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Why Did Women's Rights Expand in Post-Revolutionary Tunisia?

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In September 2017, a radical amendment to the Personal Status Code (PSC) made it legal for Tunisian Muslim women to marry non-Muslim men.¹ The new law was issued after President Beji Caïd Essebsi pushed for the lifting of a 1973 marriage restriction decree. The reasoning of the Tunisian state in annulling the restriction was straightforward: It violated Tunisia's 2014 Constitution, which explicitly provides for equality between the sexes. Following the ousting of Tunisian President Zine el-Abidine Ben Ali in January 2011, there was some fear among secular Tunisians that many of the country's "pro-women" policies, often hailed as the most progressive in the region, would be reversed. These policies were closely associated with the vilified old regime, and the Islamic party Ennahda was gaining political and electoral power. Yet, contrary to initial expectations, the legal and political rights that Tunisian women enjoyed before 2011—including the 1956 Personal Status Code that outlawed polygamy—were not only protected post-revolution but supplemented with an array of additional rights, such as the right to marry non-Muslims; a parity clause stipulating that all elected bodies should include at least 50 percent women; and a comprehensive law against all forms of gender-based violence.²

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Most explanations for Tunisia’s democratic and gender “exceptionalism” in a region that is neither democratic nor women-friendly focus on the reconciliatory nature of Ennahda; the weak role played by the military in Tunisian politics; and the existence of a large educated urban middle class with a secular outlook. But these explanations all miss an important part of the story.

This Brief argues that the protection and further expansion of women’s rights in Tunisia during a time of political uncertainty and democratic transition is the direct result of an active women’s rights movement that creatively reframed shared legacies of women’s rights from the old regime: It was the women’s rights movement’s innovative rehabilitation of Tunisia’s pre-transitional nationalist project of state feminism that made it possible to preserve past gains and expand upon them. By focusing on the drafting of Tunisia’s post-revolutionary Constitution and the passing of several recent pro-women’s laws—including the above-mentioned 2017 comprehensive law against gender-based violence, as well as a draft law that calls for equality in inheritance—this Brief will show how these activists’ recasting of pre-transition legacies of state feminism led Tunisians to safeguard past gains and successfully push for more women’s rights in the aftermath of the Arab Spring.

Explaining the Expansion of Pro-Women’s Laws in Tunisia

Following the 2011 Jasmine Revolution in Tunisia, the Tunisian parliament successively adopted an array of women-friendly laws that surpassed even those passed by the previous regime, including its Personal Status Code of 1956. They included an electoral parity clause—as part of Article 46 of the 2014 Constitution—that stipulates that women should constitute at least 50 percent of all electoral party lists at all levels of elected councils, including municipal elections, as well as a 2016 electoral law that organizes how the parity clause is applied.³ Subsequently, in 2017, the parliament passed Law 58, which forbade all forms of gender-based violence, including sexual harassment in public spaces—both workplaces and streets—as well as domestic violence. Approved by the Tunisian parliament on July 26, 2017, this new law is considered a landmark step for women’s rights: It provides women with the means to seek protection from acts of violence by their husbands and relatives, as well as from harassment in the workplace. It also required the state to build shelters for victims of domestic violence throughout Tunisia.

An important amendment to the PSC allowing Tunisian Muslim women to marry non-Muslim men was adopted in 2017, lifting such restrictions for the first time in the Arab world. Finally, in June 2018, a special committee, formed by the late Tunisian president Essebsi, recommended introducing major reforms to the inheritance laws so as to make equality in inheritance a reality in Tunisia.

Though Ennahda’s reconciliatory nature, the weak role of the military establishment in Tunisian politics, and the existence of a large educated urban middle class might each have played a role in enabling this ongoing expansion of pro-women policies in post-revolutionary Tunisia, such explanations ignore the important role played by Tunisian civil society, and by women’s rights activists in particular, in the rehabilitation of past legacies of state feminism. There has been virtually no analysis of the role that the women’s movement played in preserving past gains and adding new rights through their innovative reframing of Tunisia’s

pre-transitional state feminism, as expressed in Tunisian policies, laws, and state institutions.

According to many analysts, the summer 2013 coup against Egypt's democratically elected president Mohamed Morsi, a Muslim Brotherhood member, made political consensus an imperative for Ennahda.⁴ In contrast to the Egyptian Muslim Brotherhood's winner-takes-all strategy, Ennahda intentionally underutilized its power, eager to preserve a consensus with its secular rivals at all costs. In fact, Ennahda's core leadership, and most of its middle-rank cadres, has continuously pursued a policy of political accommodation since 2013. Ennahda officials declared in their 2016 national congress that it had become a party of "Muslim Democrats" for whom religion "functioned as a moral inspiration rather than a comprehensive, ideological vision of the world."⁵ This approach by itself, however, still does not explain Ennahda's decision not to oppose these progressive women's rights laws, many of which are considered by its rank-and-file members to be directly opposed to the requirements of Islamic Sharia law.

The weak role played by the military in Tunisia could partially explain the success of the democratic transition in Tunisia following the Arab Spring, in contrast to what ensued in Egypt and Syria, where the political role of the military establishment was one of the main factors that led to the return of authoritarianism (in Egypt) and civil war (in Syria)—whereas the Tunisian military maintained an apolitical role in 2011 and did not step in to ensure the survival of Ben Ali's regime. But this does not explain the persistence of women's rights in post-transition Tunisia, extending to the passing of a number of laws augmenting those rights. And although Tunisia's post-colonial state did historically adopt developmental and educational policies that helped to create a secularly inclined urban middle class which did support the state's pro-women policies and laws, there was no guarantee that such policies would continue—much less expand—in a democracy where Islamists, another large constituency that was conservative, were rising in power.

All of these contributing factors, however, miss an important element of the story: the strong association of women's rights with the previous regime, and the very active part played by Tunisia's women's rights movement, acting through various institutional channels of the state, in preserving past gains during the political transition and increasing them in the post-transition period.

State Feminism in Tunisia

Tunisia's women's rights movement is made up of a number of well-known women's rights activists who, though they were often regarded by Islamists as favorites of the old regime, were in fact often persecuted under Ben Ali for being part of Tunisia's broader human rights movement. The state did play a supportive role with respect to women's rights in postcolonial Tunisia, but this does not mean that the Ben Ali regime fully tolerated the secular women's rights movement. On the contrary, the largest women's rights organizations, such as the Association for Democratic Tunisian Women (ATFD) and the Association of Tunisian Women for Research and Development (AFTURD), were constantly under security threats, and many of their members were banned from traveling outside Tunisia for long periods of time.

Following the 2011 revolution, many women's rights activists found themselves in the unenviable position of having to defend themselves against attacks both from Islamists and from other revolutionaries who were sympathetic to the old regime. Women's rights activists were vilified as pawns of the Ben Ali regime despite the fact that many of them publicly opposed the old regime and paid a high price for their opposition.

One reason why the women's rights movement was such an easy target for many after the revolution was the close link between the Tunisian post-colonial state-building process and women's rights. In 1956, the new centralized state issued the Personal Status Code (PSC), which introduced the most progressive set of rights in the region for women in the private sphere of the family. Those rights included abolishing the principle of matrimonial guardianship, which means effectively taking away a legal guardian's prerogative to give a woman in marriage against her will; setting a woman's minimum age for marriage at seventeen; changing the rules of divorce and permitting it to take place only in court; and, most famously, outlawing polygamy and making it punishable by imprisonment for a year and a hefty fine.⁶

The central role played by the PSC in consolidating the secular outlook of the post-colonial regime was evident in the fact that the PSC was issued right after independence and even before the first post-independence Constitution was approved in 1959. Despite some minor changes that coincided with the change of political leadership in 1987, after the ousting of President Habib Bourguiba by Ben Ali, the political

system and legal institutions that emerged at the end of the colonial era remained essentially in place until the outbreak of the Jasmine Revolution in January 2011. The political significance of the PSC was further strengthened under Ben Ali with the adoption of the new national charter in 1987. This charter established the framework for multi-party elections, as well as the legal framework for establishing political parties in Tunisia. And it included an article that stipulated that “all political parties must respect the character of the Republican state in accordance with the principle of sovereignty of the people, and preserve the gains of the previous regime, including the Personal Status Code.”⁷

This historic model of Tunisian state feminism had long-term implications for the ways in which the women’s rights movement later envisioned the role of the state, along with their own relationship to state feminism. Both before and after the revolution of 2011, most women’s rights activists believed that women-friendly laws should be defended against conservative Islamist attacks regardless of the paternalistic and authoritarian nature of the state. In addition, the centrality of the PSC in the legal and constitutional history of post-colonial Tunisia points to the close links between women’s rights and the legitimacy of the political regime as well as its ideological basis, a fact that made it much easier for women’s rights activists to exploit the historical legacy of state feminism when they sought even more rights following the 2011 Jasmine Revolution.

Women’s Political Mobilization in Post-Revolutionary Tunisia

Tunisia experienced historic changes in 2011 following the outbreak of the Jasmine Revolution in December 2010. By January 14, 2011, the President and his family had fled the country to Saudi Arabia, and Tunisia’s transition had begun. Throughout the course of the entire political transition, between 2011 and 2014, women’s rights emerged as one of the most hotly contested topics. Despite the apparent contradictions between the Islamist and secular feminist camps, both sides shared a common desire to reclaim ownership of the women’s rights agenda.

In the midst of an uncertain and highly polarized political context, several veteran women’s rights activists, who until then had been mostly members of independent women’s rights organizations, made the decision to run in the 2011 parliamentary elections. Two primary factors motivated these activists to enter the political arena. On the pragmatic level, many were

motivated by the fear that Tunisian women’s rights were or would be under attack after the rise of Ennahda. And several women’s rights activists were motivated by the conviction that women’s rights were inherently political issues and that they needed to vigilantly defend the historic gains of Tunisian women from attacks by Islamists.

By August 14, 2012, each of the Constituent Assembly’s six subcommittees had submitted their drafts of the constitution to the parliament’s Coordination Committee. Before the final draft was even released, however, rumors that Article 28 referred to women as “men’s complements” and “associates” leaked from some members of the assembly to the Tunisian and international news media, provoking a firestorm of controversy.⁸ Given the institutional and legal legacies of state feminism in Tunisia, Article 28 was seen as implying that women should occupy a subservient status with respect to men, which elicited a huge outcry among center-left and secular parties, and among many Tunisian women from all walks of life.⁹

Ennahda responded by fighting back, renting a massive conference hall in downtown Tunis for its widely advertised celebration of National Women’s Day on August 13, 2012. Many Ennahda leaders also began to call out a number of women’s rights activists by name, accusing them of deliberately misrepresenting their words and of making ill use of the patronage they had enjoyed as women’s rights activists under Ben Ali. The women’s rights activists countered with a wide campaign, launched in both local and foreign media, in which they accused Ennahda of showing their true colors once they reached power and renegeing on pre-election promises.¹⁰ In the end, this initial draft of Article 28 prompted so much political controversy that Ennahda was forced to issue an official statement declaring that the leaked draft of the article was just a working draft. Ennahda female MPs who were part of the drafting commission felt that the article was mistranslated and taken deliberately out of context by Ennahda’s political rivals.

Tunisia’s women’s rights activists, a number of whom were by now members of the Constituent Assembly, saw in the controversy around Article 28 their chance to influence the terms of a public debate on women’s rights, proceeding for the first time in Tunisia in a democratic setting. Moreover, feminist activists, both inside and outside the Constituent Assembly, tried to influence the constitutional drafting process through a two-tiered approach. They first framed their demands in the form of a popular slogan that they disseminated through media

outlets, public statements, and political speeches in the Assembly itself: “No turning back the clock on the rights of Tunisian women” (*La Targo’a An Hokok we Moktasbat Al Mar’a Al Tounisi’a*). The slogan conveys an understanding of something like a progressive trajectory of women’s rights, and was intended to remind the Tunisian people of the importance of the Tunisian state’s legacy of preserving those rights. This was by way of direct reaction to what feminist activists, as well as increasing segments of Tunisian society as a whole—especially the educated urban middle class in Tunisia’s rich coastal cities—saw as an attack, evident in the political rise of Ennahda, on the secular progressive legacy of the post-colonial Tunisian state.

The slogan began to appear on banners during various political events, marches, and public meetings that occurred around this period. Moreover, several secular political parties and civil society associations, many with close ties to the feminist movement, called for a large march to coincide with the Tunisian National Women’s Day celebration on August 13. Popular sentiment against the ways in which Islamists were threatening the Personal Status Code encouraged many Tunisian men and women to attend the march that day. The event was a great success in terms of both turnout and political impact, and was widely covered in both local and international media.¹¹

The second prong of Tunisian women’s rights activists’ approach was forming strategic alliances across ideological and institutional divides. Feminist activists reached out to Ennahda’s leadership within the Constituent Assembly, proposing the inclusion of a principle of parity between men and women in elected councils. To feminist activists, getting Ennahda on board with the parity clause served two purposes. First, it ensured passage of the parity clause in the final voting on the Constitution. Second, Ennahda’s agreeing to the parity clause would probably shame other, secular parties into supporting it as well.

Feminist activists lobbied for months, both inside and outside of the Constituent Assembly. Outside the assembly, activists led media campaigns and framed their message in ways that evoked the parity clause as a way of ensuring that women would be equally represented at all levels of decision-making. Inside, they tirelessly lobbied to convince members of the importance of adopting the parity clause. In particular, they continued to negotiate with members of Ennahda over the scope of the parity clause and whether it should be just vertical (meaning that 50 percent of electoral party lists should be composed of women, regardless of their placement on

those lists) or also horizontal (requiring so-called “Zebra Lists,” in which positions alternate between men and women).¹²

Most political parties—many of which were created only after the revolution—opposed the parity clause, realizing they would have difficulty finding enough female candidates to fill 50 percent of their lists. Ennahda supported the law, however, confident that its support base was broad enough to field the necessary numbers of women candidates in most districts. Ennahda’s support for a parity clause in the Constitution was one of the main reasons feminist activists decided to join forces with them.

It is notable that Ennahda’s political leadership saw a strategic political gain in agreeing to pass the parity clause and amend Article 28. A straightforward explanation based on the above narrative might lead to the conclusion that their decision to compromise on women’s rights stemmed from a pragmatic desire to reach a political settlement with respect to the Constitution. It is important to note, however, that Ennahda was the only major political party to fully respect the gender parity rules for electoral lists even before passage of the parity clause in the 2014 Constitution—which might be explained by Ennahda’s need to gain international recognition from the outside world as a moderate Islamic movement. Other analysts, though, consider that the conciliatory nature of Ennahda is better explained by the internal dynamics of the party itself.¹³ Throughout the period from 2012 to 2014, Ennahda mobilized many female activists who constituted an important part of its network of support in the rural and underdeveloped Tunisian interior. The fact that the women’s rights movement saw an opportunity to pressure Ennahda for a full constitutional parity clause points to the important role the movement played in making use of the political opportunity structure that existed following the revolution to push for more legal rights for women. In the end, Tunisian feminist activists managed to secure a critical victory for women’s political representation within the context of the constitutional drafting process.¹⁴

In addition to mobilizing around the new Constitution, the women’s rights movement organized widely against gender-based violence. In July 2017, the Tunisian parliament issued a new comprehensive law against gender-based violence that redefined sexual harassment in the workplace and the streets, made it more easily punishable by law, introduced harsher penalties for domestic violence, and made it difficult for rapists to escape prosecution.¹⁵

The law against gender-based violence came into being as a result of sustained, years-long efforts by the women's rights movement. One of the most remarkable gains in the law was the introduction of a requirement that Tunisian police refer any woman who reports an assault to a hospital, where she must be examined by a forensic doctor for evidence of assault. One year after the implementation of the new law, Tunisian doctors reported an increase in the number of women they saw every day.¹⁶ In addition, as of 2017, women in Tunisia are able to access long-term restraining orders against offenders, ensuring their safety as never before.

But the legal rights that the women's rights movement in Tunisia gained following the Jasmine Revolution of 2011 did not stop there. In fact, Tunisian women seem to be gaining a record number of new rights, even since the end of the transition period. In addition to the comprehensive law mentioned above against all forms of gender-based violence, an important amendment to the PSC that allows Tunisian Muslim women to marry non-Muslim men was enacted in 2017.¹⁷ The existing restriction on marriage was seen as violating Tunisia's 2014 Constitution, which explicitly affirms equality between the sexes. The new amendment caused a storm of controversy within the broader Arab world. Scholars from Egypt's Al-Azhar, considered to be one of the main religious establishments for Sunni Muslims, issued an official statement charging that Tunisia seemed to be breaking away from mainstream Sunni Islam by allowing Muslim women to marry non-Muslim men.¹⁸

Also in 2017, President Essebsi announced his intention to give women equal rights under the country's inheritance laws. On August 13, he created the Individual Freedoms and Equality Commission (COLIBE, or *Commission des libertés individuelles et de l'égalité*), which submitted a detailed report to the President, including a new draft law for inheritance, on June 8, 2018. Though the law has not yet passed, the momentum created by the report and by the draft law, along with the existence of a strong political will, on the part of both the President and large segments of Tunisian society, to implement this reform, points to a continuation of the post-revolutionary trend of women-friendly laws in Tunisia. And it exemplifies the continuing role of an active women's rights movement in post-revolutionary Tunisia.

Conclusion

The 2011 revolution in Tunisia subjected women's rights in Tunisia to an unexpected test, as the authoritarian regime that protected those rights and ensured their continuity no longer existed. Put to this test, the women's rights movement in Tunisia actively mobilized to protect their rights. This Brief argues that the expansion of women's rights in post-revolutionary Tunisia is the product of a savvy and sustained campaign that was successfully planned and carried out by the women's rights movement.

In the context of Tunisia, feminist activists saw themselves as part of a historical trajectory of state feminism in Tunisia. They shared a sense of ownership with respect to the project of state feminism and a feeling, among many of them born in the 1950s and 1960s, that they had benefited directly from the legacies of state feminism under Habib Bourguiba. This self-identification with statist projects during a revolutionary upheaval did not mean that women's rights activists were co-opted by the state, but rather that its legacies influenced their political tactics. Rather than allowing their association with the old regime to discredit them as actors in a new, democratic context, they managed to cleverly frame their campaign for constitutional guarantees for women's political participation—and later for further reforms affecting women's private lives—as a continuation of a positive historical trend that should be defended at all costs. In the process, the women's rights movement managed to capitalize on the revolution's democratic gains and push forward a checklist of legal rights for women that remains unparalleled in the region.

Though Tunisia's state feminism remains politically and historically exceptional in the region, the detailed case study discussed in this Brief demonstrates the potential political utility of state laws and policies as resources for campaigns for women's rights. The Tunisian case shows that the content of existing gender ideologies, and the creative ways in which they can be used by an active women's rights movement, may play a major role in determining policy outcomes for women following political transitions. More broadly, the case shows how pre-transition legacies remain powerful tools for mobilizing citizens, even after the fall of authoritarian regimes.

Endnotes

- 1 For more details about the amendment allowing Muslim women to marry non-Muslims, see [“Tunisian Women Free to Marry Non-Muslims,” BBC News, September 15, 2017.](#)
- 2 For more details about the rights that Tunisian women managed to gain after the Jasmine Revolution, see [“Women’s Rights in Tunisia on a Steady Incline of Improvement,” The Borgen Project, March 30, 2018.](#)
- 3 Nedhal Mekki, *Tunisia: Equality in Gender and Constitution* (Tunis: Arab Forum For Citizenship in Transition, 2014).
- 4 Monica Marks, *Tunisia’s Unwritten Story: The Complicated Lessons of a Peaceful Transition* (New York: The Century Foundation, 2017).
- 5 Fabio Merone, *Politicians or Preachers? What Ennahda Transformation Means for Tunisia* (New York: Carnegie Middle East Center, 2019).
- 6 In the original text of the PSC of 1956, the minimum age of marriage for women was fifteen. In 1961, however, state statistics on marriage revealed that 48.5 percent of Tunisian women were getting married between the ages of fifteen and nineteen, whereas only 3.8 percent of men were getting married at the same ages. To counter this gender gap in marriage, Tunisian lawmakers decided to change the minimum age of marriage for women to seventeen. For a detailed discussion of the text of the PSC, see Ilhem Marzouki, *Le mouvement des femmes en Tunisie au XXeme siecle: Feminisme Et Politique* [The Tunisian women’s rights movement in the twentieth century: Feminism and politics] (Tunis: Cérés Publication, 1993).
- 7 Text of the Tunisian national charter quoted from I. William Zartman, ed., *Arab Spring: Negotiating in the Shadow of the Intifadat* (Athens, GA: University of Georgia Press, 2015), pp. 54-55.
- 8 For more details on the coverage of Article 28 in the local and international media, see [Monica Marks, “‘Complementary’ Status for Tunisian Women,” Foreign Policy, August 20, 2012.](#)
- 9 For a detailed analysis of the reactions against the leaked draft of Article 28, see [Tarek Amara, “Thousands Rally in Tunisia for Women’s Rights,” Reuters, August 13, 2012.](#)
- 10 For example, see: [Aida Alami, Women Face Fight to Keep their Rights in Tunisia, New York Times, February 20, 2013.](#)
- 11 For examples of coverage of the National Women’s Day march of August 13, 2012, see Amara, “Thousands Rally in Tunisia for Women’s Rights.”
- 12 It should be noted that even after the parity clause was included in the Constitution, none of the major parties completely complied with 50 percent representation for women on party lists for various reasons including the reluctance of most political parties to field women in constituencies where they fear real competition, and the limited number of women candidates, especially in rural electoral constituencies.
- 13 [Monica L. Marks, Convince, Coerce or Compromise? Ennahda’s Approach to Tunisia’s Constitution, Brookings Doha Center Analysis Paper \(Doha: Paper 10, February 2014\).](#)
- 14 Article 28 of the leaked draft of the Tunisian Constitution, which turned into Article 46 in the final version adopted by the Constituent Assembly on January 26, 2014, read as follows: “The state commits to protecting women’s accrued rights and work to strengthen and develop those rights. The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains. The state works to attain parity between women and men in elected Assemblies. The state shall take all necessary measures to eradicate violence against women.” For more details, see the final text of the Tunisian constitution at: https://www.constituteproject.org/constitution/Tunisia_2014.pdf.
- 15 For more details on the new comprehensive law against gender-based violence in Tunisia, see the report by [Human Rights Watch, “Tunisia: Landmark Step to Shield Women from Violence,” July 27, 2017.](#)
- 16 For more details about the new law and its effects one year after its passing, see [Charlotte Bailey, “One Year Ago, Tunisia Passed a Groundbreaking Law to Protect Women. Has It Worked?,” Time, July 26, 2018.](#)
- 17 For more details about the amendment allowing Muslim women to marry non-Muslims, see [“Tunisian Women Free to Marry Non-Muslims,” BBC News, September 15, 2017.](#)
- 18 For a detailed account of Al-Azhar’s response, see [“Tunisian Plan to Improve Inheritance, Marriage Rules for Women Rattles Muslim Traditionalists,” Associated Press, September 13, 2017.](#)



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