New Woman Foundation; and the Women and Memory Forum. These women's rights groups conducted research on and advocacy for the reform of patriarchal Muslim family laws, the criminalization of violence against women (honor killings, sexual harassment on the streets and in workplaces, and domestic violence), the right of women married to foreigners to obtain citizenship rights for their children, and the enhancement of women's participation in political bodies and in the workforce through appropriate institutions and policies.

These organizations all appeared in authoritarian contexts but became most prominent in the Maghreb. Casablanca, for example, was home to the woman-owned publishing house Editions Le Fennec, which produced a series of books in the 1990s on women and the law in the three Maghreb countries. The Collectif 95 Maghreb Egalité was able to draw on the emerging global women's rights agenda, as well as funding from German foundations, to advance its case for an egalitarian family code, holding meetings in the three countries, cooperating on seminars, books, and media activities, and producing an advocacy book in 2003 entitled, *Dalil pour l'Égalité dans la Famille au Maghreb* ("Guide to Equality in the Family in the Maghreb," also available in Arabic). Tunisia's "state feminism" included the government-funded CREDIF, which produced studies on problems of women's legal status and social positions. A statement issued by AFTURD in 2008 asserted: "Our work on behalf of women's empowerment is also aimed at political change and is part of the movement for democratization".[9] Algerian women mobilized in the 1980s and 1990s to contest family law practices and the emergence of political Islam/intégrisme; in 2002 they were rewarded with cabinet positions; in 2003, President Abdelaziz Bouteflika referred to the problem of violence against women in his International Women's Day speech; and some amendments, albeit insufficient, were made to the country's family law in 2005. Morocco's UAF launched the One Million Signatures drive in 1992 for family law reform, and in alliance with a new progressive government in 1998, promoted the National Plan of Action for the Integration of Women in Development. Progress

came quickly: in 2002 the Electoral Code introduced a "national list" with thirty reserved seats, or a 10 percent parliamentary quota for women (subsequently raised); the family law was replaced in 2004 with a more egalitarian set of laws and norms for marital life and family affairs; the 2004 Labor Code established the equality and rights of working women; feminists began pressuring government agencies for the criminalization of domestic violence; and in 2007, the Nationality Code gave women and men equal rights to transmit nationality to their children.[10]

Table 1. Comparing Social/Gender Indicators 2010–2011

	Algeria	Morocco	Tunisia	Egypt	Libya
Female share, paid labor force	17 %	28 %	25 %	19 %	16 %
Female share, tertiary education enrollment	34 %	12 %	40 %	14 %	10 %
Female share, university teaching staff	38 %	17 %	42 %	n/a	n/a
Mean age at first marriage	29	26	27	23	29
Total fertility rate	2.4	2.4	1.9	2.9	2.5
Female share, seats in parliament (1995–2010)	8 %	11 % (after 2002 quota)	23-28 %	2-3 %	5-5 %
Female share, judiciary	37 %	610, or 19 % of total	Since 1965; 28 % share of total	Permitted since 2002; 30 in 2007	50 in 2009*
Status of family law	Reform 2005	Reform 2004	Liberal since 1956	Patriarchal, *khula* adopted in 2000	Conservative*
Status of women's movement	Visible, well-organized	Visible, well-organized	Visible, well-organized	Women's NGOs	Non-existent*
Type of government (2011)	Parliamentary	Constitutional monarchy	Civilian; transitional	Military	Militia; weak government

Sources: World Economic Forum, Glocal Gender Gap Report, various years; *Pargeter (2010) notes that the Charter on the Rights and Duties of Women in the Jamhiriya Society stipulated equality of women and men, but family law put women under supervision of male kin; polygamy was permitted but rare; see pp. 286-287 and 293.

In Egypt, some changes did occur as a result of women's advocacy: Initiatives to prohibit and combat female genital mutilation (FGM) were implemented, courts issued the first convictions against sexual harassment, and a gender quota was implemented in time for the November 2010 elections (later overturned by the government of Mohamed Morsi). But women's organizations remained relatively weak because of state restrictions on civil society organizing. Libya is in many respects a case apart, as the country was largely isolated in spite of Gadhafi's efforts to cultivate strong ties with African states. Notwithstanding Gadhafi's quixotic behaviour and the odd political climate of Libya during that time period, advances were made in literacy and educational attainment, healthcare, and infrastructural development, and there were several impressive pieces of legislation for women's rights. However, the lack of political will to ensure full implementation and the absence of even quasi-independent women's groups that could monitor and lobby for the enforcement of the laws and policies ultimately undermined women's participation and rights. Combined with traditional social norms and the persistence of tribalism in Libya, the sociopolitical context dictated that women would not enjoy equal rights of citizenship — which in any event were circumscribed for all Libyans.[11]

Table 1 summarizes the differences in women's legal status and social positions across the five North African countries on the eve of the Arab Spring and in 2011. Tunisia does best on nearly all indicators, while Algeria has the highest proportion of women judges.[12] What the table does not show is that on the eve of the Arab Spring, only Algeria and Tunisia had political parties headed by women — Louisa Hanoune of the Workers Party and Maya Jribi of the Progressive Democratic Party, respectively. Morocco had a number of well-known women's rights advocates associated with the Collective and family law reform (e.g., Latifa Jbabdi, Rabéa Naciri, Amina Lemrini) and several associated with political parties (e.g., Aicha Belarbi and Nouzha Skalli).[13] In 2001, women politicians from the main political parties — Istiqlal, Union Socialiste des Forces Populaires, the leftist Parti du Progrès et du Socialisme, and the Mouvement Populaire, among others — created a network for the establishment of a women's quota system. The quota was established in 2002, and female members of parliament played an important role in pushing reform of the family and nationality laws.[14] A new cabinet, formed in Morocco in October 2007, included seven women — the highest female representation in the cabinet since the country gained independence. Thus, we find Maghreb women active in both civil and political society.

The conclusion here is that on the measure of women's legal status and the strength, visibility, and influence of women's organizations, the three Maghreb countries had an advantage over Egypt and especially over Libya.[15] Next I consider a second set of explanatory factors for women-friendly democratic outcomes.

Socioeconomic and Cultural Changes as Necessary Conditions for Democracy Movements, Transitions, and Women's Rights

Prior to the Arab Spring, many of the countries involved were experiencing respectable economic growth rates and much improved social development, although in recent years there had been signs of stress. Economic development had produced a modern physical and social infrastructure, higher literacy and educational attainment, and better health outcomes, with such progress leading to

rising expectations. However, the neoliberal economic policy turn of the 1990s — entailing denationalization, privatization, and liberalization — resulted in growing unemployment among the large population of educated young people; later, the Great Recession increased the cost of living. A deterioration in the quality of public services and stagnation in wages adversely affected the middle and working classes alike and were a key motivation behind the grievances that led to the 2011 protests. Cross-class in nature, the protests involved not just educated young people and dissident intellectuals but also large sections of the working class, especially in Tunisia, where the General Union of Tunisian Workers (UGTT) organized strikes. Protesters demanded political change and economic security, but most significant was the unprecedented participation of women — though not in Libya, at least in part because of the opposition's turn to armed violence.[16]

The use of social networking media and the extent of connectivity, especially among the youth, could be seen in two ways: first, as a reflection and expression of democratic attitudes, values, and aspirations; and second, as a means of mobilizing and organizing during the anti-government protests. In this regard, both women and men were active. In Egypt, Asma Mahfouz, part of the 6 April youth movement, famously appeared in a YouTube video urging fellow citizens to join the planned mass protests in Cairo's Tahrir Square. Tunisian bloggers also were very active, and young female bloggers such as Lina Ben Mhenni (of "A Tunisian Girl" blog) took part in the May 2010 anti-censorship protest. Social media were used extensively by NGOs. In addition, there had been the formation, over time, of a civil society — in varying stages of development across countries — with a rights-based agenda. Pro-democracy sentiments, therefore, resulted from the growth of the middle class and its attendant value orientation and aspirations, with the global diffusion effects of democracy promotion since at least the early 1990s also shaping the conditions for the flourishing of such sentiments.

Surveys carried out in nine Arab countries in the new century showed very high support for democracy, especially in terms of opportunity "to change the government through elections" and "freedom to criticize the government," but also in terms of democracy's presumed ability to "provide basic necessities like food, clothing, and shelter for everyone" and "decrease the income gap between rich and poor" (Jamal & Tessler, 2008, pp. 98-109). On gender equality, the results from various waves of the World Values Survey (WVS) are less promising, though they reveal variations across the Arab region and show that normative changes in a liberal direction were strongest in Tunisia.

For example, a 2013 survey of values and perceptions of Tunisian, Egyptian, Iraqi, Lebanese, Pakistani, Saudi, and Turkish publics found that Tunisians exhibit the least amount of religious intolerance; they were also liberal on the issue of women's dress. Comparing Egyptian and Tunisian attitudes, just 17 percent of Egyptians disagreed with the statement, "men make better political leaders than women", while 45 percent of Tunisians disagreed (and 44 percent of Lebanese and 46 percent of Turks). On the statement, "it is up to a woman to dress as she wishes," just 14 percent of Egyptians agreed, compared with 56 percent of Tunisians. A majority, 51 percent, of Egyptians did agree that their "country would be a better place if religion and politics were separated," but in Tunisia the figure was as high as 72 percent of respondents. When

given a choice to evaluate the idea of an Islamic government for their respective countries, fully 59 percent of Egyptians felt that it was a very or fairly good idea, compared with just 38 percent of Tunisians; 56 percent of Egyptians, compared to 27 percent of Tunisians, felt that it was "important for a good government to implement only the laws of the *Shari'a.*" The survey also found that among respondents in the seven countries surveyed, support for a military regime was low every where but Egypt (Moaddel, et al., 2013).

In Libya, interviews carried out by Andrea Khalil revealed that the Libyan population favors traditional religious and cultural values and advocates gender segregation in the public and, to some extent, private spheres. She cites an opinion poll showing that 35 percent of Libyans agreed that *shari'a* should be the only source of legislation, while 37 percent believed that *shari'a* should be the main source of legislation in the constitution – an astonishing proportion. A 2013 survey by the National Democratic Institute found that public opinion is very conservative on the *hijab*: Fully 81 percent of Libyans surveyed believe that women should wear the *hijab*, and 78 percent believe that the state should encourage women to wear it. The proportion was even higher among women respondents: 86 percent favored the *hijab* (Khalil, 2013).

During and after Tunisia's "Dignity Revolution," Tunisians were able to express themselves openly and often audaciously. In March 2013, Tunis was host to the World Social Forum, which convened at the University of Tunis El Manar. The atmosphere at the university and indeed throughout the city, where marches and rallies took place, was one of remarkable openness, with the participation of feminists, secularists, communists, anarchists, and many foreigners of various persuasions. At one point, I approached a group of young Tunisian anarchists and asked one of the women if the law allowed them to display their anarchist symbols and publications. The young woman smiled and replied, "Even if it did not, we still would be out here".[17] When Omezzine Khelifa, a rising star in Tunisia's Ettakatol party, stated that "women's empowerment is deeply ingrained in our culture", informed observers did not consider this an overstatement (Khelifa, 2012, p. 34-35).

In contrast, Egyptian women protesters were subjected to humiliating sexual abuse by marauding gangs of men in Tahrir Square, by the police, and by the military. The sexual harassment and violence visited on women during and after the Tahrir Square protests suggest that cultural changes were less profound in Egypt than in the Maghreb. Not surprisingly, in 2012, the World Economic Forum's Global Gender Gap Report ranked Egypt 126th out of 135 countries in terms of progress in closing the gap.

The Nature of the Transition, Political Parties, and Movements Involved; The Ideology, Values, and Norms of the New State and its Capacity and Will for Rights-Based Development

Finally, the third measure examined here pertains to the nature of the transition, and two points should be noted. First, the uprisings in Tunisia, Egypt, and Libya and the 20 February movement in Morocco were largely populist, cross-class phenomena without hierarchy, leadership, or ideology. There has been much discussion of the horizontal and non-hierarchical features of contemporary mass movements, including the Arab Spring, and this feature has been regarded as both a strength and

weakness.[18] And yet, progressive parties were in place in Tunisia and Morocco (and to a lesser extent in Egypt, but not in Libya) and were thus able to help shape the new constitutions. Second, whereas movements in Egypt, Morocco, and Tunisia did not have to endure external intervention (although Egypt's military continued to receive U.S. largesse) and thus proceeded organically, the North Atlantic Treaty Organization (NATO) intervention in Libya, coupled with the country's internal rifts, dictated a more troubled outcome. We now consider each of the North African country cases.

Libya

The dearth of well-established modern institutions or civil society, or an organized democratic protest movement, enabled regional factions in Libya to form their own militias and challenge a weak new government that was, in any event, uninterested in women's rights. It is telling, if not disturbing, that in a speech in Tripoli celebrating Libya's "liberation" in October 2011, National Transitional Council (NTC) chairman Mustafa Abdul Jalil declared that *shari'a* would be "the basic source of legislation, and so any law which contradicts Islamic principles is void", specifically mentioning that polygamy would be made legal (Madi, 2014). He was later encouraged by his backers in Washington – who had led the NATO intervention that helped topple the Gadhafi regime and bring the rebels to power – to clarify his statement and emphasize the "moderate" nature of Islam under the new regime.[19] But for the new Western-backed leader to have prioritized *shari'a* and a rollback on women's rights at a time when the armed uprising had all but destroyed Libya's major cities was perhaps a harbinger of the problems to come: The attack on the U.S. embassy that claimed the lives of four Americans, including the ambassador who had ironically supported the anti-Gadhafi rebels; and the country's subsequent descent into chaos, prompted by a weak government, lack of security, and an armed militia. Although a parliamentary gender quota was instituted under international pressure, resulting in a 16.5 percent female share of parliamentary seats (thirty-three out of 200 seats) in the country's first free elections in July 2012, there has been no evidence of women's political leadership or influence.[20] One analyst concludes that "political power after the revolution remains in the hands of men in the form of tribal coalitions, militias, and political institutions" (Khalil, 2013, p.105).

For the June 2014 parliamentary elections, fewer than half the registered Libyan voters took to the polls (Jawad, 2014). Without a functioning government and parliament, Libya has struggled to impose authority over the heavily armed former rebels, militias, and tribes that helped oust Gadhafi but who now defy state authority and carve out their own fiefdoms. The country slid deeper into chaos after a renegade army general, Khalifa Haftar, said to have been financed by the U.S. Central Intelligence Agency, opened a campaign against Islamists in the east.[21] Libya's security problem spilled across borders into Mali, Tunisia, and Egypt where refugees, arms traders, and jihadists have been proliferating. Inside the country, the absence of security and the risks to outspoken women were starkly revealed when Salwa Bughaighis, a human and women's rights lawyer from a prominent Benghazi family in conflict with the Islamists, was shot on the day of the general election (Stephen, 2014). One can only conclude that Libya was ill-prepared for democracy, much less a women-friendly democratic transition, and the nature of the international intervention only exacerbated existing fault lines.

Egypt

The absence of an organized democratic protest movement and the weakness of the secular political parties allowed the Muslim Brotherhood and military to assume control in Egypt. Following Hosni Mubarak's downfall, many of the institutions associated with his rule — though not the military — lost legitimacy. The Coalition of Women's NGOs, composed of about ten women's groups, tried to advance a women's rights agenda but failed to mobilize sufficient popular support or support among the new political elites.[22] The draft constitution approved by Egypt's first Constituent Assembly (CA) fell short of adequately protecting human rights, women's rights, and the rights of religious minorities, as it restricted freedom of expression in the name of protecting religion; it allowed for the military trial of civilians; it failed to protect the rights of children, especially those of young girls, by not defining a child as any person under age eighteen (as per the UN's Convention on the Rights of the Child) to protect girls from early marriage.

At least in legal terms, women have fared somewhat better following the new CA which was established after the July 2013 military intervention that brought down the Morsi government. The CA included five women members — three of whom were feminist professor Hoda Elsadda of the Women and Memory Forum, former diplomat Mervat Tellawy, and lawyer Mona Zulficar. The fifty-member CA was broadly representative of various sectors of society: professions, occupations, the National Women's Council, the Christian Coptic Church, youth, and about ten political parties. It excluded the Muslim Brotherhood but included one member of the Nour party. Special committees charged with specific themes were set up, and Elsadda noted that "there was quite a struggle" to include women's rights as a theme. "Ours is a patriarchal society," she stated, by way of explaining the refusal of the CA to consider a parliamentary quota for women. By contrast, two achievements were the inclusion of a constitutional prohibition of violence against women and a reference to women's right of access to judicial positions (Elsadda, 2014). Nonetheless, the National Women's Council criticized the appointment of just four women—out of thirty-one ministers — to President Abdel Fattah el-Sisi's cabinet.[23] At least the liberal Dostour party elected Hala Shukrallah, a Christian woman, as its head (She resigned in August 2015, citing internal divisions). A new political initiative, Women for Women — launched in Cairo in November 2013 and led by Hoda Badran (chairwoman of the Egyptian Feminist Union) — aims to raise funds for women's political leadership.

Morocco

The 20 February Movement in Morocco had the backing of progressive political parties, which, along with the strategic decisionmaking on the part of King Mohammed VI, resulted in the subsequent constitutional amendments to restrict the king's vast powers as well as to institutionalize the rights of women, the Amazigh, and cultural rights—even if dissident Moroccans feel that the amendments fell short of codifying genuinely democratic and egalitarian principles.[24] Following the referendum to endorse the constitutional amendments, elections took place and the Islamic Party of Justice and Development (PJD) won 27 percent of the seats, also winning the right to name a prime minister. Although the chosen prime minister, Abdelilah Benkirane, appointed just one woman to his cabinet, the female share of total seats in parliament rose to 17 percent — up from 11 percent — because the reserved seat system had

evolved to an expanded and eventually legally codifed system.[25] Reservations to the UN's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) were removed (2011) as part of measures to harmonize domestic laws with each other and with the international women's rights agenda. Nabila Mounib became the first woman elected to lead a major political party, the Unified Socialist Party (PSU). A critic of the Islamist agenda and of the power of the *makhzen* (royal palace), she has said that the PSU respects Moroccan women and places their rights at the center of the struggle for democracy, and that "my election is a victory for all women struggling for equality and dignity" (Belamri, 2013).

Meanwhile, activists of the 20 February movement continue to speak out, to join the almost frequent demonstrations of young people for jobs, and to decry what they deem to be continued repression.[26] Since 2011, women's rights groups in the Springtime of Dignity Coalition have continued their advocacy on women's reproductive rights and freedom from violence. Success came in early 2014, when the Moroccan parliament voted unanimously to repeal the penal code's rape marriage loophole, although feminists continue to rally behind a strong bill to criminalize domestic violence. In June 2014, women's rights groups held a press conference and rally to protest the prime minister's comments that a "women's role" is to be focused on the family.[27]

Tunisia

Tunisian women were present in the four High Commissions established to run the country during the 2011 transitional period (Khalil, 2014). The transitional government declared a parité law (equal numbers of men and women) and removed CEDAW reservations (2011). In the National Constituent Assembly (NCA) that was elected later that year, women constituted 27 percent of the members; forty of the sixty-three women in the NCA were from the Islamist Ennahda party, but the others were very active.[28] Unlike Egypt, where the Muslim Brotherhood thought it could monopolize power, Ennahda formed a three-party coalition government. Still, the feminist groups remained mobilized, holding many rallies in 2011 and 2012. Of the 107 parties legalized on 30 August 2011, three were led by women: the Party of Social Center, directed by Salma Ammar; Afek Tunis, codirected by Emna Menif (with Mohamed Louzir); and the Movement of Democratic Edification and Reform, directed by Emna Mansour Karoui. The Modern Democratic Pole, a political coalition party, featured a significant number of women at the head of their electoral lists in 2011.[29] The left-wing Al Massar had a policy of parité and sent outspoken women to the NCA.

When the Ennahda members of the NCA sought to replace the term "equality" with words akin to "complementarity" or "partnership" in the new constitution, women's rights activists and their male supporters in the secular and left-wing parties took to the streets in protest, forcing Ennahda to retreat. When a political crisis emerged following the assassination of two secular political figures and renewed protests over not only women's rights but also continued socioeconomic problems, civil society groups led by the UGTT (Union Générale Tunisienne du Travail) stepped in to mediate between Ennahda and its main secular opposition. The result was that the government agreed in early October 2013 to resign and make way for a caretaker government and new elections, demonstrating Tunisia's political maturity. In early January 2014, the

new constitution was adopted to both domestic and international acclaim.
The open political environment and balance of political forces has enabled ATFD and
AFTURD to establish sections outside Tunis, in Sfax, Sousse, Bizerte, and Kairouan,
and to work in coalition with the UGTT, the Human Rights League, and figures from
the progressive political parties toward the formation of an electoral bloc to try to
prevent another Islamist victory in the next elections.[30] They supported the women's
rights advocates among the many female candidates in the fall 2014 legislative
elections; fully 47 percent of all parliamentary candidates were female, and women
constituted 12 percent of those who led the political party lists (Chaabane, 2014). The
liberal and secular party Nidaa Tounes won the most seats (followed by Ennahda), and
women acquired a 31 percent share of all seats.

Algeria

Algeria did not experience the mass protests of the Arab Spring, and although there
have been signs of great dissatisfaction, citizens appear reluctant to risk anything
like the violence of the 1990s, which was similar to the current Syrian conflict but
without the waves of refugees. Algeria's multiparty republic ensures regular elections,
and among the countries that held elections in 2011–2012, it alone did not elect an
Islamic government (The Islamic Green Alliance, which was expected to win the
elections, called them fraudulent). One effect of the Arab Spring was the adoption
of a parliamentary quota for women, resulting in a 31.6 percent female share in the
May 2012 elections, giving Algeria the distinction of being part of an elite group of
thirty-five countries with female representation of 30 percent and above: Indeed,
Algeria ranked twenty-nine of the 142 countries listed.[31] In May 2014, the reelection
of Abdelaziz Bouteflika to the presidency saw the appointment of seven women to the
cabinet, with portfolios in education; land-use planning and environment; culture;
family and women; post, information technology, and communication; tourism; and
handicrafts. This 20 percent female share of cabinet seats is high not only by Arab but
also by international standards. In June 2014, three additional women were promoted
to the rank of general in the Algerian military to join Fatima Arjoun, who was
promoted to the rank of general in the Armée Nationale Populaire in 2010. This is now
the largest number of high-ranking women army commanders in the Arab world, and
a news report called the appointment "a sign of the liberalization of Algeria's closed
military organization" (Al-Arabiya News, 2012).

There are many Algerians who view these developments as window dressing, or
the women who have assumed political leadership positions as simply pro-regime
politicians. In addition, the Algerian Family Code requires more amendments to
become a truly egalitarian family code. What is more, although Islamist parties are
in decline in Algeria, society remains deeply conservative and religious, and the state
has been seeking to expand its base of support by building more mosques. It remains
to be seen if Algeria's critical mass of women in political leadership, as well as the
large proportion of women teaching in schools and at the country's universities, has
the potential both to change images of and cultural attitudes toward women in what
is a male-dominated society, and to enhance the quality of decisionmaking.

Structural, institutional, and cultural changes alike created conditions propitious for
the formation of pro-democracy movements across the countries affected by the Arab

Spring. In North Africa, those changes were least extensive in Libya, which is why, in the post-Gadhafi era, the country descended into a weakened and fragmented state with no female leadership. Women's organizations in Egypt, which for decades were denied the kind of state support for women's rights that was enjoyed in the Maghreb, were unable to significantly affect policymaking. In Algeria, Morocco, and Tunisia, social changes and changes in the characteristics of the female population, were arguably more conducive to democratization and to agenda-setting by women's rights groups. The diffusion effects of the Tunisian uprising and the absence of foreign intervention would seem to increase the likelihood of democratization in the Maghreb.

Conclusion

Surveys show that, in most Arab countries, publics strongly believe that men make better political leaders than women, and many studies have emphasized the strong patriarchal values that persist (Alexander & Welzel, 2011). And yet, we see a sustained level of women's political participation in the Maghreb. Support for women in politics extends to the Islamist parties, no doubt in recognition of the need to attract women voters in general elections. An inevitable result is that the women in the parliaments can be divided over sensitive issues such as family law reform and women's reproductive rights. Still, a large section from within the Maghreb's population of educated and employed women ("modernizing women") seems to have developed the political awareness and civic skills necessary to negotiate a democratic transition and have acquired the democratic values necessary to cultivate a sustainable or more effective democracy. This is a product of the strength of the women's rights movement, as well as the socioeconomic and cultural changes that took place in previous decades. Across North Africa, variations in gender relations, women's legal status, and their collective action prior to the Arab Spring, as well as the nature of the transitions and the political forces involved, help to explain the divergent outcomes.

All countries face risks to the democratization processes underway. Religious freedom is inscribed in the Tunisian and Moroccan constitutions, but further steps will need to be taken there – and most certainly in Egypt and Algeria – to ensure that non-Muslims will be accorded the same rights and obligations of citizenship and that non-observant Muslims will face neither discrimination nor harm. Another risk is that Islamist forces – both moderate and militant –remain strong and represent a challenge to the objectives of progressive and feminist forces. In Tunisia, jihadists have launched a number of terrorist attacks, and militant young men need to be re-socialized so as to reduce the likelihood of their joining the current fight in Syria. Efforts are needed to create more trust and confidence in the political parties on the part of young people and feminist groups. Socioeconomic difficulties – low growth, high youth unemployment, rising costs of living, poor public services – constitute a major challenge.

Will the activist women in civil society, political parties, and government be able to help enact the sort of broad socioeconomic changes and political rights that were called for by the Arab Spring protests? Certainly there remains some unfinished business with respect to the women's rights agenda in the region; reforming family law and combating violence against women is of greater benefit to working-class and poor women than to the elite women who advocate for these changes. Women's high

unemployment rates and low labor force participation are also issues to be addressed. I fully expect the women in political leadership to take on these issues and to set the agenda on others. What I have argued here is that their capacity to successfully do so is the result of long-term, structural, and normative changes, as well as of strategic campaigns and alliances.

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Endnotes

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1. See Achcar (2013); Hanieh (2013); Khosrokhavar (2012); Lynch (2012); and Singerman (2013).

2. See Waylen (2007); Paxton Hughes (2007); Viterna and Fallon (2008). Waylen showed that women's mobilizations during a transition were no guarantee of post-transition gains, but that the wider political context is key. Viterna and Fallon identified the following factors: history of women's mobilization, the reason for the transition, the political parties involved, and the role of international actors.

3. On endogenous and exogenous factors in democratization, see Wejnert (2005).

4. See Moghadam (2013), especially chapter 5, where I discuss conflict, occupations, and gender in Afghanistan, Iraq, and Palestine. The framework sketched above is discussed in more depth in chapter 7; see especially pp. 213-223.

5. For a useful overview, see Hadenius and Teorell (2005). Cultural and economic prerequisites of democracy: Reassessing recent evidence, Studies in Comparative International Development 39, no. 4 (Winter 2005), 87-106.

6. See Przeworski et al. (2000). Also, Inglehart, Klingemann, and Welzel (2003); Inglehart and Welzel (2008); and Welzel (2006).

7. See Wejnert; Paxton and Hughes, 177; Moghadam, (2013) 215. Broader macrosociological perspectives on international influences – though not necessarily pertaining to democratization – are offered by "world polity" and "world-system" theorists. See, for example, Meyer, Boli, Thomas, and Ramirez (1997); and Chase-Dunn (1998). In political science, "realist" and "ideational" perspectives similarly emphasize international influences.

8. For more information see, Moghadam (1998), chapter 9, especially pp. 204–213.

9. "AFTURD's Declaration: Fighting Against Attempts of Regression." Press release issued on 26 September 2008, made available to the author by AFTURD founding member Dr. Khédija Arfaoui.

10. See Moghadam, (2013), especially p.258; on Morocco's electoral law and quota for women see Darhour and Dahlerup (2013); on working women's rights see Code du Travail du Royaume du Maroc, especially Articles 9 and pp. 152-162, available at http://www.ilo.org /dyn/natlex /docs/SERIAL/67319/64073/F518847737/M AR67319.pdf; on family law reform see Charrad available at w w w.un.org /esa/socdev/family/docs/egm12/PAPER-CHARR AD.pdf; and Sadiqi, (2010).

11. For more information about Lybia see Pargeter (2010) and the doctoral dissertation of Faraj Abdulatif (2012).

12. The figures on women judges are from papers written by Boutheina Cheriet (Algeria), Fouzia Rhissassi and Khalid Berjaoui (Morocco), and Monia Ammar (Tunisia) in UNESCO-Rabat, Femmes, Droit de la Famille et Système Judiciaire en Algérie, au Maroc et en Tunisie ("Women, Family Law and Judicial Systems in Algeria, Morocco and Tunisia") (Rabat, Morocco: Lawne Printers, 2010).

13. Aicha Belarbi was state secretary for foreign affairs in the Abdelrahman Yousefi government of 1998 to 2002 and later served as ambassador to the European Union; she is also a founder of the Moroccan Organization of Human Rights. See http://www.learningpartnership.org /node/1798. Nouzha Skalli of the Party of Progress and Socialism (PPS) was elected to parliament in 2002 and, from 2007 to 2011, was Minister of Solidarity, Women, Family, and Social Development.

14. See Sater (2007) and Darhour and Dahlerup (2013).Between 2002 and 2007, the number of women representatives in the major political parties had no more than six women each, though given the total seats won by the parties, the Justice and Development Party (PJD) had the highest proportion, with a 14 percent female share.

15. On the importance of women's civil society organizing, see Htun and Weldon, (2012). Their global comparative analysis demonstrates that women's autonomous organizing in civil society accounts for progressive social policies, including policies on violence against women; the relationship is both substantively and statistically significant. On institutionalization, see Andrew (2010); and Banaszak (2009).

16. While women in Benghazi first took to the streets to demand the whereabouts of loved ones in prison, the power of Libyan patriarchy resulted in men's dominance and segregated protest crowds. See Khalil (2014) p. 95.

17. Author's observations; see also Moghadam, V. M. (2013).

18. See, for example a special issue from Benski, Langman, Peruggoria, and Tejerina (2013); see also Moghadam (2013), p.2.

19. See Gamel (2011). Under Gadhafi, polygamy had not been outlawed but rather subjected to controls and restrictions, as in several other Muslim-majority countries.

20. At the fourth annual conference of Stanford University's Center on Democracy, Diplomacy, and the Rule of Law, held in Tunis, 28-29 March 2013, I asked the Egyptian and Libyan speakers about the masculine nature of political participation and the labor force – compared with Latin America, Southeast Asia, and Eastern Europe – and what strategies were in place to change this. The Libyan speaker responded that there was no strategy to increase women's employment and claimed that: "Women don't want to work because their husbands do". The Egyptian speaker conceded that in Egypt, some 75 percent of university-educated women were not employed: "This is a terrible waste of human capital, but we don't have a strategy" (from author's personal notes).

21. On Haftar, see Mohamed Madi, "Profile: Libyan ex-General Khalifa Hafta," BBC News 16 October 2014, http://www.bbc.com/news/world-africa-27492354.

22. The Coalition consisted of the following: the New Woman Foundation, Women and Memory Forum, Center of Egyptian Women Legal Aid, El Nadeen Center for the Rehabilitation of Victims of Violence, Women's Forum for Development, Alliance of Arab Women, Egyptian Association for Family Development, Nazra Association for Feminist Studies, Ommi Association for Rights and Development, and Heya Foundation. See also Morsi (2014).

23. The women are Minister of Social Solidarity Ghada Waly, Minister of Urban Development Laila Iskandar, Minister of International Cooperation Naglaa El-Ahwany, and Minister of Manpower Nahed El-Ashri.

24. Criticisms of the limitations of the Moroccan constitutional amendments were raised in conversations author had during a visit to Rabat, 27–30 May 2014.

25. See Darhour and Dahlerup (2013), pp.132-142. The political uprising in the neighboring countries during late 2010 –11 created a political transitional atmosphere for the reform of the Moroccan constitution, and provided an opportunity for institutionalizing the principle of gender equality in the 2011 constitution.

26. In Rabat on 27 May 2014, I witnessed a demonstration of young people in front of the Justice Ministry. A group of young people with whom I spoke on 29 May told me of the arrest of a friend charged with insulting the *makhzen* in a song he had written.

27. On calls for legislation on violence against women see the article published by the UNRIC (2013); on the repeal of the rape marriage loophole see the article published on BBC News (2014) and Hayoun (2014); See also Women's Learning Partnership Press Release (2014).

28. Here I use the Tunisian spelling, also transcribed as An-Nahda or Al-Nahda.

29. See Khalil (2014), "Tunisia's Women," p.194. Afek Tounes later joined the PDP (co-led by Maya Jribi) and several smaller parties to form the Tunisian Republican Party.

30. Based on personal communications and interviews during research in Tunis, March 2014.

31. Algeria's general elections took place in early May 2012. There was a small turnout, but the Front de Libération Nationale (FLN) won 220 of 462 seats. Islamists came in third. Nearly 7,700 women ran, winning 146 seats in the national assembly. In terms of the breakdown in Algeria: sixty- eight women were from the ruling FLN; twenty-three from the RND; fifteen from the Islamic Green Alliance; seven from the Front des Forces Socialistes (FFS); ten from the Partie du Travail (PT); and the remaining twelve spread across five other parties. "Algerian Legislative Action 2012 (APN), Seats by Party and Gender, 14 May 2012, http://themoornextdoor.files.wordpress.com/2012/05/screen-shot-2012-05-14-at-7-28-14-pm.png.

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42

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Negotiating Gender Rights and Gender Relations in the Constitution-making Process in Egypt:

Towards a 'Thick' Constitutional Guarantee for Women's Rights

Naoko Kuwahara

Introduction

The purpose of this article is to explore gender-sensitive constitution-making. I will examine the constitution-making process in Egypt, as well as the constitutions themselves, from comparative constitutional law and gender perspectives, and I will then include the Japanese experience. Constitutionalizing or legalizing women's issues is one of the most controversial or challenging legal areas because women's issues are often assumed to be matters deeply embedded in tradition or culture, and therefore, it has been held that changing the status-quo relating to women's issues will erode the tradition or culture which should be protected.

The article is divided into six parts. First, I will discuss comparative constitutional law and gender perspectives based on existing literature. Then, I will present a brief analysis of the constitution-making processes in Egypt in order to provide a background of the issues relating to gender or women's rights. Then, I will examine articles directly relating to gender or women's rights under the Egyptian Constitutions of 1971, 2012, and 2014. I will also discuss the Japanese experience relating to these issues and give some suggestions. In the concluding remarks, I will make suggestions for ensuring women's rights in the constitution-making process.

Methodologies and Theories for Gender-sensitive Constitutional Design

Comparative constitutional law is a relatively new field with interdisciplinary interests from political science, sociology, and economics to legal studies, which explores "how constitutions are formed and how they operate" (Dixon & Ginsburg, 2011, p. 1). The study of comparative constitutional law in the practical, non-academic world was led by the revival of institutionalism in the social sciences in the academic world, and the third wave of democracy beginning in the middle of the 1970s with the emergence of countries in transition subsequent to the end of the Cold War (Dixon & Ginsburg, 2011, p. 3). Constitutions were regarded as instruments of the transition of regimes. In addition, the global phenomenon known as "the rise of world constitutionalism" as referred to by Ackerman (1997), and "juristocracy" as referred to by Hirschl (2007) have made constitutional law and its systems, including constitutional courts and judicial review, preeminent. This, therefore, has paved

the way for comparative analyses of constitutional laws beyond the specificity of constitutional law within one country.

The literature on comparative law, however, has not sufficiently discussed gender issues, even though other disadvantaged groups such as certain ethnic groups or religious communities have been examined (Baines & Rubio-Marin, 2005, section 1, para. 3). The literature on constitutional law does not sufficiently give women's right advocacy groups a full "design manifest" to constitutionalize gender equality (Irving, 2011, p. 33). The issue remains about what should be done to promote constitutionalizing women's rights in practice, because women's rights under constitutions have rarely been recognized or have been neglected until recently (Baines & Rubio-Marin, 2005, section 1, para. 4; Irving, 2011, p. 19). It follows that women's rights advocacy groups would often face questions regarding how to use constitution-making processes as well as constitutional judicial processes to achieve gender equality (Baines & Rubio-Marin, 2005, section 1, para. 5). When women's rights advocacy groups design constitutions in order to promote gender equality, they need information on constitutional mechanisms for promoting gender equality or ensuring women's rights. They must also have information regarding the effectiveness, efficiency, or rationality of different constitutional mechanisms in different settings.

There are, however, a few exceptions to which women's rights advocacy groups can refer to when constitutionalizing women's rights or gender equality. The feminist constitutional agenda, according to Baines and Rubio-Marin (2005), should present "the position of women with respect to: (i) constitutional agency; (ii) constitutional rights; (iii) constitutionally structured diversity ; (iv) and constitutional equality" with special attention to: women's reproductive rights and sexual autonomy, women's rights within the family, and women's socioeconomic development and democratic rights" (Baines & Rubio-Marin, 2005, section 1, para.6).

Women's constitutional agency means "lobbying, legislating, litigating, and adjudicating" (Baines & Rubio-Marin, 2005, section 2, para. 6) and thus participation in the constitution-making process such as lobbying and drafting constitutions is regarded as critical for promoting gender equality. In general, participation in constitution-making or constitutional design, where the processes include elements of representation, consultation, popular ratification, and oversight, is assumed to be an important factor of democratic constitution-making. Popular participation is justified, according to Blount's overview (2011), because it enhances constitutional legitimacy, makes better citizens, strengthens a constitution's ability to constrain the executive, or provides more rights, provisions, and a better enforcement mechanism to protect them (p. 39). As Irving noted (2011), the logic of participation, in general, has been extended specifically to women. It is assumed that women's participation in constitution-making processes might provide an opportunity to institutionalize or constitutionalize women's experiences and their demands for promoting gender equality.

According to Baines and Rubio-Marin (2005), the term gender equality is equivocal, and it has been used to denote three doctrines of gender equality: formal equality,

the separate but equal principle, and substantive equality (section 5, para. 2-4). Formal equality is a principle of equal treatment, requiring the state to provide men and women with the same opportunity to exercise rights and obligations in the context of gender, while the doctrine of seperate but equal respects women's differences. Substantive equality seeks to avoid unequal outcomes by taking into account that the same rules may produce different and unequal outcomes due to the fact that men and women may be differently situated. Then, how do we draft constitutional articles to promote gender equality or ensure women's rights? Sullivan (2002) suggests the following choices exist when working on constitutionalizing gender equality:

> 1. Choice between a general provision favoring equality and a specific provision favoring sex equality;
> 2. Choice between limiting classifications based on sex and protecting the class of women;
> 3. Choice between reaching only state discrimination and reaching private discrimination as well;[1]
> 4. Choice between protecting women from discrimination and guaranteeing affirmative rights to the material preconditions for equality; and
> 5. Choice between setting forth only judicially enforceable and broadly aspirational equality norms (Sullivan, 2002, p. 747).

She notes that the first choice between generality and specificity affects "the jurisdictional or institutional allocation of discrimination," i.e. generality retains broader discretion for future interpretation, while specificity restrains interpreters' discretion in the future (Sullivan, 2002, p. 747). She mentions Article 7 of the 1948 United Nations Universal Declaration of Human Rights as an example of a general provision, and Article 1 of the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW, 1979) as an example of a specific provision (Sullivan, 2002, p. 748). Article 7 of the 1948 United Nations Universal Declaration of Human Rights reads:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 1 of the CEDAW states that:

> The term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The second choice between symmetry and asymmetry entails that either "the ban on discrimination applies to forbidden classifications (such as sex, race, and sexual

orientation) or to protected classes (such as women, African Americans, and gay men and lesbians)" (Sullivan, 2002, p. 750). For example, for tackling the issues relating to discrimination against women, the choice of symmetry requires a law to provide that discrimination on the basis of sex is forbidden. On the other hand, the choice of asymmetry requires a law to state that, for example, "women shall be accorded full and equal dignity of the person with men" under article 33 of Uganda's 1995 Constitution (cited by Sullivan, 2002, p. 751), and it aims at protecting "the class of women rather than the classification of sex"(Sullivan, 2002, p. 751). It corresponds to the choice between formal equality and substantive equality. The third choice between state action and private action asks whether the ban on discrimination should apply to the public sphere only or to the private sphere as well. Limiting constitutional constraints to state action does not directly extend to family or the relationship between employer and employee in the private sector. The fourth choice between negative rights and positive rights asks whether women should have freedom from discrimination "or also some guarantee of freedom to the material preconditions of the meaningful exercise of equal rights of citizenship" (Sullivan, 2002, p. 759). The letter choice includes "the right to work, minimal subsistence, equal pay, literacy, reproductive control, health care, or education" (Sullivan, 2002, p. 759). The final choice is one between judicially enforceable standards and hortatory or aspirational norms. She notes that hortatory or aspirational norms are unknown to traditional constitutional views, and their legal effect is ambiguous and brings to light Article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as an example of a provision articulating hortatory or aspirational norms (Sullivan, 2002, p. 761). According to Article 5(a) of the CEDAW reads:

> States Parties shall take all appropriate measures: (a) [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Norms such as those put forth in Article 5(a) of the CEDAW are best understood as a form of 'soft law' that attempts to influence a state's behaviour rather than generating binding norms.

Partly following to the feminist constitutional agenda presented by Baines and Rubio-Marin (2005), in this article, constitutional agency, constitutional rights in general, and constitutional equality in particular are discussed. When discussing constitutional equality, I apply the matrix of approaches constitutionalizing gender equality suggested by Sullivan (2002) in order to examine equality under the constitutions in Egypt.

Constitution-Making Processes

The 'Arab Spring', or revolutions, had a significant impact on the Japanese people, including Japanese academics. From a foreigner's perspective, a series of constitution-making processes in Egypt included various topics to be included in the constitution-making processes such as public participation, structure of governance, rights, and religion. Controversial issues may divide the procedures and the

substantive matters for making a new constitution. Issues on procedures for making a new constitution included the following: 1. whether to introduce amendments or a new constitution; 2. whether to proceed with parliamentary elections or first with drafting a new constitution; and 3. who should be members of constituent assemblies. Issues on substantive matters of constitutions included: 1. human rights, especially freedom of expression, freedom of the media, freedom of religion, and minority rights; 2. *Shari'a* and the status of al-Azhar; 3. women's rights; 4. civilian control of the military; and 5. the structure of governance or polity.

The debate over the constitutions of 2012 and 2014 showed that constitutional supremacy, which originated as a western value, and 'modernity' were accepted by Islamists, secularists, leftists, and liberals, among others. Constitution-making processes in Egypt also seemed to show the contentious relationship between democracy in the sense of majority rule and human rights. It resulted from the lack of a pervasive agreement on the concept of constitutional democracy due to deep ideological divisions. While Mohamed El-Baradei released the draft of a bill of rights, the discussions did not go much further. Rather, Islamists or *Salafists* showed their aggressive view against a bill of rights and critically regarded it as a 'western' product.

The debate over women's rights was intertwined with the role of *shari'a* in the Constitution. One of the most controversial articles relating to women's rights was Article 36 of the 2012 constitutional draft which emphasized gender equality without contradicting the precepts of Islamic Law and was eventually omitted from the final draft of the 2012 Constitution. The reason Article 36 of the draft was omitted, however, could not be gleaned from media sources. The 2012 Constitution did not directly deprive women of the rights that they enjoyed under the 1971 Constitution. Rather, the 2012 Constitution omitted the controversial draft of Article 36 that was based on Article 11 of the 1971 Constitution.[2] The 2012 constitution, however, embedded the possibility of depriving women of these rights within Articles 4 and 219. The 2014 Constitution returned to the language of the 1971 Constitution, as far as the provision of *shari'a* was concerned.

Gender and Women's Rights under the Constitutions

As far as provisions relating to women's rights are concerned, the 2014 Constitution is designed to enhance women's rights more so than the 2012 or 1971 Constitutions, mainly because it chooses to guarantee the so-called "affirmative rights to the material preconditions for equality" (Sullivan, 2002) as mentioned above under Paragraph 2 of Article 11, which reads:

> The state commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.

Because affirmative rights are regarded as an effective measure to bring substantive equality to women who have been historically socialized to occupy subordinate

positions, Paragraph 2 of Article 11 seemingly intends to ensure women's participation in the state's decision-making processes, such as the legislative, executive and judiciary processes, in order to promote gender equality. Moreover, Paragraph 3 of Article 11 affirms state protection of women against all forms of violence and is a step forward for women's rights in light of the current Egyptian social context where sexual violence against women is becoming more visible than before. Moreover, assuming that the phrase 'all forms of violence' under Paragraph 3 of Article 11 includes domestic violence, the 2014 Constitution delivers a strong message that the state shall or may intervene in the so-called 'private sphere' to protect women from violence. Interpreting both Article 10 and Paragraph 3 of Article 11 literally, begs the question: how is 'domestic violence' legally defined, and how will it be addressed when it conflicts with the so-called "family values"' protected under Article 10?

As such, the 2014 Constitution departs from the so-called traditional constitutional model which "operates under strong conventions of constraint to general norms of formal equality, symmetrically interpreted, against state rather than private action, to promote negative not positive rights, that are capable of administrable judicial enforcement" (Sullivan, 2002, p. 762). Examples of such a model include the U.S. Constitution and the Japanese Constitution. Rather, the 2014 Constitution seems to be specific, asymmetric, and extends to private action and positive rights.

With regard to the choice between a general provision favouring equality and a specific provision favouring gender equality, the 2014 Constitution chose a general provision under Paragraph 1 of Article 11 rather than a specific provision favouring gender equality. With regard to the choice between limiting classifications based on gender and protecting the class of women, while it takes a basically symmetrical approach under Paragraph 1 of Article 11, it also chooses partial asymmetry by guaranteeing affirmative action to give preferences to women as a group under Paragraphs 2, 3, and 4 of Article 11. Paragraph 1 of Article 11 bans discrimination based on gender. By contrast, Paragraphs 2, 3, and 4 of Article 11 aim to protect women as a group. With regard to the third choice between addressing only state discrimination or addressing private discrimination as well, it seems that the latter part of Paragraph 3 of Article 11, about the state ensuring that women are empowered to reconcile their duties toward their family and their work obligations, chooses to extend the ban on discrimination to not only state actions but also more specifically private actions. With regard to the choice between protecting women from discrimination and also guaranteeing affirmative rights to the material preconditions for equality, as mentioned above, it chooses both to protect women from discrimination and to guarantee affirmative rights to the material preconditions for equality under Paragraph 2 of Article 11. Considering the choice between including only judicially enforceable or broadly aspirational norms for equality, Article 11 seems to depend on judicial interpretation or enactment of laws.

The answer to the choice between these competing approaches depends on the structure of the constitutional, economic, social, cultural, and historical circumstances. The structure of the constitution includes the structure of government, electoral systems, judicial review, and the role of the military in domestic affairs.

Issues regarding the structure, for example, include "(1) the division of power vertically (i.e., federalism and local government) and (2) horizontally (presidentialism v. parliamentalism), (3) the power and composition of the judiciary, (4) states of emergency, (5) the electoral system, and (6) the role of the military" (Williams, 2009, p. 5).

In Egypt, as the debate over the constitutions of 2012 and 2014 exemplified, women's rights were intertwined with the position of *shari'a* under the Constitution. In deciding cases relating to the constitutionality of personal status laws favourable to women in light of article 2 of the 1971 Constitution, amended in 1981, under which stipulated "principles of Islamic law (*shari'a*) are the principal source of legislation", Mousa (2011) emphasises the "progressive approach" taken by the Supreme Constitutional Court (hereinafter referred to as the SCC) in spite of the sceptical views against the amended article 2 that would undermine women's rights (p.153). Therefore, judicial review and the composition of the SCC is crucial for implementation of women's rights

Lessons Learned from the Japanese Experience

Although Japan is an economically advanced country, gender equality in economic and political areas is less advanced than other developed countries. For example, Japan was 10th on the Human Development Indicator (HDI) for 2012, 21st on the 2012 Gender Inequality Index, and 105th on the 2014 Gender Gap Index. This shows that gender equality in the area of education and health has been achieved, but the gaps between women and men in the labour market and at the highest level of political decision-making are huge. This is due, in part, to the lack of state-strong initiatives or adequate measures that can lead to substantive gender equality.

The current Japanese Constitution enforced in 1947 introduced a number of legal reforms, including family law reforms and drastically improved women's status and enhanced women's rights. There was no gender equality under the former Japanese Constitution, which was enacted in 1890, and women were subordinate to men on the premise that the natures of women and men were different and resulted from biological differences. Some characteristics were thought to be innately tied to gender (e.g., men were logical and women were emotional) and roles were gender-oriented (e.g., men work outside the home and women do domestic work). Although the current Japanese Constitution introduced equality as a general principle under Article 14 and gender equality in family life under Article 24, the view according to which specific characteristics and roles based on biological gender differences was broadly shared by political decision-makers as well as a majority of the people. Laws that provide unequal treatment of men and women without just or adequate reasons remained.[3]

For moderating gender gaps between women and men, lessons learned from the Japanese experience and from the legal perspective are as follows:

1. Family law or personal status law can be an avenue to ensure women's rights in 'the public sphere' as well as 'the private sphere';
2. Criminalizing or imposing penalties for violence against women and sexual

harassment are also ways to ensure women's rights in 'the public sphere' as well as 'the private sphere';

3. Affirmative action or positive action is necessary to close or narrow the existing gender gaps;

4. Strong political will is a crucial factor in changing people's attitudes;

5. Implementation mechanisms for constitutional equality and rights, including statutes and substantive legislation, judicial review, legal education or training for legal enforcement institutions (e.g., police forces), and independent media, should be established; and

6. Changing the public's mentality or attitudes is difficult in the short-term, but not impossible in the long term.

Conclusion: Towards a 'Thick' Constitutional Guarantee Model

From the perspective of constitution-making, especially in a country where women hold inferior positions in society, formulations with more requirements for gender equality and women's rights in the substantive way, which I call a 'thick' constitutional guarantee model, would be more appropriate than formulations with less requirements in the formal way, which I call a 'thin' model, to promote gender equality and ensure women's rights. A 'thick' constitutional guarantee model, which I suggest here, includes: 1. ensuring representation of women's agency for constitution-making processes; 2. ensuring women's rights and gender equality by: (i) including a specific provision favouring gender equality, (ii) protecting women as a class, (iii) addressing both state discrimination and private discrimination; and (iv) guaranteeing affirmative rights for women; 3. accepting women's rights in the context of the nature of rights; and 4. enforcement mechanisms, (i) including non-judicial or semi-judicial institutions of compliance (e.g., an ombudsman) as well as judicial review; and (ii) ease of prerequisites for a cause of action to enable the third party, other than the victims whose rights are violated, to petition to the court for remedy, for example, the public interest litigation in India (see appendix 2). Such provisions are a clear departure from the traditional constitutional theory, which I describe as a 'thin' constitutional guarantee model.

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ENDNOTES

1. The choice here is whether to apply the ban on discrimination only to public/state or also private action. For example, the South African Constitution provides both that '[t]he state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth' (subsection 3 of article 9), and '[n]o person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)' (subsection 4 of article 9).

2. Article 11 of the 1971 Constitution provided that "The State shall guarantee harmonization between the duties of woman towards the family and her work in the society, ensuring her equality status with man in fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence".

3. For example, article 733 of the Civil Code imposes on women only a waiting period for marriage *idda* where "a women may not remarry unless six months have passed since the day of resolution or rescission of her previous marriage".

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Egypt. 1971. The Constitution of the Arab Republic of Egypt 1971.

Egypt. 2012. The Constitution of the Arab Republic of Egypt 2012.

Egypt. 2014. The Constitution of the Arab Republic of Egypt 2014

Appendix I: Comparison of 1971, 2012 and 2014 Constitutions of Egypt

1971 Constitution	2012 Constitution	2014 Constitution
Matters Relating to *Shari'a*		
Art 2. Islam is the religion of the State and Arabic is its official language. Thr principles of Islamic *shari'a* are the main source of legislation.	Art 2. Islam is the religion of the State and Arabic is its official language. The principles of Islamic *shari'a* are the main source of legislation. Art 4. The noble Azhar is an independent Islamic institution of higher learning. It handles all its affairs without outside interference. It leads the call into Islam and assumes responsibility for religious studies and the Arabic language in Egypt and the world. The Azhar's Body of Senior Scholars is to be consulted in matters pertaining to Islamic law (*shari'a*). The state guarantees the financial means needed to fulfill these tasks. The Sheikh of the Azhar is independent and cannot be dismissed from his position. The law determines the process by which he is selected from among the members of the Council of Senior Scholars. All this will proceed as stipulated by law. Art 219. The principles of Islamic law (*shari'a*) include general evidence, the foundational principles of Islamic jurisprudence (*usul al-fiqh*), the reliable sources from among the Sunni schools of thought (*madhahib*).	Art 2. Islam is the religion of the State and Arabic is its official language. The principles of Islamic *shari'a* are the main source of legislation. Art 7. Al-Azhar is an independent Islamic scientific institution, with exclusive competence over its own affairs. It is the main reference for religious sciences and Islamic affairs. It is responsible for calling to Islam, as well as disseminating religious sciences and the Arabic language in Egypt and all over the world. The State shall provide sufficient financial allocations thereto so that it can achieve its purposes. Al-Azhar's Grand Sheikh is independent and may not be dismissed. The Law shall regulate the method of appointing the Grand Sheikh from amongst the members of the Council of Senior Scholars.

1971 Constitution	2012 Constitution	2014 Constitution
Women's Rights		
Art 9. The family is the basis of the society and is founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family - together with the values and traditions it embodies - while affirming and developing this character in the relations within the Egyptian society. Art 10. The State shall guarantee the protection of motherhood and childhood, take care of children and youth and provide suitable conditions for the development of their talents. Art 11. The State shall guarantee harmonization between the duties of woman towards the family and her work in the society, ensuring her equality status with man in fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.	Art 10. The family is the basis of society and is based on religion, morality and patriotism. Both state and society seek to preserve the inherent character of the Egyptian family, its cohesion, stability, and moral character, and to protect the family as specified by law. The state guarantees mother-and-child services that are free of charge and pledges to reconcile the woman's duties toward her family with her work in the public sphere. The state provides special protections for female breadwinners, divorced women, and widows.	Art 10. The family is the basis of society and is based on religion, morality, and patriotism. The State shall ensure its cohesion stability and the establishment of its values. Art 11. The State shall ensure the achievement of equality between women and men in all civil, political, economic, social, and cultural rights in accordance with the provisions of this Constitution. The State shall take the necessary measures to ensure the appropriate representation of women in the houses of representatives, as specified by Law. The State shall also guarantee the women's right of holding public and senior management offices in the State and their appointment in judicial bodies and authorities without discrimination. The State shall protect women against all forms of violence and enable them to strike a balance between family duties and work requirements. The State shall provide care to and protection of motherhood and childhood, female heads of families, and elderly and neediest women.

Appendix II: Constitutional Guarantee Model for Women

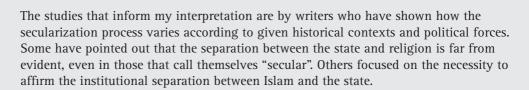|	Thick Constitutional Guarantee Model	Thin Constitutional Guarantee Model
Constitution-Making Processes	Representation of women's agency	Representation for all people
Equality/ Rights	(i) a specific provision favouring sex equality (ii) protecting the class of women (iii) dealing both with state discrimination and private discrimination (iv) guaranteeing affirmative rights for women	(i) a general provision favouring equality (ii) limiting classification based on sex (iii) dealing only with state discrimination (iv) protecting women from discrimination
Nature of Rights	Acceptance of rights in context	Ahistorical, acultural and acontextual rights
Enforcement Mechanism	(i) non-judicial or semi-judicial institutions of compliance as well as judicial review (ii) ease of prerequisites for a cause of action	Judicial review

Tunisian Women in the "Arab Spring":
The Singularity of Article 46 in the 2014 Constitution

Lilia Labidi

Introduction

The "Arab Spring" that began in Tunisia has provided the context for women to gain a number of victories. The adoption of the parity law, for which women have been struggling for more than two decades, opened the door of the Constituent Assembly to women wearing the *hijab* who had been previously excluded from participating in public life and formal politics, and enabled women to participate in writing the new Constitution. Tunisia lifted its reservations to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2014. Finally, the government voted for Article 46 of the 2014 Constitution, which affirms women's rights and obliges the State to take the steps necessary to consolidate these rights, to guarantee equality of opportunity between men and women to attain decision-making positions, to achieve parity between women and men in elected bodies, and to eradicate violence against women. How did this happen? How can we explain the singular nature of these achievements? My discussion here will look back on women's struggles in Tunisia to see how they moved the country towards adopting Article 46 of the 2014 Tunisian Constitution.

For this discussion I use an anthropological approach that takes into account historical, psychological, and legal materials in an effort to understand how Islamic legal limits (*hudud*) have been reinterpreted for the three Tunisian constitutions of 1861, 1959, and 2014. I am interested in the contexts and tensions surrounding these constitutions, each of which carries with it ideals and testifies to the circumstances of the time. I also use for this discussion life histories that I collected from historical figures in the Tunisian women's movement who were active from the 1930s into the 1950s, as well as my own observations of the contemporary Tunisian women's movement from the 1970s up to the present. Analyzing the discourse and practice of these women and women's groups will help us understand the contribution of women to the construction of values and norms that were formerly the exclusive domain of the *ulama* (i.e. Muslim scholars or religious leaders) and the *fuqaha'* (experts in Islamic jurisprudence), women's participation in the process of the secularization of society and in the reinterpretation of religious thought, and women's struggles against despotism and for democracy (Labidi, 2009c).

The studies that inform my interpretation are by writers who have shown how the secularization process varies according to given historical contexts and political forces. Some have pointed out that the separation between the state and religion is far from evident, even in those that call themselves "secular". Others focused on the necessity to affirm the institutional separation between Islam and the state.

In the first section of this paper I will look at some research on the process of secularization in countries with experiences similar to Tunisia's colonial occupation, and the roles played by the state and social groups to promote women's rights. This will help me outline the contexts and forces at play in this process. In the second section I will explore some historical events, including the previous constitutions of 1861 and 1959, in order to understand what motivated women to rise up against colonialism and patriarchy, and how women participated in the construction of new *hudud*/values, leading, in the Tunisian context, to the promulgation of the Personal Status Code (PSC) in 1956 which gave significant rights to women. In the third section I will focus on negotiations over these legal limits (*hudud*), which will come to express new values, focusing on several events taking place between the 1970s and the "Arab Spring" that started in 2010, in order to understand how feminists, both secular and Islamist — all of whom educated in the national university system, formulate their positions on questions such as the freedom of conscience and the constitutionalization of women's rights.

Context and Secularization

For Himanshu Roy, secularism in the West took the form of protest by the oppressed against the theocratic state and for individual liberty, and it was capitalist merchants who, in a context of the expansion of capitalism and commerce, developed secularism while minorities continued to be divided in states that remained, in essence, theocratic. Roy also discusses how, in India, the secularism that arrived via colonial capitalism facilitated the process of segregation and division among groups, with electoral practice continuing and sometimes reinforcing this process (Roy, 2006, p. 164). In looking at the relationship between society, religion, and the state, Mondher Kilani notes that even in France, "a country that is officially '*laïc*', the separation between Church and State is not always clear" (Kilani, 2003, p. 69).

Talal Asad (1993 and 2003), author of several books on Islam and secularism,[1] puts forward some definitions that can help us understand the work undertaken by Tunisian reformers and women's movements. He says, for example, "I wish only to point to the fact that religion as a category is constantly being defined within social and historical contexts [...] People use particular conceptions of religion in social life...". On the subject of secularism, Asad asserts:

> Secularism as a political doctrine [...] [is] very closely connected to the formation of religion itself, as the 'other' of a religious order. It is precisely in a secular state — which is supposed to be totally separated from religion — that it is essential for state law to define, again and again, what genuine religion is, and where its boundaries should properly be [...]. The state is not that separate. Paradoxically, modern politics cannot really be separated from religion as the vulgar version of secularism argues it should be — with religion having its own sphere and politics its

own. The state (a political entity/realm) has the function of defining the acceptable public face of 'religion.' (N. Shaikh, personal communication)[2]

Eqbal Ahmad, who worked in Algeria with Frantz Fanon, asserts the need to separate *Shari'a* from the state:

> According to my own reading of Islam, there is nothing like a concept of the Islamic state. Rather, what the Qur'an talks about is Islamic politics, politics conducted in accordance with the spirit of Islam. And this means a politics characterized, above all, by a spirit of justice, equality and social concern [...] The Prophet permitted his followers to consult each other in matters of warfare and politics, on the grounds that there could be no fixed, hard-and-fast methods in these matters. Hence, Islamic politics is a far cry from the static, rigid models [...] As the Qur'an says, all people have the right to follow the religion of their own choice or no religion for that matter, and so there can be no compulsion in matters of faith. A true Islamic politics would work to guarantee this freedom, not to stifle it. (Y. Sikand, personal communication)[3]

In the Maghreb the process of secularization varies according to context and political system. Khalifa Chater considers that secularism was out of the question during the pre-colonial and colonial eras in Tunisia (Chater, 2010). Malika Zeghal points out how the secular world is no longer defined by the opposition between the sacred and the profane and the shrinking of the religious sphere, but by the state taking on functions that had traditionally been filled by the church. She notes that in the Tunisian case, when Habib Bourguiba wished to carry out his secularizing and modernizing project, he had to reform the religious institutions to put them under the control of the state, but when political challenges arose in the 1960s he quickly had recourse to religious symbolism, as he had done during the colonial period when he defended the *hijab* and led a campaign against burying Muslims who had become naturalized French citizens in Muslim cemeteries. Zeghal's study emphasizes the recourse to religion in public and state spheres and concludes that secularization occurs whenever there is no competition among interpretations of the sacred, in the production of religious materials, and when the political sphere is controlled by the state, with religion having little or no influence (Zeghal, 1999, pp. 95 and 89). Her interpretation is put forward in response to Franck Frégosi, who focused on what he called "gallicanisme bourguibien" – the subordination of religious institutions to the state – and on the role of Zine el-Abidine Ben Ali, and how neither Bourguiba nor Ben Ali truly envisaged a "logic of secularization" (Frégosi, 2005, pp. 30 and 31). A recent text by Lahcen Oulhaj shows how the coming to power of the conservative Islamic party, the Justice and Development Party (PJD), in Morocco has not affected the process of secularization at all, given the country's choice of a constitutional monarchy that recognizes political pluralism and linguistic, cultural, and religious diversity (Oulhaj, 2013, p. 45).

The Turkish experience is very relevant here, for this country occupies a privileged place in the imagination of both liberal and Islamist elites. This is highlighted in a study carried out by Umut Azak in which she shows how, in a society characterized by political pluralism, the elites may not agree on their understanding of secularism and may engage in public debate on this issue. Since 1937, when secularism became one of

the six principles of the Turkish republic, the principle of secularism has been a theme that appears consistently in public debate and, since the pluralist democratic transition of 1946, the critique of secularism resulted in a competition between various visions, sharpening public opinion and political debate over questions like education and religious freedom. For Azak, the public debate over the prohibition against the calling for prayer led to the reproduction, reformulation, and questioning of the Kemalist secularist discourse. In this context the discussion pursued by the intellectual elite was an example of a civic discussion on a state policy that limited religious liberties in the name of secularism, promoting a "pure Turkish Islam" related to the pre-Republican ideology formulated by Ziya Gökalp at the start of the 1900s. This reading enables the author to show the role played by nationalist conservative intellectuals like Basgil, who sought to free the Islam of the Sunni masses from repressive secularist policies, thus defying Kemalist secularism and forcing the intellectuals to reformulate their vision of a secularism that protected pure Turkish Islam from an impure and reactionary Islam (Azak, 2012, pp. 59, 61, 64, and 73).

Recently, Alev Cinar addressed the controversy in Turkey over the *hijab* showing how, while the *hijab* has given Islam a presence in public space, it limited women who wore it to a symbolic presence. She brings forward the testimony of several women who wear the *hijab*, illustrating how this led to stifling their careers. The lawyer Gonul Arslan recounts how she was a victim of negative discrimination from secularists who showed their disdain for such dress code, and also experienced positive discrimination from Islamists who chose her for their party because she wore the *hijab*. Sibel Eraslen, who wears the *hijab*, is the former leader of the Women's Committee of the Refah Party, and organized her party's campaign in Istanbul for the local elections of 1994, was denied a position in the city administration, and she and her colleagues also found themselves eliminated from the committee and replaced by the wives and daughters of party officials. There is also the case of Islamist women intellectuals who have been excluded from conferences, seminars, and panels, where the invited Western women researchers can discuss diverse subjects dealing with politics, law, the arts, etc., but where the Islamist women are limited to themes like women and the family. These cases and others allow Alev Cinar to draw a parallel between the years when secularism was founded upon constructing a new national conscience via women's unveiled bodies in the public sphere, and the 1990s, when Islamists introduced a new national identity by constructing and manipulating the image of Muslim women in public space, this time by covering their bodies (Cinar, 2008, pp. 907, 908, & 910).

What means do women have to defend their rights, when they live in societies where religious belief is subject to radical interpretations? To answer this question Gunes Murat Tezcur looks at the relations between secularism, liberalism, and democracy in non-secular societies and the means that women possess to prevent tyranny and protect individual rights, and concludes that it is necessary to constitutionalize these rights (Tezcur, 2007). Among the lessons we can learn from these studies is that the process of secularization appears to vary according to context and the current religious and political forces, that women's bodies are at the center of the protagonists' visions (whether the protagonists are religious or secularists), and that the constitutionalization of women's rights emerges in situations of struggle between different political forces.

Women's Struggles Against Patriarchy and Colonialism in Tunisia

The women's movement in Tunisia has its origins in debates over education and rights that began in the middle of the nineteenth century with the reform of military education in 1840 (Sraieb, 1993), the introduction of the decree relating to the emancipation of slaves in 1846, and the appearance of a work by Ibn Abi Ad-Diyaf (1804-1874) entitled *risalah fi al-mar'a* (The Epistle on Woman), published in 1856. This work, based on Islamic jurisprudence, provided the author's response to questions raised by France's General Consul in Tunisia, Léon Roches, regarding the private and public role of women, and preceded the promulgation of the Fundamental Pact (*ahd al-aman*) in 1857 that aimed to ensure the security of Tunisians and award privileges to foreigners in Tunisia. The first constitution in the Arab-Muslim world, published in Tunisia in 1861, was inspired by the Ottoman constitution ("*ettandimet*") and guaranteed freedom and equality for Tunisian subjects, regardless of the religious community to which they belonged.

The 1861 Constitution, which comprises 13 sections and 114 articles, is a key document for understanding the nature of the debate over equality and the tensions around the distinction between private and public. The first section has 8 articles and is devoted to the Bey's family, with women mentioned in half the articles and the family presented as the ideal type of family. Article 3 of the 1861 constitution defines the role of the "Head of State" who

> (...) is at the same time the head of the ruling family and also represents the image of the father for Tunisians. He has full authority over all the princes and princesses who compose the family, so that none of these can dispose of his/her own person or possessions without his consent. He has a father's authority over them and owes to them the treatment due their status.

In the case of crimes committed by members of the family, Article 8 stipulates that they will not be judged by ordinary tribunals and that the Head of State may order "the application or commutation of the punishment". These rules recall customary family practices where the father, brother, or by default the uncle, can decide what penalty to apply for certain crimes, such as honor crimes (these became very rare in Tunisia by the 1980s and a 1993 law criminalized honor crimes, no matter who their author was, and qualified them simply as crimes).

Sections I and XII demarcate the private and the public. Chapter XII, entitled "On the rights and duties of subjects of the Tunisian kingdom", comprises 29 articles (Articles 86 to 114) and is inspired by human rights notions. Article 86 emphasizes the rights of subjects, whatever their religion, to have full security regarding their persons, their property, and their honor. Article 87 asserts the right of subjects to denounce offenses, even when they are not themselves the injured party. Article 88 stipulates that all subjects are equal before the law regardless of their status or position. Article 89 guarantees the freedom to dispose of one's goods and person. Article 92 says that all expatriate Tunisians, naturalized abroad, become "Tunisian subjects as soon as they enter the Kingdom of Tunis".

The context surrounding the Fundamental Pact (*ahd al-aman*) and the first Constitution was dominated by economic and political difficulties. On the one hand, the dwindling

of public finances put the State in great need of money and obliged it to sell authorizations to export goods like oil, soap, lye, wheat, barley, sponge, octopus, sheep and cows, wool, skins, and poppy, in order to reduce the budget deficit. Worsening living conditions in rural areas pushed people to mortgage possessions at very high rates of indebtedness. Between 1829 and 1860 there was a significant increase in the number of French, Italian, Spanish, Greek, Maltese, and English merchants, whose activities in commerce and finance were motivated more by profit than the desire to modernize production structures. And we should not forget the meddling of the European powers in Tunisian affairs, a meddling that was ambiguous and perverse, in the words of Béatrice Hibou (2009). All these factors help explain why Habib Bourguiba called The Fundamental Pact of 1857 scandalous at the speech he gave before the Constituent Assembly on 1 June 1959.

On the other hand, political pressures existed on several levels. Bonaparte's expedition to Egypt in 1798 and the occupation of Algiers in 1830, as well as other European expeditions in the region, dominated the societal imaginary and raised awareness of the disparity in military power between European nations and the Maghreb. Pressure was put on the Bey by European countries, for example by Consul Richard Wood of England and by the French consul Léon Roche, stressing the need for reforms such as those undertaken by Turkey and then, as these reforms were delayed, threatening the Bey with naval attacks and with the threat of being deposed.[4]

Moreover, the population did not see itself in the 1861 Constitution for two reasons. The first was the marginalization of Islam. The second concerned the primacy awarded to janissaries (members of the Turkish infantry forming the Sultan's guard between the 14th and 19th centuries) over the indigenous population — an aspect that caused much discontent. Dissatisfaction with this was so strong that it led to an insurrection in 1864 headed by Ali Ben Ghedahem, called "the people's Bey", who succeeded in uniting many tribes around him. After this revolt the Constitution was suspended. A number of historians have shown how both The Fundamental Pact and the 1861 Constitution were also sources of domination. For example, for Moustapha Kraiem, whereas the Fundamental Pact and the first Constitution are the "first translations of the principles of equality before the law and respect for human rights" (Kraiem, 1990), their actual functioning followed the model of a *shura* where its members were all coopted. The Epistle on Women, published in 1856 by Ibn Abi Ad-Diyaf, before the publication of the Fundamental Pact, is considered by the historian Béchir Tlili to be a fundamental text for understanding the history of feminism in Tunisia, in large part because, since this period, the Tunisian elite has undertaken a critical reconstruction of its basic institutions. While the Tunisian elite was closely following the suffragette movement in the Anglo-Saxon countries, France under Jules Ferry invaded Tunisia and the protectorate was established in 1881, putting a brake on the critical discussion of the condition of women.

The Tunisian elites had a heightened awareness of the psychological war that was being waged against them, with drawings and photographs undermining the community's values distributed via the press, postcards, and so on. Men were depicted as violent and women shown nude on book covers, even when these were books about hunting.[5] Debates over the condition of women continued among intellectuals and

reformers in Tunisia and in the region. In Algeria in 1895 Muhammad Ben Moustapha Ben Khouaja published *al-iqtirath fi houkouk al-inath* (i.e. propositions for women's rights); in Egypt in 1899 Qassim Amin published *tahrir al-mar'a* (i.e. the liberation of women) and in 1901 *al-mar'a al-jadida* (the new woman). Abdelaziz Thalbi, the founder in 1920 of the Tunisian Liberal Constitutional Party or Destour, was sentenced to two months in prison in 1904 for his reformist positions and his campaign against Muslim preachers (Chater, 2010). He published in 1905, along with two European authors, *L'esprit libéral du Coran* (the liberal spirit of the Qur'an) where he protested against the *hijab* and the seclusion of women.

A. Women Demonstrate

Towards the end of the nineteenth century the circulation of women in public space, which had been limited to visits to the *hammam* (public baths), to family, and to the cemetery, became more visible. Also, between 1892 and 1939, almost 600 biographies of women were published in Egypt by authors of both sexes. Women's magazines and newspapers appeared in a number of Maghreb and Mashreq countries. Princess Nazli Fadhel Pacha of Egypt (1853-1913),[6] who was the widow of Khalil Chérif Pacha, Ottoman Minister for Foreign Affairs, and who held a literary salon in Egypt, remarried in 1900 the Tunisian Khelil Bouhageb. Bouhageb was a member of the management committee of the Khaldounia — an institution where science and new forms of knowledge were discussed — and who became Tunisian Minister of Culture (then called Ministre de la Plume) in 1922. Princess Nazli started a literary salon in 1907 in La Marsa, a suburb of Tunis, that was frequented by the new elite of reformists, writers, and journalists, among them Ali Bach Hamba, director of the *l'Hebdomadaire Tunisien* (i.e. the Tunisian weekly).

While women in a number of countries worldwide were successful in their struggles to gain the right to vote and became members of parliament, Tunisians and women throughout the Arab world continued their struggles against patriarchy and colonialism. In 1911, Tunisian women participated in demonstrations over the Djellaz affair, demonstrations that opposed the French effort to officially register cemetery land, growing out of the population's concern that the French would then control how the land was used. In 1919 Safia Zaghloul, wife of Saad Zaghloul, a leading Egyptian political figure who became Prime Minister in 1924, led a demonstration of women in Cairo against colonialism. In 1923 the Egyptian feminist Hoda Sha'arawi, returning from Rome where she had been attending an international conference on the situation of women, joined other women in shedding the *khama* (a small veil that covers the lower part of the face). This event took place the same year that Kemal Ataturk founded the Turkish Republic and married the suffragette Latifa Ussaki, who had studied law in 1919 in Paris and London. In 1924, women raised the eligible marriageable age to 16 years in Egypt and Manoubia Ouertani, a Tunisian teacher, cast off her *khama* at a conference in Tunis on the women's situation, organized by the French socialists.

Another example, dating from the 1920s, illustrates the aim of the colonial power to put forward an emancipatory discourse even while keeping women under restrictions. In 1927, the French Resident-General in Tunisia addressed a letter to the French plenipotentiary minister in Egypt, Gaillard, to inform him that Tunisian feminists were

preparing to receive a visit from Hoda Sha'rawi, the well-known Egyptian feminist, to support their goal of women's emancipation. He asked Gaillard to refuse granting a passport to Sha'rawi, because her visit to Tunisia was undesirable in the current circumstances (the passport was delivered but Sha'rawi ended up not going to Tunisia). Such practices limited the development of a discussion on the situation of women, blocking its progress in certain cases, radicalizing it in others.

In 1928 Hédi Labidi (1911-1985), Tunisia's first journalist and essayist, published an article in the newspaper *As-Sawab*, in which he invited women to organize themselves in associations. One year later Habiba Menchari, a medical secretary in Tunis of Algerian origin, repeated Manoubia Ouertani's act of shedding her *hijab*, in a situation similar to Ouertani's, and this so angered Habib Bourguiba that he published an article titled "Le voile" (the veil) in the newspaper *l'Etendard*, affirming that the veil was an integral part of the Arab-Muslim personality, criticizing French socialists for holding such meetings, and stating his opposition to assimilation (he was probably also aware at this time of events in some of the Islamic republics of the USSR where young girls were killed by their parents for having taken off the *hijab*). Several historians agree that it was important for Bourguiba to emphasize and safeguard what he called "Tunisian identity," as it was viewed by the community.

Among the Tunisian feminist figures who joined the protests against the French naturalization of Tunisians and the burial of naturalized French citizens in Muslim cemeteries, were Bchira Ben Mrad and Chedlia Bouzgarou. The former was following the position of her father, a Zeitounian *shaykh* who had argued against naturalization; the latter went to families celebrating weddings and denounced *shaykhs* who had issued *fatwas* favoring naturalization. She also attempted to raise awareness of the consequences of such an act (Labidi, 2009b, pp. 33-74; pp.141-219) while presenting two types of Islam, one that was traditionalist and collaborating with the colonial power, and another that was emancipatory.

It was in this context that a book by the Zeitounian theologian, Tahar Haddad (1899-1935) — *imra'atuna fi ach-chariâ wal-mujtamaâ* (our women in Islamic legislation and society) — was published, appearing in 1930 at a time when the Eucharistic Congress at Carthage was taking place and the hundredth anniversary of French Algeria was being celebrated. This created a firestorm among the Zeitouna *ulama*, with Shaykh Mohamed Salah Ben Mrad, an important professor at the Zeitouna and Bchira Ben Mrad's father, refuting the work and in 1931 publishing a pamphlet entitled *Al-hidad 'ala imraatou Al Haddad* (i.e. mourning the woman of Haddad). Another author, not well-known, Amor Berri Medani, attacked Tahar Haddad in his book, *Sayfou al-hak 'ala man layara al-hak* (the sword of justice for he who knows nothing of justice). A profusion of criticism was unleashed against Tahar Haddad who, coming from the south and without support from the Zeitouna *ulama* who were closely connected to the Tunis elite, was supported only by a few writers and journalists. Isolated and prevented from practicing as a notary, Tahar Haddad died in 1935 following a lengthy illness and in complete solitude.

The year 1931 was also a year marked by heavy floods leading to considerable human and material losses, leading Wassila Ben Ammar and Néjiba Ben Mrad, in the following

year (when they were respectively 20 and 17 years old and were both unmarried) to found the Société des Dames Musulmanes (The society of Muslim Women) to help the victims, collecting funds and setting up a refuge and a clothing distribution center. A reception was organized in February 1932 under the auspices of the spouse of Resident General Manceron and the Bey's princess daughters in a residence in the medina where both Wassila Ben Ammar and Néjiba Ben Mrad spoke. Wassila Ben Ammar (who was much later to marry President Habib Bourguiba, in 1962) expressed her regret that The Society for Muslim Women was dominated by men and Néjiba Ben Mrad emphasized the compassion of Muslim women. The event was brought to a close with the naming of Fatma Guellaty as the Association's President. The press reported the association's activities in 1933 when, on the occasion of the *mouled* (the Muslim new year, marking the birth of the Prophet), Saida Ben Chedly (the wife of Othman Kaak)[7] and Bchira Ben Mrad gave speeches on the role of women in Islam. It should be noted here that all these women were related either by blood or marriage.

La Société de Dames Musulmanes, suspected of having privileged relations with the French Resident General in Tunisia, was increasingly ignored by Tunisian families. Bchira Ben Mrad, Néjiba Ben Mrad's sister, applied for an official permit in 1936 to form the Union des Femmes Musulmanes de Tunisie (UFMT), in order to show some independence from the colonial environment and avoid criticism from the Muslim community. The main leaders of this movement were the daughters of Shaykh Mohamed Salah Ben Mrad, their female cousins and other female relatives by marriage. Encouraged by her father, Bchira Ben Mrad explained her ideas and actions on the pages of the newspaper *Chems al-Islam* (The Sun of Islam) and organized concerts to collect funds to assist students from the Maghreb studying in France and to support Neo-Destour party activities. Among the early activities of this new organization was celebrating the return to Tunisia of the country's first woman doctor, Tawhida Ben Cheikh. Awarded a degree from the Medical Faculty of Paris, she became editor-in-chief of *Leila*, the first Tunisian feminist newspaper in the French language, published from 1936 to 1941. *Leila* provoked much controversy when Tunisians realized that among its writers were some Pères Blancs (a group of Christian missionaries, formally called Missionnaires d'Afrique, that was founded in Algeria in 1868). Fearing the influence this publication might have on their daughters, Tunisian families stopped supporting it and, after several years, it ceased publication (Labidi, 2007). Among the other women who joined the UFMT was Badra Ben Moustapha who, with her cousin Frida Agrebi, obtained degrees in 1936 from the Medical Faculty of Algiers and thus became the first certified Tunisian midwives. The second woman doctor was Hassiba Ghilleb, a pediatrician with a degree from the Medical Faculty of Paris, who began practicing in Tunisia in the early 1950s and in 1952 produced a report documenting rapes of Tunisian women in Tazarka by French soldiers.

The leadership of the UFMT sought to attract women with university degrees as representing a new breed of women. The organization's activities aimed to underline the intellectual qualities of its members, via the speeches they gave, the articles they wrote, and the songs and plays they presented at receptions. Bchira Ben Mrad, who frequented the Bey's palace as well as the French Residency, appealed to the Bey's princesses and to the Resident General's wife to sponsor the organization's activities, enabling her to obtain the necessary authorizations to hold UFMT gatherings. The

funds she collected served to finance Tunisian students abroad as well as the activities of nationalist activists. In 1938, three women (all related to Bchira Ben Mrad), all from the UMFT and close to the Zeitounians and to the Old Constitutional Party (le Vieux-Destour), founded l'Union Féminine (The Feminine Union). This organization, aiming to encourage girls' Islamic education and suspected of having a *wahhabi* orientation, did not receive official authorization.

Chedlia Bouzgarou, from a milieu distinct from the women mentioned above and whom we introduced earlier, distinguished herself in 1935 on the public stage and in formal politics and became a major figure in the struggle against colonialism. During one of the Bey's visits through the streets of the Medina, she succeeded in attracting his attention when, to question him about the fate of political prisoners who had been deported, she tricked him by moving among a number of different balconies, making him think that many people were calling to him about the condition of political militants. Her calls upset the Bey's ritual visit and attracted his attention, as well as that of the notables and journalists who were present, and led to full headlines in the press. In April 1938 she organized a small group of women into demonstrations that became legendary: at the arrival of Eric Labonne, France's Resident General in Tunisia, she managed to approach him and yell out, "Long live France, long live Tunisia, long live His Highness the Bey, long live M. Labonne, long live the Destour party, long live Bourguiba" (Habib Bourguiba was her maternal uncle). Several days later she again demonstrated, this time against the arrival of the new French Resident General Daladier. At each of these demonstrations Chedlia Bouzgarou and other women were arrested and sentenced to prison terms. Despite the difficulties and deprivations, whether in prison or outside it, she pursued the struggle, calling upon men and women to mobilize against colonialism and for freedom and independence, and she continued in this way until independence was achieved (Labidi, 2009b). The actions of the Section Féminine du Néo-Destour (The Women's Section of the New Constitutional Party), led by Chedlia Bouzgarou and other historic women figures, were dedicated to political action and to providing moral support for political prisoners and their families (Labidi, 2001).

Among the other movements was the Section Féminine des Jeunes Musulmans led by Souad El Khattech Neiffer, the wife of Mohamed Salah Neiffer, a Zeitounian shaykh. This group collected funds to support the educational and extra-curricular activities of children of modest circumstances, purchase school supplies, and pay salaries for teachers in l'Ecole de la Fille Musulmane. There was also the Union des Femmes de Tunisie (UFT), of a communist orientation, founded in 1944 by Charlotte Joulain, the widow of a French military man. The UFT succeeded in attracting a number of Tunisian women like Hafidha Darrage, Mongia Mouldi, Fatma Ben Romdhane, Fatma Mazigh, Kmar El Bahri, Saïda Ben Mohamed, and Khiari, Boujemâa, Azzouz and Ben Abdennebi (for whom we only have family names). The first Muslim Tunisian woman to lead this organization was Nebiha Ben Abdallah (wife of Dr. Ahmed Ben Miled), elected in 1951. In an interview I had with her in 1983, she told me how she was attracted by the dynamism of this organization, which had activities different from those of the UMFT, which seemed to her prone to setting up meetings for the women of the grand bourgeoisie. In contrast, the UFT's actions had a social character. In the beginning they were directed towards the families of French soldiers, later they targeted poor Tunisian families. UFT members provided health care, visited the sick,

installed water fountains in underprivileged neighborhoods, and showed cartoon films for children and films on health education for women. The final leadership committee was composed of Nebiha Ben Miled, Cherifa Saadaoui, Zohra Ben Slimane, Gladys Adda, Soufia Zouiten, Neyla Haddad, and Fatma Ben Brahim. There was also a section of the UFT called the Union des Jeunes Filles de Tunisie, which included women like Fatma Jellouli, Béatrice Slama, Jaqueline Sebbagh, Juliette Bessis, Khédija Mazigh, Fatma Manaï, Beya Klaï, Kalthoum Bouhafa — all of whom were secondary school students and some of whom were Jewish.

Bakhta Saddam founded the first girl scout section. And the Club de la Jeune Fille Zeitounienne was founded in 1954 and led by Tawhida Farhat, Safia Kehia, Zeinab Ouertani, and Fatma Ben Ali. In 1955 the first conference took place where women demanded social and political rights. It was organized by a group of women from the Tunis bourgeoisie. Alia Babou and Saida Sassi, under orders from Habib Bourguiba, boycotted the meeting and challenged the organizers regarding their use of French to communicate with Tunisians, given that the population was largely illiterate.[8] Alia Babbou also evokes this incident in her memoirs (Babou, 2003).

B. Promulgation of the Personal Status Code
What did leading women figures think of Tahar Haddad? Bchira Ben Mrad, who fought for women's education and for raising the legal marriage age for women, approved of her father's negative view of the author and his work, judging that Haddad was not mature enough to understand and interpret the Qur'an. Nebiha Ben Miled, by contrast, received from her husband, Dr. Ahmed Ben Miled, a copy of Haddad's book as a wedding present. The book argued for the rights of women to work, to appear in public space, to be educated, etc. The activities of the Section Féminine des Jeunes Musulmans, led by Souad El-Khattech Neiffer, were an extension of Tahar Haddad's thought. As for Chedlia Bouzgarou, fully believing that women were equal to men, she did not express her views on the subject, preferring to pursue her own activism.

Starting at the end of the 1940s, men increasingly called upon their wives, sisters, nieces, aunts, and daughters, to read speeches and to engage in the struggle against colonialism. In Tunisia, the women activists of the large cities, sometimes in competition with one another, would go to places like Nabeul, Sfax, and Béja, to hold meetings with women and to sensitize the population on the harms of colonialism.

The final years of the struggle against colonialism saw tensions among a variety of groups. Within the nationalist movement there were two main approaches at odds over the best path toward independence: one led by Salah Ben Youssef who was of a pan-Arab orientation that encouraged an alliance between conservative supporters of pan-Arabism and the upper classes of Tunis, the other by Habib Bourguiba supported by the youth, women, and the labor movement.

Habib Bourguiba's project eventually became the dominant one. Among the reforms he introduced, even before the 1959 Constitution was adopted by the Constituent Assembly that solidified the people's sovereignty, was the Personal Status Code (PSC), promulgated in 1956. It was an accomplishment that provoked hostility among the Zeitounian *ulama*. The members of the Islamic tribunal who denounced the PSC

were either dismissed by the state or sent into early retirement. Even in Egypt, the Imam of Al-Azhar, Shaykh Mohamed Kedher Hassine, originally from southern Tunisia and named to the Al-Azhar position in 1952, opposed the Tunisian reforms and contributed to the hostility in Egypt toward Bourguiba and the new reforms. Among the *ulama*, one of the most visible supporters was Fadhel Ben Achour, and the Tunisian population as a whole accepted the reform without protest. This popular support for various rights for women – outlawing polygamy and divorce by repudiation; instituting divorce by judicial procedure and allowing women to choose their spouses; stipulating equal salaries for men and women for equal work; providing schooling for girls and allowing mixed-sex schools and workplaces; giving women the right to travel and to manage their financial affairs, can be explained by the work undertaken by women to prepare society for such changes and by the commitment of both male and female intellectuals and journalists to pave the way for society to embrace these new *hudud*/values.

Whereas social science research has emphasized the opposition of religious figures to the PSC's promulgation, it has rarely discussed opposition within the Constituent Assembly of 1956-1959 to Article 27 of the proposed constitution, according to which "every citizen of Tunisian nationality is considered to be a voter" ("*considéré électeur tout citoyen de nationalité tunisienne*"). The question is whether this article also includes women. Adel Kaaniche points to a discussion regarding the term "citizen" ("*citoyen*") and whether women were also to be considered voters as men were, and he sees three distinct groups that responded in different ways to this question. For some Assembly members the word "citizen" referred only to men, in light of Article 10 of the proposed constitution that stated that "All citizens have the right to freely travel within the [national] territory, to leave it, and to set up residence within limits defined by law" ("*Tout citoyen a le droit de circuler librement à l'intérieur du territoire, d'en sortir et de fixer son domicile dans les limites prévues par la loi*"). Here, in this view, "citizen" could refer only to men since women "were not free to move around as they wished. Consequently, women could not participate in political life, out of respect for traditions that do not allow them to go outside and participate in meetings" (Kaaniche, 2009).

A group that included Bahi Ladgham, Chedli Ennaifer, and Ahmed Drira proposed postponing this discussion until after the publication of the election law, while a third group, composed of Mahmoud Materi, Mohamed Bellalouna, Sadok Bousoffara, and Azouz Rebai defended women's right to vote. Habib Bourguiba, fearing that Article 27 would be blocked, issued a decree on 14 March 1957 awarding women the right to participate in the municipal elections of 1957, thus confronting the Constituent Assembly members with a fait accompli.

In the 1959 Constitution three articles (out of the total 78 articles) speak of "the human person" ("*la personne humaine*") and of "citizens" ("*citoyens et citoyennes*"). Article 5 states that the "Tunisian Republic guarantees the inviolability of the human person and freedom of conscience, and protects the free exercise of religions, provided this does not disturb public order". Article 6 states that "All citizens have the same rights and the same duties. They are equal before the law". Finally, Article 10 says that "Each citizen has the right to move freely across the territory, to leave it, and to set up residence within the limits defined by law".

This group of articles forms the basis of a culture of human rights, which will be made more explicit in 2002, when the new version of Article 5 became, as follows:

> The Republic of Tunisia shall guarantee fundamental freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence.
> The Republic of Tunisia shall be founded upon the principles of the rule of law and pluralism and shall strive to promote human dignity and to develop the human personality.
> The state and society shall strive to entrench the values of solidarity, mutual assistance and tolerance among individuals, social categories and generations.

If the PSC and then the 1959 Constitution were well received by the Tunisian public, this popular support can also be explained by the respect that the population had for Habib Bourguiba, his word, and his wisdom. While a number of intellectuals had been impressed by the feminists, with some valuing their company, and saw them as role models for their daughters, Habib Bourguiba was the only one to understand the tie that the feminists saw between patriarchy and colonialism and what it would take to break the chains of domination. He was also one of the rare political figures of this period to have had regular contact with women militants between 1930 and 1955, attending their meetings, being photographed with them, entering into correspondence with some, suggesting to others to spread their activities into the country's regions, and encouraging some to represent Tunisian women when international figures came to Tunisia or at international conferences. The other important political figure who integrated the woman's dimension into his political activism was Farhat Hached, one of the founders of the independent trade union movement in 1944 and then the UGTT in 1946. Assassinated by the French in 1952 at the age of 38, he did not have enough time to build ties with the women of various groups.

Habib Bourguiba was also the only major political figure to evoke his mother, his female relatives, and his two wives, during speeches that were broadcast on radio and television, and he did not hide his emotions as he did this. He often mentioned the memory of his mother, who had died at a young age as a consequence of overwork, and he situated his becoming aware of injustices done to women in the period when Tahar Haddad's book appeared, which came out one year after the publication of Bourguiba's article, "Le voile". He also often mentioned the debt he felt towards his female relatives, like his older sister and his nieces, who played a key role in his political life. Finally, these women, along with his wives Mathilde Lorrain (with whom he lived from 1927 till1961 and with whom he had a son) and later Wassila Ben Ammar (who shared his life from 1962 till1986 and with whom he adopted a daughter), also contributed to his sensibility. In addition, women political activists like his niece Chedlia Bouzgarou; Majida Boulila, an activist from Sfax with whom he corresponded; Khédija Tobbal and Essia Ghalleb who the French confined to a camp in the South at the same time he was – all these strong historic women figures enabled him to experience equality between men and women.

He also owes this sensibility to his readings and travels, which enabled him, as with Gandhi, to absorb several elements of the critical liberal humanism he had encountered during his studies in France and, later, during his visits to countries in the Arab world,

Asia, and Europe (Tharamangalam, 1995, p. 461). These diverse encounters contributed to opening his unconscious to his emotional and political experiences, forging a critical spirit towards the great and little traditions and enabling him to introduce reforms like the Personal Status Code and the 1959 Constitution, which constructed a republic in which men and women were to be equal. Other significant measures were adopted encouraging the exercise of critical faculties, such as the 1956 separation of Zeitouna University (founded in 123AH/737AD and which trained *ulama*) from the mosque of the same name and its replacement in 1961 by a Faculty of Theology; the introduction of religious education and civic instruction into the schools; the reinterpretation of certain religious duties like the *mahr* (changing what used to be large amounts of money the groom gave to the bride for marriage to the token amount of one dinar), fasting, the sacrifice of a ram on the Eid al-Adhha, and the pilgrimage, among others. The state also eliminated a number of important religious institutions like the *waqf/ habus* (the charitable religious foundations), and the state began to appoint the Mufti of the Republic and to administer the Department of Worship.

Negotiating the *Hudud*

In this section, I will be discussing how the perceptible discontent of the 1960s became sharper with increasing economic difficulties (a general strike in 1978, armed revolt in Gafsa in 1980, bread riots in 1984, etc.), and turned into social and political anger that required, in the subsequent years, the reaching of a political consensus on two different occasions, where the political parties negotiated limits (*hudud*) to their activities and where, on both occasions, women's rights were a main subject of discussion.

A. The National Pact of 1988

Bourguiba's reforms began to encounter increasing resistance, starting already in the 1960s. Among the actions that created discomfort among the population, I will discuss two: Bourguiba's appeal that the population not fast during Ramadan and restrictions placed on women's wearing the *hijab*.

In 1960 Bourguiba drank a glass of orange juice, in public, during a speech he gave during the month of Ramadan and called upon the people to follow him, a gesture he presented as part of a *jihad* for development. Shaykh Tahar Ben Achour, who had supported the promulgation of the PSC, refused to support Bourguiba's position and Bourguiba's view generated widespread discomfort, including among many who were not strictly practicing Muslims. Nebiha Ben Miled's testimony — she was a social worker at the Charles Nicolle Hospital and had worked alongside Frantz Fanon — sheds an interesting light to help understand how Bourguiba's appeal was received by Tunisians. In recounting her life history to me, she said that, although she did not fast, she refused to carry out the presidential communication transmitted to hospital employees that they not fast but take lunch during Ramadan in the hospital's canteen. Through her refusal to eat in public she was expressing her respect for those who fasted and said she saw in Bourguiba's appeal a transgression that was greater than simply not fasting. Following this incident, which affected her deeply, she requested a month's leave and then decided to resign from her position.

The second case concerns Hend Chelbi who, wearing the *hijab*, gave a speech about Islam on the occasion of the 27th day of Ramadan in 1975, carried live on television.

After her speech she refused to extend her hand to greet President Bourguiba, which was a great shock for Tunisians. Since that incident the *hijab* became increasingly visible in public space, often worn against the parents' wishes – parents who had become, in the eyes of their daughters and according to the religious instruction given in the public schools, not sufficiently devout Muslims.[9] Whereas the state retreated on the question of fasting, with regard to the *hijab* the government published Decree 108 in 1981 which forbids wearing the *hijab* in public institutions.[10] The arguments given to defend the law were that the *hijab* that girls were wearing to school with increasing frequency was "foreign to our traditional dress code", and they were dressing in a way "that merges with 'confessional' dress, which signifies belonging to a group that distinguishes itself by sectarian dress, contrary to the spirit of our times and the healthy evolution of society" (Decree 108, 1981). 1981 was also the year when the Islamic Tendency Movement (MTI, Mouvement de la Tendance Islamique), bringing together Islamically-oriented students, intellectuals, engineers, etc., applied for legal recognition, without success. Several of its leading figures were arrested and sentenced, among them Rashid Ghannouchi, who received an 11-year prison sentence, but then were released in 1984. The MTI continued its activities among the population, providing social assistance, and gradually became more radical in its program.

In 1985 the MTI demanded that the law related to adoption be put to a referendum – Tunisia was then the only country in the Arab world that authorized adoption, with the adopted child able to carry the name of the adopting parents. While the proposed referendum was supported by many adopting parents who were experiencing difficulties with their adopted children, psychologists, jurists, and social workers who had expended much effort to push the state to recognize the rights of adopted children and children born out of wedlock felt, that if a referendum were to be approved, they would have given false hope to both the children and the adopting parents. In fact, no referendum on this question was held and, with attacks carried out in the tourist areas of Sousse and Monastir in 1987 – attacks that were attributed to Islamists – the police made a number of arrests among Islamists including among the MTI members, many of whom were sentenced to long prison terms and two of whom were executed. Finally, on 7 November 1987, Bourguiba's Prime Minister, Zine el-Abidine Ben Ali, deposed the president for mental incapacity, with much of the population thankful that Bourguiba himself was not harmed.

At this point Tunisia entered into a new period where the religious domain was under the control of the political. MTI militants and those of the Party for Islamic Liberation (PLI) were freed from prison in 1987 and on 7 November 1988 the National Pact, which confirmed the maintenance of the Personal Status Code, was signed by a number of parties, including the MTI. Two independent feminist organizations – AFTURD (Association des Femmes Tunisiennes pour la Recherche et le Développement) and the ATFD (Association Tunisienne des Femmes Démocrates), obtained legal status (Labidi, 2007).

The state under Ben Ali continued Bourguiba's policies regarding women, reassuring both feminists and women in general, and new laws were adopted that reinforced this feeling, ensuring the right of a divorced mother to keep the family dwelling, even

when it was registered in the husband's name; the marriage of a girl younger than the legal marriageable age was made conditional on the agreement of the father/guardian and of the mother; the child of a Tunisian mother was awarded the right to choose the Tunisian nationality, with the agreement of the father; a fund was created for divorced women and their children in cases where the husbands/fathers were not paying alimony and judicial proceedings were initiated against them; providing for a choice of marriage contract with either separation or common ownership of wealth; and relations within the couple were to be founded on a partnership (women with financial means should participate in providing financially for the family).

On the political level, the ban on having a religious basis for a political party forced the MTI to remove the religious element from its name. It changed to the Renaissance Party (*al-Nahdha*), but still was not given legal recognition. A number of Nahdha party members were candidates in the 1989 election, as independents, and won almost 14 percent of the seats. After a short period of relative freedom, in 1991 there were explosions at an RCD party office in Bab Souika in Tunis. As a result, Islamist activists of both sexes were pursued and some were sentenced to long prison terms. Some managed to go into exile. Of the 654 Islamist political prisoners identified in 2011 by the Tunisian association "Liberté et équité" as victims of abuse or torture (one of whom, Rachid Chammakhi, died from this treatment), 444 were imprisoned between 1989 and 1994. Among the claims collected by "Liberté et équité", 26 were made by women for measures taken against them on account of their wearing the *hijab* – measures that, in certain cases involved suspension or dismissal from their jobs (Triki & Almiya, 2012).

The state also kept a close watch on the secular opposition and co-opted the independent Tunisian feminist movement, while at the same time marginalizing the movement's historic figures. Activities were closely monitored or made difficult when they were not actually forbidden or cancelled. Women's telephones and emails were monitored. Among the women targeted, Sihem Ben Sedrine and Radhia Nasraoui provide good illustration of the ordeal undergone by independent feminists during this period. After philosophy studies in France, Ben Sedrine worked in Tunisia as a journalist for independent newspapers, published several newspapers and founded publishing houses, and launched radio Kalima in 2000 with Naziha Réjiba. Having founded the National Council for Freedom in Tunisia (Conseil National pour les Libertés en Tunisie) in 1998, she consistently defended freedom of the press and human rights, then found herself physically attacked and her documents and possessions ransacked. In 2001 she was the first person to denounce corruption on TV, on the London-based channel Al-Mustaqilla, and she was arrested at the airport on her arrival in Tunisia and imprisoned. After the revolution of 14 January 2011, Ben Sedrine was appointed member of the Truth and Dignity Commission (l'Instance Vérité et Dignité), which, with 15 members, was charged with establishing a Law on Transitional Justice. The role of this commission was to find and provide indemnities for victims of the abuses of the Ben Ali and Bourguiba regimes, from 1955 to the date of adoption of the Law on Transitional Justice.

Radhia Nasraoui, a lawyer, found her office broken into in 1998 and her documents stolen; then in 2001, on her return from Paris, her documents were seized. She and her daughters were harassed repeatedly in 2002 and in 2003, and she began a hunger strike to stop these attacks against her family and herself. Among her activities, she

co-founded the Association contre la Torture en Tunisie and as a lawyer defended a number of arrested Islamist activists.

In addition, during the 1990s and the 2000s feminists developed mechanisms of defense and resistance. For the members of AFTURD this took the form of research and artistic expression[11]; for the members of the ATFD it took the form of building alliances with human rights organizations, both national ones like the Ligue Tunisienne des Droits de l'Homme (LTDH) and international ones like Amnesty International.

B. The Tunis Appeal of 2003

2003 was a very eventful year, with the political parties and organizations trying to position themselves, and it constituted a key moment in the history of Tunisian feminism and in the debate over the secularization of society and the reinterpretation of religious discourse. Four of the opposition parties – Nahdha, Ettakatol (Democratic Forum for Work and Freedom, Forum Démocratique pour le Travail et les Libertés), the PDP (Parti Démocratique Progressiste) and the CPR (Congrès pour la République) – met in France and signed the Tunis Appeal (L'Appel de Tunis) that proposed that the next government, following the 2004 elections, should respect the people's sovereignty as the sole source of legitimacy. The state should show respect for the population's identity and its Arab-Muslim values, guarantee freedom of belief for all Tunisians, and achieve equality between men and women.

This meeting was not without impact on the feminist milieux in Tunisia and the celebration of 13 August 2003, an annual event marking the anniversary of the Personal Status Code's promulgation, was a theater of multiple tensions among various organizations. A declaration signed by the ATFD, the Tunisian Human Rights League (LTDH), and the Tunisian Section of Amnesty International demanded full equality between men and women and argued that the reference to religion turned women into a target. Their declaration stated:

> As much as we respect the religious convictions of each citizen, man and woman, so we firmly refuse all forms and all practices that take women as target, to transform them into an instrument for the public and social expression of religious choice, which should necessarily be limited to the field of the individual and not go outside the private space (Chouikha, 2005).

But once this text was published, the Tunisian Section of Amnesty International and some members of the LTDH leadership withdrew their support. Some members, surprised by the publication, went so far as to say that they learned of its existence via the press. The ATFD then published a second communiqué where the organization stated "its deep concern," pointed to "the spread of the *hijab*," expressed "its total rejection of this symbol, which is that of women's sequestration and of regression," and attacked the propaganda regarding the *hijab* broadcast by the satellite television channels coming from the Mashreq and its female television figures, questioning the state on its "lack of clear political stance regarding wearing the *hijab*" (Chouikha, 2005, p. 9).

In December 2003 Sana Ben Achour, a jurist and later president of the ATFD (2008-2010), spoke during a round-table discussion titled "The *hijab*: The southern side of the

Mediterranean". It was an occasion for her to clarify the ATFD's position regarding the *hijab* and to show some distance with respect to both the two preceding communiqués that provoked such an outcry and to the repression that the state was exercising. She maintained that the *hijab* (using the French term, "le voile") followed a "Law of men claimed to be in the name of God, aiming to negate women whose femininity, whose bodies, are considered to be base, to be *'awra* (flawed), and are to be hidden under the *hijab* in order not to provoke disorder". She also recognized in her introduction that there were "as many realities as there are *hijab*s and as many *hijab*s as there are uses to which it is put". In fact, she expressed an ATFD position that conforms to the discourse of Tunisian feminists of the 1980s, who denounced the reigning misogyny and at the same time wanted to distance themselves from the government's campaign against women wearing the *hijab*. In this regard she declared, "Everything opposes us to the *hijab*. But understand, oppose doesn't mean repress or legitimize repression [...] to be opposed to the *hijab* is not to reject women who wear it but to refuse the *hijab* as a horizon". The state, concerned over the extent of the debate, increased its repression of women wearing the *hijab*, such as those working in public institutions like hospitals (circular 98, 22 October 2003), or students.

On 14 January 2011 the Ben Ali regime fell, following a revolution led by youth who carried the slogan, "Freedom, dignity, and work". Adolescents became photo-journalists for international satellite television channels and social networks contributed to the mobilization, with women playing a key role during the revolution and in the period of democratic transition post-14 January 2011, both in the government and in independent public institutions set up by the transitional government.[12] The spirit of justice, based on direct experience and/or on reflection and revolutionary legitimacy enabled the society to decide on controversial questions concerning the following matters:

a) In 2011, limitations on wearing the *hijab* were eased, and it was widely accepted that wearing it was a matter of the individual's right to free expression, thus putting an end to the ultimatum: study and work, or wear the *hijab*.[13] This meant that women wearing the *hijab* were no longer harassed by the police and were able to be photographed for their national identity card, with appropriate modifications to Article 6 of Decree 717, of 13 April 1993, defining the characteristics of the identity card.

b) Political parity between men and women was adopted by the Haute Instance Nationale Supérieure pour la Réalisation des Objectifs de la Révolution, de la Réforme Politique et de la Transition Démocratique, composed of 155 members, of which 37 were women. Article 16 of the Electoral Law it adopted in April 2011, affirming parity and mandating alternation between men and women on electoral lists, received 84 votes (some sources say 85) versus 34 who voted against.[14] Electoral lists not respecting this rule were to be eliminated, provoking criticism from the parties affected, particularly new ones who, fearing they would not be able to find women candidates especially in rural regions, ran the risk of having a sharply reduced number of lists. Parties were given the freedom to choose a man or woman to head each list. Against the expectations of many, the Nahdha party voted for parity whereas a number of other parties, expected to vote in favor, voted against. Of all the parties — even among those who followed the basic parity rule of alternating men and women on their lists

— only the *Pole Démocratique Moderniste* had, in addition to parity on their lists, an almost equal number of men and women as list heads (16 women and 17 men). As for the Nahdha party, it put two women as list heads, choosing them to reflect the debates on cultural identity that were taking place in each region. These two women were Souad Abderrahim, a pharmacist and entrepreneur who did not wear the *hijab* and who represented the district Tunis 2, an upper middle-class district where many women did not wear the *hijab*; and Ferdaous Oueslati, a specialist in Islam who wears the *hijab*, similar to many women in her district (which covered the Americas and Europe outside France) who often wore the *hijab* as a sign of identity.[15]

A further note on Souad Abderrahim: in the 1980s she was a militant in the Islamically-oriented student organization, the UGTE (Union Générale Tunisienne des Etudiants) and was arrested for 15 days under Bourguiba's rule; she then suspended her activities as the Ben Ali regime's repression of Islamists became more severe. She rejoined Nahdha as an independent in 2011, running a faultless campaign that contributed significantly to Nahdha's overall success. Married with two children, often dressed in a tight-fitting pants suit, she criss-crossed the streets of her district, presenting herself as a guarantor that Nahdha would not oblige women to wear the *hijab* nor would it touch the Personal Status Code nor other aspects of women's rights, except to improve them.

c) The national campaign, "The culture of citizenship and democracy" ("culture citoyenne et démocratie"), undertaken by the Ministry for Women's Affairs to promote, throughout Tunisia's regions, civic culture and awareness of women's political, cultural, economic, and social rights, and the activities of feminist organizations and of women who engaged in various actions, led to Tunisia's lifting its reservations regarding the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as one of the responses to the demands of the revolutionary youth who called for "freedom, dignity, and work".[16]

Let me make two points here. The first concerns the number of women's associations formed between January and September 2011. That number equalled the number of such associations founded during the more than two decades of the Ben Ali regime. The second point concerns relations among the various feminist and women's organizations during the period of democratic transition between January and September 2011. Here we see the independent feminists criticizing organizations like the UNFT (Union Nationale des Femmes de Tunisie), formed after independence in the Bourguiba period, and the ATM (Association Tunisienne des Mères), which appeared after 1987 under Ben Ali,[17] for having echoed the government's discourse without showing any independence from it, and succeeding in having these organizations placed under judicial oversight.[18] Also, women of the Nahdha party criticized the ATFD for not having come to the aid of prisoners' mothers and for not having defended the rights of women wearing the *hijab*.

The results of the October 2011 elections created a shock for the opposition and for feminists. The results did not meet their expectations and showed a strong bipolarization. Nahdha won the elections with 41.47 percent of the vote (1,501,418 of 3,702,627 votes) and the proportion of women elected to the National Constituent

Assembly (ANC, l'Assemblée Nationale Constituante) was 26.73 percent, slightly lower than the 27.57 percent of women elected in 2009 under Ben Ali. The majority of the women members of the ANC were Nahdha members, and Souad Abderrahim's list won three seats, a very respectable number (Labidi, 2014).

To better understand why these results did not meet the expectations of the elites, we need to return to several events that occurred between 2011 and 2012 and that illustrate the tensions among various social groups and the role played by women in defining freedom of conscience and relations within the family.

New Social Demands

In this section I wish to discuss two events that renewed debates that occurred in Tunisia a half-century earlier, this time with women as the main actors. The documentary film *Ni dieu ni maître* (i.e. neither god, nor master) (Nadia El Fani, 2011) provoked great controversy over freedom of conscience and over fasting during Ramadan, reminding Tunisians of Bourguiba's call to not fast. It also showed how the state, to avoid the people's anger, forbids the sale of alcohol during Ramadan and takes measures that allow cafés and restaurants in tourist zones to remain open while keeping their windows covered in order not to shock the population. The second case concerns the controversy that arose over the formulation in Article 28 of the Constitution proposed by the ANC that took office after the October 2011 elections, a formulation that spoke of "complementarity" between men and women rather than "equality".

A. "*Laïcité InchAllah*"

Nadia El Fani, a filmmaker well-known for her fiction film *Bedwin Hacker* (2003), *Les enfants de Lénine* (2007) devoted to her Communist father, as well as for a number of documentaries and short films, provoked a strong reaction among Salafis with her documentary film, *Ni dieu ni maître*. When it was given a special showing in the Spring of 2011, in the context of elections scheduled to take place later that year, it generated few comments but, when put on the program of a theater in Tunis several months later, passions were unleashed even before its projection, leading to violence uncommon in Tunisia. The filmmaker then changed her film's title to "Laïcité InchAllah".

This documentary, completed in 2010 but then taken up again after 14 January 2011 to integrate women's actions during the revolution, contains three scenes relating to fasting during Ramadan. One scene shows the filmmaker, in the middle of the day, preparing to have her lunch, with a beer, in her garden. Two other scenes are filmed with a hidden camera, because El Fani was still waiting to receive official permission to film from the Ministry of Culture. In a taxi she enters into a conversation with the taxi-driver, saying that she didn't believe in God. All the taxi driver answers is: "That's your business".[19] The last scene shows the filmmaker in a café with its windows covered with paper and its clients, all men, drinking coffee either at the bar or seated at a table. She whispers to her assistant that "they behave as though they were fasting, but without fasting," and asks her assistant to film with the hidden camera. Clients who overheard the filmmakers' remarks opposed the filming and a conversation started on the first article of the Tunisian Constitution, which says, "Tunisia is a free state,

independent and sovereign; its religion is Islam, its language is Arabic, and its regime is a Republic". The filmmaker remarks that the government is one thing and religion is another and uses the film to denounce authoritarianism.

Attacked on Facebook, the filmmaker brought two legal cases against her attackers, one in France and the other in Tunisia.[20] To defend her Tunisian case she engaged Bochra Belhaj Hmida, former ATFD president and someone who is clear about her fears for the freedoms of belief and expression.[21] Frida Dahmani, a journalist for Jeune Afrique, questioned Rashid Ghannouchi, founder of the Nahdha party, about his position regarding Tunisians who claim the right to not fast during Ramadan. His answer was: "Whether a person fasts or not concerns only that person and his/her commitment to God". Simply, those who don't fast must respect those who do" (Dahmani, 2012). As for whether one can be a good Tunisian citizen and not a practicing Muslim, or even an atheist, he answered: "All Tunisians are free," and, "No Muslim can excommunicate another," and that "Living together" means the duty of each to respect what the other considers sacred (Dahmani, 2012).

The Maghreb region has been experiencing a debate over freedom of conscience for some years now. The positions of various religious orientations and political parties differ from country to country. During Ramadan 2013, the Tunisian preacher Adel Almi announced that he intended to take photographs of people breaking the fast and to post them on Facebook, to which a number of Tunisians — youth (both male and female), urban, and mostly belonging to the upper middle class — answered that they would put their own photos on Facebook, showing themselves eating during Ramadan, a gesture that gained much support. In Morocco, groups had been protesting for several years against Article 222 of the Penal Code, which provides six months in prison and a fine of almost 100 Euros for anyone breaking the Ramadan fast in a public place. Also in 2013, in the presence of the King of Morocco, the Imam of a mosque in Safi declared that Islam was not against the right of apostasy and non-respect of Ramadan. This speech showed a consensus among Islamist political figures. The second-in-command in Al-Adl wa Al-Ihsan party, Fathallah Arsalane, said that "no pressure can be put on the individual's choice, spiritual relationship, and right to know God" and maintained that "true democracy is sufficiently open to support all opinions" (Arsalane, 2013).[22] The al-Jamaâ movement in Morocco found in this position a way to distinguish itself from a controversial *fatwa* on apostasy issued by the Moroccan Council of *Ulamas*, calling for apostates to be condemned to death. In Algeria, at Tizi Ouzou, almost 500 people, some without clear political affiliation, lunched in public in the middle of Ramadan to demonstrate their freedom of choice.[23]

B. Complementarity

The phrase "complementarity between women and men" ("*complémentarité de la femme avec l'homme*") in Article 28 of the ANC's proposed constitution led to a strong reaction, giving a political character to the debate. The text was revealed by Selma Mabrouk of the Ettakatol party (one of the parties in the governmental "troika" led by Nahdha and also including the CPR which, together with Ettakatol, is a secularist party; Mabrouk later left Ettakatol and joined the Al-Massar party). It stipulates that "the State guarantees the protection of women's rights and what has been achieved, according to the principle of complementarity with the man within the family and

as the associate of man in the development of the country". This was received as an assault on the culture of Tunisians who, since 1956, often call the Personal Status Code "the country's constitution". Women, fearing for their position in society, reacted against this article, which consecrated "complementarity" and not "equality" between the sexes, and was perceived as a regression with regard to what had already been achieved.

In addition, this content was revealed a few days before the 13th of August, 2012 when, annually, the promulgation of the Personal Status Code of 1956 is celebrated. Selma Mabrouk wrote on her Facebook page: "I am a Tunisian woman and before being a woman or a Tunisian, I am a human being and a full citizen". She launched a petition on her site calling for "protecting the citizenship rights of women in Tunisia" against the formulation that defines the woman "with regard to the man" and supporting a vision that does not say that the man is the "complement to the woman" (Dufourmont, 2012).

Immediately, a group of associations came together, composed of the ATFD, AFTURD, the Tunisian League for the Defense of Human Rights (LTDH), the Executive Committee and the Women's Commission of the UGTT Trade Union, the Tunisian section of Amnesty International, and the National Council for Freedoms, and published a declaration on August 4 that they were scandalized by the suppression of the "principle of the equality between the sexes" and by the insult to the dignity and citizenship of women.[24] The group also highlighted the paternalist approach that gave absolute power to the man while denying the woman her full citizenship rights, and they attacked the text for not recognizing the woman as "an independent being", and as "a citizen having the same human rights and freedoms as the man". The group rebelled against a definition where the woman was defined in relation to the man as father, husband, or brother.[25] The signers called for rejecting the notion of "complementarity" between man and woman, because it was open to misunderstanding and its interpretation risked opening the door to the tactic of fait accompli as was seen in the case of the Algerian Family Code in 1984.

After the demonstrations of 13 August 2012 that mobilized political parties and national organizations that were opposed to the notion of "complementarity" and to the Nahdha, which was seen as supporting it, and where women joined in large numbers to demonstrate against attacks on their rights – the opposition to the Nahdha began to treat women wearing the *hijab* disdainfully, associating them with women working in *hammams*,[26] and making fun of them on social networks – a phenomenon similar to the one pointed out by Alev Cinar (2007) in Turkey. The Minister for Women's and Family Affairs blamed the *hijab* worn by women for preventing women from reaching decision-making positions. Souad Abderrahim, who had succeeded during the electoral campaign in giving the Nahdha an image different from that of the 1980s, was put on television to reassure the population and to defuse the crisis. She confronted Ahlem Belhadj, a child psychiatrist and president of the ATFD, and declared that the text was not final and that it could certainly be changed. Eventually, the mixed commission of the ANC, charged with coordinating and making coherent the work of the various ANC committees, decided to modify Article 28 of the 2014 Constitution and to adopt the phrase "equality between the two sexes, equality of

opportunity as a function of competence, and legal punishment for violence against women". Article 28 gained general consensus before being sent to the Committee on Rights and Freedoms and to the plenary session of the ANC.[27]

It is important to point out here that the Islamic feminist movement, following the October 2011 elections and the intense public discussion, was marked by numerous tensions, pushing these women to reposition themselves, just as this public discussion led some women members of the secular parties to come closer to Nahdha women members of the ANC. Souad Abderrahim, who earlier had criticized Tunisia for lifting its reservations concerning CEDAW, later made a declaration where she withdrew her criticism in the summer of 2011, saying that "There is no question of one woman being against another woman. The gains achieved are untouchable. It is essential to struggle against patriarchal society and the macho mentality that dominates" (Djait, 2013). Meherzia Labidi, Vice-President of the ANC who wears the *hijab*, questioned wearing the *niqab*, encouraged women to take their fate into their own hands, expressed her anger at the rape of a young woman by two policemen, and asked for the judicial system to hear the testimony of the parents of Amina Sboui, a militant of the Femen movement, who had been arrested for defacing a cemetery wall and possessing tear gas.

Finally, the Constitution adopted by the ANC in January 2014 devoted Article 46 to women's rights, stipulating the following:

> The State is committed to protect the achieved rights of women, to support them, and to work to improve them.
> The State guarantees equality of opportunity between women and men to assume different levels of responsibility, in all areas.
> The State works to achieve parity between women and men in elected bodies.
> The state will take the measures necessary to eradicate violence against women.

It should be noted that the article devoted to women reflects the struggle of women who are no longer satisfied with the paternalistic "protection" of the political parties and who, via internal pressure from within the ANC and external pressure from civil society, succeeded in convincing ANC members that the State, as a republic, had to commit itself to guarantee women's rights. While this article is followed by one on protecting children's rights (Article 47) and another on the rights of those with disabilities (Article 48),[28] the rights of the elderly were not protected, despite the fact that they constituted 11 percent of the total population in 2014 and will represent 15 percent of the population in 2025, and also despite studies carried out by civil society groups that mention the mistreatment and the recourse to suicide by elderly individuals living in rural areas.

The debate over equality versus complementarity during the summer of 2012, and the regional turmoil during the summer of 2013 in which Tunisian opposition forces, inspired by the military coup that overthrew Egyptian president Muhammad Morsi, threatened the al-Nahdha-led Tunisian government, strengthened the supporters of "equality", and contributed to the constitutionalization of women's rights in Tunisia in 2014. As a consequence, the Tunisian republic committed to protect, guarantee,

and realize women's rights, and to eradicate violence against women. The Tunisian government, finally formally notified the UN Secretary-General in April 2014 that the government was lifting its reservations regarding CEDAW, a measure that had been adopted by Tunisia's first transitional government in August 2011.

Conclusion

To conclude, I would like to highlight how the refusal of Tunisian elites, civil society, and women's associations to introduce *shari'a* as the foundation of law while writing the new constitution is very much in line with the approaches of thinkers like Talal Asad, Eqbal Ahmad, and others. It is also in line with the push for the constitutionalization of women's rights. The singularity of Article 46 of the Tunisian Constitution is inscribed in the particular characteristics of the history of Tunisian reformism and of the Tunisian women's movements. Article 46 testifies to women's contribution to the process of secularization and reinterpreting religious thinking — dimensions that have been marginalized in the social sciences. Now, during each of the periods we have discussed, we have seen that feminist constructions of what I have called elsewhere a theory of evil — that is, of the obstacles, barriers, discriminations, and misogynous visions that prevent women from achieving their goals — enabled feminists engaged in political parties or in national or independent civil society institutions to identify the elements that motivated their struggles: i.e. colonialism and patriarchy from the 1900s to the 1950s; and discrimination, authoritarianism, and misogyny from the 1950s to the 2000s (Labidi, 1989). These struggles and constructions contributed to the promulgation of the Personal Status Code in 1956 and to the constitutionalization of women's rights in 2014, an increasingly widespread demand by women.

The second aspect relates to the support feminists found among some intellectual and political figures starting in the nineteenth century, who avowed the dependence of men upon women, a view shared by Hédi Labidi, Tahar Haddad, Farhat Hached and especially Habib Bourguiba (Labidi, 2009a). The reforms introduced since the 1950s in fundamental institutions like marriage, children's socialization, mixed-sex schools, women's salaried labor, and the democratization of political life, encouraged the formation of a new subjectivity that played an important role in the defense of women's rights by political parties and national organizations in 1988, 2003 and in 2014, and led to the constitutionalization of women's rights.

The third and last aspect concerns women and their bodies. Women's bodies appeared as central to the Bourguiba and Ben Ali regimes, as they also did for the Islamic Tendency Movement that later became the Nahdha party. Secularist or Islamic modernity involved respectively the uncovering or covering of women's bodies. I have shown above how the public debate during the 1920s over the *hijab*; in the 1930s over the issues raised in Tahar Haddad's book; over women's political rights starting in the 1940s; over the autonomy of feminists during the 1980s, and the constitutionalization of women's rights in 2014, enabled feminist groups to evolve and to express their thinking. These different periods each saw a kind of Tunisian feminism, varying between universalist (calling for complete equality between the sexes with differences between them interpreted as being of social and/or cultural origin) and differentialist forms (calling for equality but believing that certain activities are better suited to each

sex), and reflecting the character of debates that dominated the public sphere up until the end of the first decade of the 2000s. These two trends debated their ideas over the three decades since the 1980s, whereas Islamist women – essentialist feminists (where feminine specificities are complementary to masculine ones and both are necessary to humanize society) – were prevented from participating in public discussion and their thinking did not evolve in public space under the Bourguiba and Ben Ali regimes. While universalist and differentialist feminists, without being in opposition to Islam, call for a greater role for the state (Labidi, 2013) and a more limited role for religion, the essentialist feminists are still seeking their way. The debate over "complementarity" was the first significant public occasion for them to revisit their fundamental visions of women's rights and to refine and redefine their own visions.

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ENDNOTES

1. See, for example, Asad (1993) and Asad (2003).

2. Interview conducted by N. Shaikh. Talal Asad discusses his work on secularism in the modern world. *Asia Society Online*. Retrieved from http://asiasociety.org/islam-secularism-and-modern-state

3. Interview conducted by Y. Sikand. Iqbal Ahmad on Dalit-Muslim Unity. Retrieved from http://www.pdx.edu/sociologyofislam/interview-iqbal-ahmad-dalit-muslim-unity-yogi-sikand

4. Riadh Guerfali writes: "Eighteen months have already passed since this solemn declaration and his highness has not yet given to his people, or to the subjects of allied powers established in his States, any of the promised reforms". In La Constitution tunisienne, charte d'un régime républicain à l'agonie (22/3/2005). Retrieved from http://nawaat.org/portail/2005/03/22/la-constitution-tunisienne-charte-dun-regime-republicain-a-lagonie/

5. Illustration titled: "Tragédie en Tunisie. La revanche d'un Arabe," [Tragedy in Tunisia: An Arab's revenge]. Appearing in Petit Parisien in 1893, cited by Pascal Blanchard and Nicolas Bancel in De l'indigène à l'immigré. [From the indigenous to the immigrant]. Paris: Gallimard, 1998. The authors show how a pseudo-scientific study carried out at the end of the 19th century, titled L'art d'aimer aux colonies, [The art of loving in the colonies], by a certain Dr. Jacobus (a pseudonym) was reprinted a number of times up to the end of the 1930s and how, in this "study", women were described in pornographic and openly racist terms. Also, fearing that their children would be converted, families refused to have their daughters attend mission schools.

6. See Hafsia (2010).

7. In this paper we give a woman's husband's name for purposes of identification only.

8. This event was reported to me by Fatma Jallouli.

9. Only rarely did families escape these criticisms. An Algerian woman – a university graduate, married, and a mother – related to me how her son, shocked by the differences between their rather cosmopolitan family behavior and the narrow sectarian education at school, was strongly influenced by the latter and went to join the armed struggle in Afghanistan during the 1980s.

10. For a discussion of this, see Chouikha (2005).

11. Research has been carried out on a variety of themes like divorce, unequal inheritance between men and women, etc., and was also means to promote social criticism.

12. Yadh Ben Achour heads the Commission Nationale Supérieure pour la Réalisation des Objectifs de la Révolution, de la Réforme Politique et de la Transition Démocratique [Higher political reform commission]; Taoufik Bouderballa heads the Commission d'Enquête sur le Rôle des Forces de Sécurité dans la Répression Sanglante des Manifestations [Commission of inquiry on the security forces' role in the bloody repression of demonstrations]; and Abdelfattah Amor heads the Commission Nationale d'Etablissement des Faits sur les Affaires de Malversation et de Corruption [National fact finding commission on embezzlement and corruption], (foreign bank accounts, real estate in Tunisia, participation in companies and wealth, etc.).

80

13. Testimony of Mongia Laabidi, (2012, March 13), founder of the Association for the Fight against Torture and a victim of torture because she wore the *hijab*, to the *Al-Magharibia* Channel. She was able to flee the country and came to reside in England. Retrieved from http://www.youtube.com/watch?v=s8iMvPywDuY)

14. This law has been challenged but there has been little distribution of writings opposed to this law. See the site: *Le Peuple Touareg: Les manœuvres frauduleuses et déloyales conçues par Yadh Ben Achour* [The Touaregs : Yadh Ben Achour's fraudulous and disloyal manœuvres]. Instance-superieure-isror-yadh-benach.blogspot.sg/2011/04/les-m…

15. She won 10,218 votes, equaling 35 percent of the votes cast.

16. What should we call the revolution in Tunisia? For those living in the areas that were the birthplace of the revolution, it is The Revolution of 17 December; for those living in the capital city of Tunis, it is The Revolution of 14 January. The term Jasmine Revolution suggests, for some, a denial of the sacrifices made by many Tunisians in this struggle. Seddik Jeddi proposes The Olive Revolution; Nebiha Gasmi, The Barbary Fig Revolution; Jaloul Ayed (2013), titled his book, *Tunisie. La route des jasmins* [Tunisia: The road of jasmins]. Paris: Editions de la Différence.
I would like to cite here the study by Robert Castel, "La discrimination négative: le déficit de citoyenneté des jeunes de banlieue", [Negative discrimination: Citizenship deficiency of the youngs of the suburbs] (2006). *Annales, Histoires, Sciences Sociales, 6*1(4), 777-808), which discusses the citizenship deficit of populations, especially those originating in the Maghreb, now living on the peripheries of the large French cities. His observations are similar to what could be seen in Tunisia in 2011, which suggests that the countries of the southern Mediterranean have themselves become the peripheries of Europe.

17. The party in power – Rassemblement Constitutionnel Démocratique, RCD, 1988-2011, [Democratic Constitutional Rally] – descended from the Parti Socialiste Destourien (PSD, 1964-1988), which in turn descended from the Neo-Destour Party, founded by Habib Bourguiba in 1934.

18. On 13 January 2011, the UNFT organized a demonstration to support Ben Ali following his speech in which he echoed the famous phrase uttered by Charles de Gaulle – Je vous ai compris [I have understood you] – and the images of men and women wearing scarves with the RCD's characteristic color of purple, displaying their enthusiasm for the ruler, were broadcast by public television as proof of his popular support. A group of independent women from the country's regions, headed by Rafika Bhouri, was the only group to call for dissolving the UNFT in March 2011.

19. Retrieved from http://www.telerama.fr/cinema/laicite_inch_allah_revolution_tunisie,73190.php

20. Retrieved from http://www.youtube.com/watch?v=3SWzsRSyFlU

21. Bochra Bel Haj Hmida, list head for the Ettakatol Party in Zaghouan for the October 2011 elections, was not elected.

22. Liberté de conscience: Al Adl Wal Ihssane pour le droit à l'apostasie et le non-respect du Ramadan? [Freedom of conscience: Al Adl Wal Ihsan for the right of apostasy and not respecting Ramadan?]. Retrieved from http://maroc.msn.com/news/maghreb-news/1057744/liberte-de-conscience-al-adl-wal-ihssane-pour-le-droit-a-lapostasie-et-le-non-respect-du-ramadan/

23. Report on Algeria Retrieved from http://www.youtube.com/watch?v=RPcCsLwAO80; on France. Retrieved from http://www.youtube.com/watch?v=NleHrF6g09o

24. Anonymous.(2012). Le cadeau d'Ennahdha: 'la complémentarité' de la femme 'avec l'homme' et non l'égalité entre les sexes [Ennahdha's present : gender complementarity not gender equality]. Retrieved from http://www.elkasbah.net/tunisie-fete-de-la-femme-le-cadeau-denNahdha-la-complementarite-de-la-femme-avec-lhomme-et-non-legalite-entre-les-sexes/

25. Anonymous. (2012). Quel avenir pour la femme tunisienne? Complémentaire ou égale? [What kind of future for Tunisian Women? Complementary or equal?]. Retrieved from www.tunisiefocus.com/politique/quel-avenir-pour-la-femme-Tunisian-complementaire-ou-egale-17727/

26. A profession located at the bottom of the scale of professions.

27. Anonymous. (2012). Le fameux article 28 sur la 'complémentarité', recalé. [The famous article 28 on 'complementarity' is plucked]. Available at: www.espacemanager.com/politique/tunisie-le-fameux-article-28-sur-la-complementarite-recale.html

28. Article 47 of the 2014 Constitution reads, Les droits de l'enfant sur ses parents et sur l'Etat sont la garantie de la dignité, de la santé, des soins, de l'éducation et de l'enseignement. L'État se doit de fournir toutes les formes de protection à tous les enfants sans discriminations et selon les intérêts supérieurs de l'enfant .[The rights of the child on parents and on the State are the guarantee for dignity, health, care, education, and instruction. The State must furnish all forms of protection to all children without discrimination and according to the child's higher interests].
Article 48 states, L'État protège les personnes handicapées de toute discrimination. Tout citoyen handicapé a le droit de bénéficier, selon la nature de son handicap, de toutes les mesures qui lui garantissent une pleine intégration dans la société. L'Etat se doit de prendre toutes les mesures nécessaires à la réalisation de cela. [The state protects handicapped persons from all discrimination. Each handicapped citizen has the right to benefit, according to the nature of the handicap, from all measures that can guarantee full integration into society. The State must take all measures necessary to achieve this].

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Women's Fight for the Constitutionalization of Gender Equality in Morocco

Nadia Naïr

When the so-called "Arab Spring" started, nobody thought that the wave of protests would affect so many countries. Who could have predicted that Arab dictators would step down under the street protests' mounting pressure? Uprisings that started in Tunisia spread to Egypt, Yemen, Bahrain, Syria, reaching even Morocco, Jordan and Algeria, albeit rather with a mitigated impact.

So far, the Arab World has been perceived as politically and culturally crippled, at least by Western eyes. Such a conception blinded the West to all the struggles coming from pro-democracy movements that have been taking place in these countries. The various uprisings and demonstrations that have been recently occurring in this part of the world were henceforth forgotten or denigrated – uprisings and demonstrations that were passed over in silence and harshly repressed by the authoritarian regimes, with the blessing of Western countries, especially France and the United States. Such a perception masked the various achievements that were accomplished by the women's rights progressive movement in order to reach full citizenship.

The world discovered by surprise the women's involvement via their pictures while participating in the "Arab Spring" uprisings which gave them an unprecedented exposure. However, women in this part of the world have been claiming their human rights, and even fighting for them for decades now, after having actively participated in the battle for independence as early as the 1930s. Yet, as soon as independence was achieved, women were quickly forgotten about.

During the colonial rule, some male and female thinkers/reformers held large debates on the prevailing situation of women. Not only did they believe that a country's liberation was intrinsically linked to women's emancipation, but they also considered that questioning socio-religious discriminatory measures was a vital matter. The most famous ones were: Mohamed Abdu, Qasim Amin, Tahar el Haddad, and Allal el Fassi. Those were the mostly quoted ones then in terms of women's rights issues. Also, and taking into consideration the masculine and patriarchal notions of history that were prevailing then, "feminist men" seemed to have more visibility and credibility than their female counterparts, such as Malak Hifni Nazik, Houda Shaaraoui, Hind Nawfal, or Malika el Fassi.

In Morocco, like in many other countries that were emerging from colonialism, the nationalists considered that this was not the appropriate time to discuss the condition of women, that the priority should go to the country's liberation and that any debate on the status of women should be put off to a later date that never came. But once independence was achieved, women's associations that were once active during the colonial era disappeared. However, the current Moroccan women's rights movement is very active and has achieved a number of significant reforms at different levels.

At the legal level, the following developments occurred:
• The 1995 Commercial Code and the Code of Obligations and Contracts led to the abolition of the spouse's authorization in order for a woman to conclude trade contracts and labor contracts;
• The 2002 Code of Criminal Procedure allowed married women to have access to justice, on a par with their husbands; prior to that, married women were not entitled to take civil action against their husbands unless authorized to do so by a judge;
• The 2003 Labor Code laid down the concept of non-discrimination based on gender as far as employment and wages are concerned, and referred to sexual harassment in the workplace as a serious misdemeanor;
• The 2008 Nationality Code finally gave Moroccan women the right to pass Moroccan citizenship to their children;
• Various decrees were enacted in order to allow women access to some men-only jobs in the public service (administrative division executives, police agents, postal workers, customs officers);
• The 2004 Family Code is considered to be the cornerstone of reforms: the marital relationship is no longer based on hierarchy, domination, and servitude within the family. Among the most important reforms we find that: the family shall be headed by both spouses, rather than exclusively by the husband; duties and obligations are the same for both spouses; matrimonial guardianship is no longer a necessary condition for issuing a marriage certificate; minimum age of marriage for both males and females is 18; from now on, polygamy is subject to judicial authorization as well as to strict conditions; some modifications were adopted in order to facilitate the proceedings of divorce for women, regulating the sharing of property rights acquired during marriage in case of divorce, reinforcing children's rights; etc...);
• In the Penal Code, paragraph 2 of Article 475 (January 2014) that used to allow a rapist to escape prison sentence by marrying his minor rape victim was abrogated.
• With respect to combating violence against women: The Moroccan Women's rights movement has drawn the attention of the succeeding governments to this issue in order to devise strategies to combat this violation of women's human rights.

At the political level, the following developments occurred:
• The mobilization of the women's rights movement and the advocacy for women's rights led to an increase in the women's political representation from barely 0.5 percent to 17 percent in Parliament and to 12 percent in local communities. While this is a major development, it has not met the women's rights movement's demands yet. It is worth mentioning here that demands for the implementation of a quota have always been challenged on the grounds of their 'unconstitutionality.'

For over a decade, the women's rights movement has been an active player (perhaps

even the most active one) on the political and social scenes in Morocco. It has played a major role in terms of mobilization and advocacy. Also, it has established a name for itself as a reference with regard to women's issues.

Going back to the "Arab Spring" the first demonstrations that were instigated by the 20 February Movement rallied very few women's rights associations. Most of the female protesters participated on an individual basis.

The major political parties that were represented in Parliament then, including the Justice and Development Party (JDP, an Islamist party), which is currently represented in the government, have also chosen to keep their distance from the 20 February Movement, although a number of their young militants were involved in the Movement.

A few days after the start of the first street protests the Moroccan monarchy reacted swiftly by deciding to avoid confrontation. Hence in his speech of the 9th of March 2011, the King announced a new phase of democratic consolidation as well as a global constitutional reform.

Unlike in the past, an Advisory Constitutional Revision Commission was set up in order to draft the new text based on consultations with the various political parties, syndicates and associations. It is worth mentioning here that this Commission included seven women out of 19 members coming from different backgrounds: law, sociology, human rights, and political science.

The royal speech provoked contradictory reactions. In fact, the vast majority of political parties, civil society groups, and major feminist associations agreed to adhere to the reform process, whereas young partisans of the 20 February Movement and very few leftist political associations and parties rejected it calling for the drafting of the Constitution by a Constituent Assembly whose representatives are elected rather than appointed.

On March 16, 2011 the feminist associations organized themselves into a coalition called "The Feminist Spring for Democracy and Equality" (FSDE). The coalition's main objective was to constitutionalize an effective gender equality concerning the civil, political, economic, cultural, and social rights. Several meetings were held in order to draft a joint memorandum that reflected the feminist movement's vision vis-à-vis the new Constitution. After a large debate on the issue, it was decided to present this joint memorandum, in addition to each association's own memorandum. The Constitutional Reform Commission listened to the women's associations' delegates on April 11, 2011.

On the 1st of July 2011, the Constitution was approved in a referendum with 98 percent of the votes. The FSDE welcomed the adoption of its remarks in the new Constitution and called for a "Yes" vote. It should be mentioned here that there was no consensus on the vote within the various FSDE factions.

Concretely, the constitutionality of women's human rights and gender equality is based on the following:

1. The text of the Constitution refers to male and female citizens.
2. The Preamble stipulates the primacy of international conventions over the Moroccan law, hence calling for the domestic law to be in harmony with international law:

> Aware of the necessity of setting its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco subscribes to the principles, rights, and obligations resulting from the charters of the aforesaid organizations and reaffirms its attachment to the Human Rights as they are universally recognized...

This same Preamble states that the Kingdom "pledges ... to protect and promote the human rights mechanisms and the international humanitarian law mechanisms and to contribute to their development within their indivisibility and universality". As for the issue of discrimination, the Preamble stipulates that Morocco pledges to "ban and combat all discrimination based on gender, color, belief, culture, social or regional origin, language, disability or any other personal circumstance". It is worth mentioning here that gender-based discrimination ranks first in the paragraph dealing with the elimination of all forms of discrimination.

3. Article 6 stipulates that: "Public authorities shall work for laying down conditions enabling the creation of an effective rule of law, generalizing liberty and equality of female and male citizens, as well as their participation in the political, economic, cultural and social life".

4. Article 19, which is the first article under Title II of the Constitution, entitled, "Fundamental Freedoms and Rights", stipulates that "men and women have equal civil, political, economic, social, cultural and environmental rights and freedoms as listed in this article and in the rest of the Constitution as well as in the conventions and international treaties duly ratified by Morocco". However, these rights are restricted by the following provisions: "and this is in conformity with the Constitution's provisions and the Kingdom's constants and its laws.

The same article also stipulates the following: "The state shall work towards the establishment of parity between men and women". The third part of the aforementioned article says that: "Therefore, it [the state] has assigned "a specialized authority to ensure parity between men and women and fight against all forms of discrimination.

5. Article 30 stipulates that "All adult citizens, males and females enjoying their civil and political rights are electors and eligible", and that "the law provides provisions designed to encourage the equal access of women and men to elective functions". As such, this article stands against the argument of the quotas' unconstitutionality which is continuously brandished by those who oppose the introduction of a quota system in elections. It makes it mandatory by law for the state to take measures of positive discrimination concerning election to public functions.

6. Article 34 stipulates that, "The public authorities shall draft and implement policies designed for individuals and groups with specific needs", for this purpose, they shall

in particular "address and prevent the vulnerability of certain categories of women, mothers, children, and the elderly ...".

7. Article 115 about to the Superior Council of the Judicial Power Authority states that "a representation of women magistrates must be assured from among the ten members elected, in proportion to their presence in the judicial body".

8. Moreover, the Constitution recognizes the significant role of civil society, as stated in:

> The public interest associations and the non-governmental organizations contribute, within the framework of participative democracy, in the enactment, the implementation and the evaluation of the decisions and the initiatives taken by the elected bodies and the public authorities. (Article 12)

> Participative mechanisms of dialog and concertation are implemented by Regional Councils and Councils of other territorial collectivities so as to favour the participation of male and female citizens and the associations in drafting development programs and their follow-up.

> Male and female citizens, as well as the associations, may present petitions in order to schedule any relevant matter on the agenda of the Council. (Article 139)

This is evidence of the important role that civil society is playing in general, and the feminist movement in particular, as an agent for advocating women's rights and a force for legistlative reform.

A few months after the ratification of the Constitution in November 2011, the JDP became the big winner of the legislative elections, although it had to ally itself with other political groups in order to form a government of coalition that incorporated a left-wing party (the Party of Progress and Socialism, the ex-Communist party).

During this period, many constitutional violations took place:
• Gender parity was not respected within the government. Worse yet, out of 31 ministers, one woman only (the Minister of Solidarity, Women, Family and Social Development) participated in the JDP's first version of the government. When asked about this single nomination, the Prime Minister answered: "We could not find other competent women". Following the withdrawal of some political parties from the government, and in light of critiques coming from the feminist groups, a second cabinet was formed in October 2013, this time with six women[1] out of 39 ministers (representing 15 percent of the cabinet, whereas in 2007 women represented 21 percent).

Unfairness towards women acceding to decision-making positions was palpable. This was felt in the nomination of executive officers, directors and *walis*[2] to strategic institutions, as well as to central, regional and local territorial administrations. For example, only one woman out of 16 was selected as wali of the regional territorial administrations, just two women out of 29 served as governors, and no woman at all served at the head of the four strategic institutions in the country.

• In February 2013, a Commission was appointed in order to draft a Memorandum for the setting up of the Authority for Parity and the Fight against all Forms of Discrimination, under the auspices of the Ministry of Solidarity, Women, Family and Social Development. The Commission was composed of 15 members (eight women and seven men) of academic and legal background. It is worth mentioning in this respect that civil society groups, particularly the feminist groups, were not part of the Commission even though they were asked to submit their opinions and suggestions concerning the Authority and its functioning.

Finally, we should keep in mind that the Commission was supposed to finalize the setting up of the Authority for Parity and the Fight Against all Forms of Discrimination during 2013. However, nothing has been done so far.

• The Governmental Plan for Women's rights, known as *Ikram*, which used the slogan "From Equality to Parity" (the ex-Governmental Agenda for Gender Equality) is considered to be a setback: it shifted from a rights-based approach to one based on charity.

Moroccan women's struggle for the constitutionality of gender equality does not stop here. It seeks to implement the provisions as stipulated by the Supreme Law of the Kingdom and to reform any other legislation in order to make them conform to the Constitution. It is a struggle which seems to be long and complex, just like all the democratic struggles that have been led so far.

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ENDNOTES

1. Charafat Afilal, Minister of Energy, Mines, Water and Environment, in charge of Water Resources; Soumiya Benkhaldoun, Minister of Higher Education, Scientific Research and Professional Training; Mbarka Bouaida, Minister of Foreign Affairs and Cooperation; Hakima El Haite, Minister of Energy, Mines, Water and Environment, in charge of the Environment; Bassima Hakkaoui, Minister of Solidarity, Women, Family and Social Development; and Fatema Marouane, Minister of Handicrafts, Social Economy and Solidarity. Retrieved from http://www.illionweb.com/portraits-des-6-femmes-ministres-du-gouvernement/
2. Someone who has authority or guardianship over somebody else.