

## Who is threatening free speech in post-revolutionary Tunisia?

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Barely a year after a popular revolution toppled the Tunisian regime and provoked a wave of revolts across the Arab world, a small art exhibition was held in La Marsa, a wealthy suburb of Tunis on the Mediterranean coast. Some of the works at the *Printemps des Arts* festival celebrated the revolution; others questioned the new political climate. One showed the words 'Praise to God' spelt out in Arabic script by lines of sculpted black ants. In another, the torsos of three veiled women sank into a circle of stones. On the final day of the show, in mid-June 2012, a minor local court official declared some of the artwork blasphemous and ordered it immediately removed. A large crowd quickly gathered, many of them young Salafists, a nascent movement of radicalised Islamist activists. Some climbed over the walls and vandalised the art; others demonstrated in the street against the exhibition. Over the next few days protests spread across Tunis and beyond the capital. The president, prime minister and speaker of parliament, representing the three parties in the governing coalition, appeared on television to give a joint press conference condemning the violence. However, they also criticised the artists for their 'attack on the sacred', which they [declared](#) to be not an example of free expression but instead a provocative attempt to sow discord in fragile times. Two months later Ennahdha, the Tunisian Islamist movement then leading the coalition, proposed a blasphemy law to ban such 'violations of the sacred'. In the face of death threats the artist responsible for the ant calligraphy fled the country. The sculptor behind the veiled women exhibit was formally accused of 'undermining public morality' and was threatened with up to five years in jail. The *Printemps des Arts* case was but one of many fraught battles over free speech and revealed how contested the meaning of freedom has become in a fledgling democracy.

Tunisia's post-revolutionary, state-rebuilding project has been marked by assassinations, street protests, political deadlock and bitter recriminations between Islamists and secularists. Several cases have been brought for violations of the still-vague limits to free speech and Tunisians

have been jailed for what they have said, written or sung. The list of those accused is growing. In the most serious case, Jabeur Mejri, a young blogger, was jailed for seven and a half years in March 2012 for a Facebook posting which included lewd caricatures of the Prophet Mohammad. Amnesty International named him a [prisoner of conscience](#). His co-accused, Ghazi Beji, fled abroad and was granted political asylum in France. Two months later, Nabil Karoui, the owner of a private television station, was [fined](#) for broadcasting the animated film *Persepolis*, which some critics had denounced as blasphemous. Then another blogger, Olfa Riahi, was [accused](#) of criminal defamation in March 2013 after she alleged misuse of public money by the then foreign minister. Amina Sboui, a Femen activist, was [jailed](#) in May 2013 after writing the word ‘Femen’ on the wall of a cemetery and not long after she had posted a photograph of herself topless on the web. In June 2013 the young rapper Alaa Eddine Yaakoubi, who performs as Weld El 15, was jailed for a song critical of police brutality, *Boulicia Kleb* (Police are dogs).<sup>1</sup> In December 2013 he was jailed a second time for performing another song. As a Human Rights Watch researcher [put it](#), many Tunisians have found themselves ‘suddenly caught in the coils of arbitrary justice’.

Many among the Tunisian elite hold the Islamist movement Ennahdha responsible for this crisis. After two decades in hiding, Ennahdha re-emerged in the weeks after the revolution and swept to power in the country’s first free elections in October 2011. Critics conjured portents of a theocratic state in the making. Many secularists regarded this as a second round in the revolutionary struggle: first the people overthrew an authoritarian police state, now they had to fight an ideological battle to secure hard-won liberal freedoms. ‘The Ennahdha leader wants to Islamise modernity and the Tunisians want to modernise Islam,’ [wrote](#) one law professor. Or as Nejib Chebbi, a veteran secular opposition leader, [said](#): ‘Tunisians don’t want to have an ideology restrain their freedoms.’ Ennahdha presents itself as a socially conservative, religiously inspired political movement whose commitment to democracy was reinforced, not weakened, by the repression it

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<sup>1</sup> This first conviction for likening policemen to dogs, was particularly puzzling given that in September 2011 the veteran statesman and then prime minister, Beji Caid Essebsi, went unpunished after telling a crowd that in his estimation some policemen were “monkeys”. See: [Essebsi Speech Provokes Outcry Among Security Forces, TunisiaLive](#), 6 Sep. 2011.

faced throughout the 1990s and 2000s, when thousands of its members were jailed or forced into exile. It says a democratic system is the best guarantee such repression is never repeated. However, it argues that some freedoms, including freedom of expression, must be limited to accommodate its understanding of Tunisia's culturally specific Arab Islamic heritage. 'Freedom of expression and freedom of artistic creativity are among the freedoms we accept but they are not unrestricted and those who exercise them must call to mind the belief and morals of our people,' said Sahbi Atig, head of the Ennahdha bloc inside the Constituent Assembly.<sup>2</sup> In this climate it is tempting to reduce these clashes over free speech to a polarised battle between liberal secularists and reactionary Islamists. However, that would be to miss the true complexity of a contradictory transitional period, in which at least two conflicting elements are at play: the legacy of a once all-present authoritarian regime and the awkward evolution of an Islamist movement.

The Tunisian dictator Zine el-Abidine Ben Ali was toppled in January 2011 and fled to exile in Saudi Arabia, but some pillars of his rule remain. All the free speech prosecutions since the revolution have come under Ben Ali-era laws, laws crafted with deliberate ambiguity by what was once an all-powerful executive seeking to prop up a police state and rubberstamped by a puppet legislature. One of the most commonly used is article 121.3 of the penal code, which orders between six months and five years in jail and a fine for anyone caught distributing, selling or displaying in public any pamphlets, leaflets and stickers that 'disturb public order or undermine public morality'. Under this law, which is criminal not civil, the prosecutor need only prove that harm might occur, not that it did occur. In 2005 the Ben Ali regime used this law to jail a prominent opposition critic, Mohamed Abbou, who had written an article comparing Tunisian prisons to the infamous US-run Abu Ghraib jail in Iraq.<sup>3</sup> After the revolution, this same article was used to prosecute Karoui, the television director, and Mejri, the blogger. It was also deployed in the *Printemps des Arts* case against the sculptor who created the veiled women exhibit, Nadia Jelassi,

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<sup>2</sup> Sahbi Atig, 'Na'am Li-Tajriim Al-Ta'addi 'alaā Al-Muqaddasāt' [Yes to the Criminalisation of Attacks on the Sacred], Ennahdha, 12 June 2012.

<sup>3</sup> Human Rights Watch, *Tunisia's Repressive Laws: The Reform Agenda* (New York: HRW, Nov. 2011), 22, [www.hrw.org/reports/2011/11/01/tunisia-s-repressive-laws-0](http://www.hrw.org/reports/2011/11/01/tunisia-s-repressive-laws-0).

who is head of fine arts at the Institut Supérieur Des Beaux Arts in Tunis. She was summoned before an examining magistrate to account for her art. ‘The magistrate asked me what were my intentions in making my work,’ she said. ‘It’s a question that I could accept from a spectator, an art critic, a student. But for a judge who is accusing me to ask exactly what happened in my head? Did I really intend to provoke or be against religion? It’s not his business to ask at all.’<sup>4</sup>

Ennahdha leaders admitted that reform of the penal code was one among many urgent priorities confronting the new Tunisia, but argued they could not be held responsible for judges’ decisions. ‘These recent sentences don’t reflect the policy of the government,’ said Zied Ladhari, an elected Ennahdha representative at the Constituent Assembly.<sup>5</sup> He complained that some unexpected sentences were the result of judges playing ‘political games’ in the hope of embarrassing or undermining Ennahdha. This, in his view, explained why a court decided to give only suspended sentences to 20 men convicted of attacking the US embassy in September 2012 in riots in which four people were killed and the nearby American school burnt to the ground.

However, the judiciary did not always seem to act entirely independently. There are clear links between some prosecutions and the Ennahdha-led government, including the case against the artist Jelassi, which was initiated by the public prosecutor who acts on behalf of the state. Jelassi has not been brought to trial, but her case remains open and serves as a clear warning to other artists. In other instances Islamists themselves have initiated cases. For example, an elected Ennahdha representative brought a case against Raja Ben Slama, a psychoanalyst and university professor, for the offence of defaming a public official without evidence after she accused him on a television talk show of watering down free speech protections in a draft constitutional article. The offence is punishable by two years jail under another article of the penal code. Although she has not been brought to trial, her case also remains open. There is no direct evidence of an Ennahdha directive to judges encouraging them to pursue this flood of free speech cases. It may be that many judges were already socially conservative and felt they needed to take a stand against acts they saw as offensive

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<sup>4</sup> Nadia Jelassi, Author Interview, 11 June 2013.

<sup>5</sup> Ziad Ladhari, Author Interview, 1 July 2013.

to their notion of public morality. However, it is also likely that at least in some cases they were reacting to the discourse framed by Ennahdha, which argued for clear restrictions on freedom of speech, particularly on religious grounds. There have been some legal reforms - a new draft press code, for example, removes prison terms for nearly all speech offences. However, this has yet to be incorporated into the penal code, which means judges still have at their disposal numerous, ambiguous laws. As Ben Slama herself argued: 'I think there are judges who, without being either Islamist or conservative, prefer to submit to the pressure of the general atmosphere or prefer to be obliging to the new rulers of Tunisia. There are judges that were obliging to the Ben Ali regime who have become opportunistically obliging to the new rulers.'<sup>6</sup>

Judicial reform too has been halting. For the most part judges from the Ben Ali-era, when the judiciary was an instrument of the presidency, remain in their jobs. Attempts to weed out corrupt judges have been heavy-handed. In May 2012, the then Ennahdha justice minister, Nouredine Bhiri, announced the summary dismissal of 82 judges in a process Human Rights Watch [dismissed](#) as 'unfair and arbitrary'. That may have served as a warning to other judges to step into line with Ennahdha's statements about the need to restrict freedom of speech. Furthermore, after the October 2011 elections the High Judicial Council, a 19-member body used by Ben Ali to control judicial appointments and dismissals, was suspended and the newly-elected Constituent Assembly was tasked with appointing an alternative council. However, the assembly failed to agree on a new body, in part because Ennahdha refused to grant it financial and administrative independence.<sup>7</sup> In August 2012, Bhiri reinstated the original High Judicial Council, with the same members who had served under Ben Ali, giving him effectively the same arbitrary control over the judiciary as enjoyed by the former regime. Only in July 2013 was a temporary replacement judicial council finally [agreed](#). The heart of the challenge presented by these free speech cases lies with an unreformed and unaccountable judiciary.

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<sup>6</sup> Raja Ben Slama, Author Interview, 17 June 2013.

<sup>7</sup> Human Rights Watch, 'Tunisia: Mass Firings a Blow to Judicial Independence,' HRW, 29 Oct. 2012, [www.hrw.org/news/2012/10/29/tunisia-mass-firings-blow-judicial-independence](http://www.hrw.org/news/2012/10/29/tunisia-mass-firings-blow-judicial-independence).

Whatever role the judiciary has played in the battles over free speech, however, the focus of most attention and criticism has been Ennahdha itself. Dismissed as unchanging, theocratic and reactionary by its secular opponents, Ennahdha is better understood as an Islamist movement undergoing a long, difficult evolution. It emerged in the 1970s as a movement focused on ethics and proselytizing before adopting a distinctly political path in 1981, when it argued for the establishment of a 'contemporary image of the Islamic system of government'.<sup>8</sup> By the late 1980s it had accepted the principles of democracy and a civil state. However, Ben Ali soon repressed and dismantled the movement after its surprisingly strong showing in elections in 1989, and its members were jailed for many years or fled into exile. Once its senior figures began to be released from jail in the mid-2000s, Ennahdha signed an agreement on political freedoms and joined a common opposition front with secular, leftist and even communist parties. These were conceptual adjustments rather than mere temporary tactical changes, not least because they were public commitments made at a time when few anticipated the coming fall of Ben Ali and when Ennahdha had little to gain. Since the revolution, Ennahdha leaders have insisted that their party has been a model of consensus and compromise. They emphasise that the party chose not to put up a candidate for the presidency early in the transition for fear of provoking a backlash. Then, lacking an overall majority in the elected assembly, Ennahdha agreed to share power in a coalition government with two secular, social democratic parties. Under pressure in debates over the new constitution, Ennahdha compromised: it retreated from its demand to include mention of sharia law, revised an ambiguously worded article that gave women only 'complementary' status to that of men, dropped a plan to include a ban on 'attacks against the sacred', dropped an article describing Islam as the religion of the state, and ceded ground to those who wanted a mixed parliamentary and presidential system of government. On 9 January 2014, after months of opposition criticism, the Ennahdha prime minister, Ali Larayedh, announced the government's resignation in favour of an interim technocratic cabinet which would oversee the passage to new elections.

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<sup>8</sup> Harakat al-Ittijah al-Islami, 'Al-Bayan Al-Ta'sisi Li-Harakat Al-Ittijah Al-Islami' [the Founding Statement of the Islamic Tendency Movement], in Rachid Ghannouchi *Al-Hurriyyat Al-'amma Fi Al-Dawla Al-Islamiyya [Public Liberties in an Islamic State]* (Tunis: Dar al-Mojtahed, 2011).

At this writing, in early 2014, Ennahdha is moving towards the political centre ground with acts of both ideological change and political pragmatism. Yet its Islamic project has become less and less clear. This ambiguity comes in part because the movement wants to appeal to a broad conservative constituency and fears losing support among its base to radical Salafist movements with their more clearly articulated vision of an Islamic caliphate under sharia law. The political freedoms allowed after the revolution meant Ennahdha faced the loss of its monopoly as the spokesman for political Islam. Confronted with this uncomfortable reality, the movement's ideology has been reduced to a small number of core issues: accepting democratic principles, emphasising Arab-Islamic identity and taking a conservative position on questions of gender and free speech, where protection of 'the sacred' (*al-muqaddasāt*) becomes a primary goal. Islamic norms are thus recast as cultural and moral values, what Olivier Roy describes as the collapse of Islamism as a political ideology and the emergence in its place of 'Muslim democracy'.<sup>9</sup> The result in Tunisia is that a movement that was persecuted for the expression of its political beliefs is intent on once again introducing limits to freedom of expression. In its 2011 election manifesto, Ennahdha committed in general terms to protect 'human rights, public and individual freedoms, freedom of expression and of association'.<sup>10</sup> However, in the wake of the *Printemps des Arts* exhibition, Sahbi Atig, the head of the Ennahdha bloc in the Constituent Assembly, argued that freedom of expression and of artistic creativity was not without limits and should reflect the morals and beliefs of the Tunisian people. He described the revolution as a victory for Arab-Islamic identity, which meant any 'insulting' of 'the sacred' was against the people's 'good morals' and should be criminalised.<sup>11</sup> Two months later the party submitted a draft bill against blasphemy, which although it has not become law did detail what restrictions Ennahdha envisaged for free speech. The bill laid down a broad definition of 'the sacred' including not just places of worship, but also God, his prophets, the Quran and the Sunna (the teachings and practices of the Prophet). It also listed a wide

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<sup>9</sup> Olivier Roy, 'There Will Be No Islamist Revolution', *Journal of Democracy* 24, no. 1 (2013), 14.

<sup>10</sup> Ennahdha, *Barnāmaj Harakat Ennahdha: Min 'ajl Tunis Al-Hurriyya Wa-L-'adālaa Wa-L-Tanmiyya* [Programme of the Ennahdha Movement: For Freedom, Justice and Development in Tunisia], 2011, 12.

<sup>11</sup> Atig, 'Na'am Li-Tajriim Al-Ta'addi 'alaā Al-Muqaddasāt' [Yes to the Criminalisation of Attacks on the Sacred].

variety of actions that would constitute a violation of 'the sacred', including insults, curses, mockery, ridicule, disparagement or disgrace carried out in words, images, or actions, including illustrations or caricatures.<sup>12</sup>

These conservative statements on freedom of expression, apparently at odds with the party's moderation and pragmatism on other issues, were also an effort to forge party identity amid diverse strands of opinion. The more Ennahdha moved to a centrist position, the more it risked undoing its internal ideological unity. Senior leaders in both the moderate and conservative wings of the party share this hawkish position on free speech. In October 2011, Hamadi Jebali, the movement's number two and its most high-profile moderate, criticised the broadcasting of the film *Persepolis*, which included a scene with a representation of God, and emphasised 'the distinction between the right to expression, thought and creativity - rights for which the movement has struggled and is still struggling - and insulting beliefs and sacred symbols'.<sup>13</sup> More recently, another Ennahdha moderate, Samir Dilou, the current human rights minister, [said](#) of the long jail term given to the blogger Jabeur Mejri, the Amnesty prisoner of conscience: 'We must not forget that in Tunisia, with its culture and Arab-Muslim traditions, an attack on the Prophet cannot be regarded as a freedom of expression.' Conservatives in Ennahdha like Habib Ellouz, a preacher and early member of the movement, take a similar position. Ellouz defended the draft bill against blasphemy as necessary to prevent 'provocations' and he too defended the jailing of the blogger Mejri. 'To provoke people on the basis of their religion is totally rejected,' he said. He presented these restrictions as a necessary bulwark against radicalism: 'These kind of provocations will strengthen the jihadi Salafist trend. If you want to see more al-Qaida supporters in Tunisia then be flexible on blasphemy.'<sup>14</sup>

By contrast, the younger generation of Ennahdha leaders tends toward a discourse founded on international human rights, and can be more flexible on some issues. For example, Jawhara Tiss,

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<sup>12</sup> Habib Khedher, 'Mashrū' Al-Qanūn Yata'alluq Bi-Tanqiyh Wa-'itmām Ba'd 'ahkām Al-Majalla Al-Jazā'iyya Wa-Tajrīm Al-Mass Bi-L-Muqaddasāt' [A Draft Law on the Revision and Completion of Certain Provisions of the Criminal Code and the Criminalization of Violation of the Sacred], 1 Aug. 2012, [www.anc.tn/site/main/AR/docs/projets/56\\_2012.pdf](http://www.anc.tn/site/main/AR/docs/projets/56_2012.pdf).

<sup>13</sup> Hamadi Jebali, 'Bayān: Lā Li-L-I'tidā' 'alā 'aqīda Al-Sha'b, Na'am Li-Himāya Al-Masār Al-Sīasī' [Statement: No to Attacks on the People's Faith, Yes to Protecting the Political Process], Ennahdha, 9 Oct. 2011.

<sup>14</sup> Habib Ellouz, Author Interview, 3 July 2013.



28, one of the elected Ennahdha representatives in the assembly, said she was against the prison sentences in many of the free speech cases, including for the rapper Weld El 15 and the blogger Jabeur Mejri. 'If I had to choose between freedom of speech and the protection of religion from any insults, then I am with freedom of speech. Religion doesn't need me to protect it,' she said. But she too emphasised the importance of Arab-Islamic identity in Ennahdha's project and the need for a cultural alternative to Western dominance. 'We have extremists on both the right and the left. Some on the left say Tunisia cannot be a progressive nation if it is not like the Europeans, in other words 'black skin, white minds'. But this is what threatens the identity of Tunisians here. We want to be an independent nation from our ex-colonisers.' Tiss argued in favour of some limits to free speech, but said: 'These limits cannot be put only by politicians. It has to be the outcome of a real debate in society and a consensus.'<sup>15</sup>

That consensus, however, seems a long way out of reach. Following the assassination in July 2013 of an elected leftist politician, Mohamed Brahmi, who was killed by a Salafist cell responsible for a similar political assassination five months earlier, there were weeks of street demonstrations calling for the resignation of the Ennahdha-led government. The Islamists are seen as lax on security, ambiguous in their policy towards Salafist radicals and slow to revive the economy and create jobs. The secular elite in Tunis, which led these protests, presents the political challenge as a profound, irreconcilable ideological battle. Hamadi Redissi, a Tunisian academic, regards the Islamist movement as counter-revolutionary with a deeply restricted view of freedom. 'They believe in morality, public order, the sacred: everything except freedom,' he said. 'This is a democracy but it will never become a liberal democracy.' He also dismissed the Islamist movement as a 'subaltern elite' who were ill-suited for government: 'They are people from nowhere, from the south, from popular areas, and they came into power.'<sup>16</sup>

There is more than a hint of illiberalism here. After all, as Redissi admitted, Ennahdha did indeed come into power: the party emerged victorious from the first free elections in 2011, winning

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<sup>15</sup> Jawhara Tiss, Author Interview, 2 July 2013.

<sup>16</sup> Hamadi Redissi, Author Interview, 17 June 2013.

in all but one constituency and taking 89 out of 217 seats in the assembly. In contrast those parties that expressed the most secular political point of view fared badly at the ballot box. Other secularists echo the Ben Ali regime when they depict the Islamists as obstacles to progress and modernity. 'We are for a modern state of the 21<sup>st</sup> century. They are for a society that has a religious connotation largely marked by imposing their ideas,' said Beji Caid Essebsi, a veteran politician and now leader of the largest opposition party, Nidaa Tunis.<sup>17</sup> 'We say a modern society needs a secular state where religion doesn't intervene. They want a state with Islamic colouring. We are moving in completely different directions.' Such views have tended to dominate in the main television channels and in the main newspapers, where Islamist influence is still limited. New television channels more sympathetic to Ennahdha are beginning to emerge, but slowly.

The consensus that Ennahdha hoped to forge has gradually faded. The slow pace of economic recovery, constitution drafting, legal and judicial reform, and Ennahdha's initially ambiguous response to Salafi radicalism have taken a political toll. Two secularist parties, Ettakatol and the Congress for the Republic (CPR), joined Ennahdha in the 'troika' coalition government after outperforming other opposition parties in the 2011 elections. Both have suffered repeated internal defections and a sharp fall in public support. Moncef Marzouki, the head of the CPR who became Tunisia's president, was once a rare spokesman for the need to accommodate the Islamists but has since faced repeated public criticism and has seen his political fortunes dwindle. Like Ennahdha, he too rounded on the press, which he described as a 'counter-revolutionary' force guilty of 'disinformation, absurd opinion polls, the worst bad faith, and exploiting rumours, slurs and insults to destabilise the "troika"'.<sup>18</sup> He published a 'Black Book', [accusing](#) named journalists and editors of complicity with the Ben Ali regime. The voices of those who argue in favour of political co-existence across the ideological spectrum have become ever more faint.

The most striking practical test of this apparently irreconcilable ideological discord was in the drafting of the new Tunisian constitution, the primary task given to the elected Constituent

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<sup>17</sup> Beji Caid Essebsi, Author Interview, 29 May 2013.

<sup>18</sup> Moncef Marzouki, *L'invention D'une Démocratie: Les Leçons De L'expérience Tunisienne* (Paris: La Découverte, 2013), 43.

Assembly and a job it was supposed to have completed within a year of the 2011 elections. The debates in the assembly at Bardo, the grand residency of the Husainid beys from the 18th century, have been fraught. On 1 July 2013, the first day of the plenary debate on the final draft of the constitution, most of the opposition parties walked out in protest at Ennahdha's handling of the drafting process. The following day they returned but the atmosphere in the chamber was tense. 'Islam is part of the constitution and reminds us that Tunisia is well-anchored in its Muslim heritage,' Sahbi Atig, the head of the Ennahdha bloc, told his fellow representatives. 'This text is rooted in Islam while also guaranteeing freedoms and democracy.' But moments later Slaheddine Zahaf, an independent representative from Sfax, where he runs the city's successful football club, turned to his Ennahdha opponents and said: 'We did not make a revolution to turn Tunisia into Afghanistan. This constitution paves the way to make Tunisia an Islamist country. You lived in fear and today you are still in fear. But you will live all your life in fear because you don't accept the meaning of democracy.'

To draft the constitution, the assembly was divided into six commissions, each reflecting the balance of power in the assembly and each with a separate element of the constitution to work on. The rights and freedoms commission, which dealt with freedom of expression, had nine Ennahdha representatives among its twenty-two members. The main article protecting freedom of expression was revised gradually as debates and public hearings were held. In the first draft, in August 2012, freedom of expression was 'a guaranteed right and freedom', but limits were placed on freedom of the media and of publication, which could be restricted by 'a law protecting the rights, reputation, safety and health of others'. By the time the final article, Article 30, was passed on 6 January 2014, not only freedom of the media and of publication but also freedom of expression could be restricted by such a law. This is broadly in line with and in fact slightly less restrictive than the key International Covenant on Civil and Political Rights of 1966, which Tunisia ratified in 1969. In Article 19, the covenant guarantees freedom of expression but says it may be subject to restrictions,

if provided by law and if necessary, for the respect of the rights and reputations of others, and the protection of national security or of public order, or of public health or morals.

Behind the scenes, some members of the Tunisian rights and freedom commission described acrimonious debates over the precise wording to be chosen for the constitution. Salma Mabrouk, a secular commission member, said there had been strong opposition to placing any limits on freedom of expression, except where such limits followed principles of necessity and proportionality in achieving their aim. ‘We lived 23 years with articles that said freedom of expression was limited by a law that protects public order and the authorities interpreted this however they wanted,’ said Mabrouk. ‘We want to avoid this and to protect all freedoms in general. Where you don’t have this role of necessity and proportionality the authorities can stamp on your rights. That is what we had for 23 years.’<sup>19</sup> She claimed, as have other opposition representatives, that Ennahdha officials ignored the internal votes on this and other questions and pressed ahead with their preferred draft, which in this case allowed for certain restrictions on the freedom of expression. Ennahdha has denied this. Farida Labidi, the senior Ennahdha representative who led the rights and freedoms commission, admitted there had been disagreements on the precise limits to be applied to certain freedoms. ‘There are some asking for freedom of expression without limits. We opted for what is present in Article 19 of the International Covenant,’ she said. Ennahdha had pressed to have the protection of ‘public morals’ included, as it is in Article 19, as a legal restriction on freedom of expression but was forced to concede in the face of opposition. ‘There are some freedoms that are absolute and others we have to regulate and intervene in the ratification to create a legal framework to guarantee them... But there should be a constitution that reflects the desire of all Tunisians, not of one political party, or a majority or a minority.’<sup>20</sup> However, here as elsewhere, there were internal divisions within Ennahdha on the issue. On the day the article was passed in the assembly 16 representatives, including 10 from Ennahdha, put forward an amendment that would have also

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<sup>19</sup> Salma Mabrouk, Author Interview, 8 July 2013.

<sup>20</sup> Farida Labidi, Author Interview, 4 July 2013.

outlawed ‘violations of the sacred’, which it described as God, the Quran and the Prophet.<sup>21</sup> The amendment was withdrawn before a vote could be taken.

However, other articles in the draft constitution also have an impact on freedom of speech and in reality amount to a constitutional stand against blasphemy. The first draft of the constitution, which came out in August 2012 just weeks after the *Printemps des Arts* affair, explicitly gave the state the power to criminalize all ‘attacks on the sacred’ without any further elaboration. After much public criticism this was removed in subsequent drafts only to reappear in a last-minute revision of an article in January 2014, just before the final vote of approval on the constitution. [Article 6](#) of the new Tunisian constitution, which guaranteed freedom of conscience, belief, and of worship, described the state’s new role as undertaking to ‘protect the sacred’ (*himāya al-muqaddasāt*), without defining what ‘the sacred’ means and what protecting it might involve, and to ‘prevent harm’ to the sacred – a clear echo of the earlier attempted ban on attacks on the sacred. In a hastily-arranged compromise designed to assuage Leftist parties, the same article also said the state would act to ban accusations of apostasy and incitement to hatred and violence. A new article proposed in mid-2013 listed a number of points in the constitution that could not be changed by future amendments, among them the fact that ‘Islam is the religion of state’. The legal significance of this sentence was far from certain, and Ennahdha eventually dropped the article as a concession during negotiations with the opposition. Such ambiguities in the drafting process angered the opposition, forced significant delays in the finalising of the constitution and emboldened those demanding Ennahdha’s resignation. It leaves a mixed picture of Ennahdha’s avowed consensus building. The article specifically addressing freedom of expression is less restrictive than it might be. Other articles, however, are vague and problematic and caused serious political divisions. Ultimately, many in Ennahdha argue that parliament in future will be sovereign, with the unstated subtext that the Islamist party is confident it will continue to outperform its rivals at the ballot box. ‘The people are sovereign and will vote for their representatives and these people will design the laws,’ said

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<sup>21</sup> A pioneering Tunisian organization, al-Bawsala, kept a close eye on how individual representatives voted throughout the constitutional drafting period. For detail on this attempted amendment see: [www.marsad.tn/fr/constitution/article/30](http://www.marsad.tn/fr/constitution/article/30).

Farida Labidi. 'The people will elect their representatives and the coming parliament, not the constitution, will choose their rights.'<sup>22</sup>

The battles over the limits of free speech have played a defining role in the early years of Tunisia's new transition to democracy, but this is much more than the polarised Islamist-secularist battle it is often presumed to be. In part it is about a once-powerful, unreformed judiciary treading warily in a new post-revolutionary landscape. Yet it is also the rarely acknowledged story of an Islamist movement that has compromised and moderated its views in some areas but that is clinging to questions of identity and protection of the sacred as crucial to its political project. The constitution drafting process has brought compromise but has left some troubling ambiguities. Meanwhile, the slow pace of economic recovery and the continued lack of social justice, which should surely be the real priorities of the transition, combined with a rising tide of Salafist radicalism, have driven the political process to deadlock. The Arab Spring has no better chance of a successful transition to democracy than in Tunisia, but even here freedoms once taken as won must still be painfully negotiated.

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<sup>22</sup> Author Interview, 4 July 2013.