

## Protecting the sacred: Tunisia's Islamist movement Ennahdha and the challenge of free speech

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**ABSTRACT** *Since the 2011 uprising, Tunisia's Islamist movement Ennahdha has proposed a political project based on reclaiming the nation's Arab-Islamic identity. At the heart of this is the issue of 'protection of the sacred', which seeks to define limits to freedom of expression to protect religious symbols from criticism. This is part of Ennahdha's post-Islamist evolution. The movement has drawn away from its earlier ambitions to Islamize the state and now seeks to reconstruct the role of Islam by asserting a cultural Islamic identity, which recasts religious norms as conservative values and which has yet to determine the precise limits of new individual freedoms. The result was to propose a new set of rules for the community under which Tunisians would freely express their religious belief in a way denied them under the former regime, but would also live under a state that defended and guaranteed their religious values.*

Keywords: Tunisia, Islamism, free speech, constitution, secularist

As the Tunisian Islamist movement Ennahdha has drawn away from its earlier ambitions to Islamize the state so it has concentrated its contemporary message on the defence of a cultural project. This project is built on the broad assertion of an Arab-Islamic identity, which includes a particular stance on freedom of expression that may best be characterised as the 'protection of the sacred'. This is the Ennahdha-inspired phrasing that emerged in the final version of the new Tunisian constitution as approved in January 2014 by the National Constituent Assembly, in which the Islamist party held the largest share of seats. The constitution guaranteed freedom of expression (and other related freedoms of conscience, belief, opinion, thought, information, and publication) but simultaneously empowered the state to protect and to prevent harm to 'the sacred' (*al-muqaddasāt*). It did not specify what was being held sacred, nor who might decide this, nor what such protection might entail. Rather, Ennahdha proposed a new set of rules and discourse for the

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community in which citizens would not only be free to express their religious belief in a way denied them under the former regime of Zine al-Abidine Ben Ali but would also live under a state that defended their religious values. It was an assertion of a particular definition of Tunisian identity as Arab-Islamic, with its claim to cultural authenticity. It was a critique of what was perceived as the imposed, secular, Westernised modernisation of the previous regimes, but also an effort to enter modernity through a different, Arab-Islamic path. This article draws on interviews conducted during fieldtrips in 2013 with several Ennahdha representatives and politicians from rival secular parties, as well as Ennahdha party literature, to investigate the origins and development of Ennahdha's position on freedom of expression. It proposes that 'protection of the sacred' should be seen as an important element in the post-Islamist evolution of Ennahdha and argues that this concept has become key to the movement's project of cultural authenticity. This is part of an ongoing and often ambiguous process by the movement to reposition itself for a post-2011 democratic setting, a process likely to be constrained both by the political environment and by internal arguments among its members. It is both defensive, in that it seeks to rally differing views within the movement behind a commonly-agreed objective, but also a sign of evolution and adaptation as the movement recasts itself in the light of the new political freedoms on offer and the new compromises required in the post-uprising political process.

### **A post-Islamist evolution**

Ennahdha's position on freedom of expression emerges out of two overlapping contexts, the first of which is a region-wide phenomenon often described as 'post-Islamism'. We may broadly define Islamism as a political ideology that advocates for control of the state in order to impose an Islamic order under sharia law. This covers a wide spectrum from violent jihadist groups to non-violent mainstream organisations who seek this goal through the ballot box. Post-Islamism then is an attempt to characterise the transformation of those Islamist movements who move from this goal towards becoming socially-conservative political parties that accept the rules of a civil, democratic, pluralist system and no longer advocate for the imposition of sharia law but which maintain an

Islamic reference as their inspiration. The source of this transformation, as Olivier Roy put it, was that Islamism had failed to capture the state and had exhausted its revolutionary zeal.<sup>2</sup> Instead, Islamist movements fragmented into ‘neofundamentalism’, effectively morality-focused activism, and normalised, nationalist, conservative political parties, which advocated elections, political coalitions, and democracy.<sup>3</sup> It was the very involvement in the political process, in this reading, that secularised Islamist movements. Another approach presented this evolution as less a historical development and more a conceptual rethinking. Asef Bayat characterised post-Islamism as ‘both a condition and a project’: condition, in that this exhaustion forced a reinvention of Islamism, and project, in that there was a conscious effort to conceptualise a way to transcend the Islamism of the past towards a new discourse of ambiguity, inclusion, and compromise. ‘Whereas Islamism is defined by the fusion of religion and responsibility, post-Islamism emphasises religiosity and rights’, Bayat wrote.<sup>4</sup>

How much do these explanations explain Ennahdha’s transformation? Ennahdha emerged in the late 1960s and early 1970s as a group focused on religious ethics, Quranic study, and proselytising. In 1981 it adopted a distinctly political path in the name of the Mouvement de la tendance islamique (*Harakat al-ittijah al-islami*, MTI), challenging the authoritarian rule of Habib Bourguiba. What is striking about the movement, though, is that even at this early stage the question of applying the sharia as a discrete set of laws was downplayed and there was a clear endorsement of political pluralism, several years ahead of Islamist movements elsewhere in the region. In other words, elements of the post-Islamist turn were present from the early years. The MTI’s first programme included what might be considered a claim to establish an Islamic state in that it argued for the establishment of a ‘contemporary image of the Islamic system of

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<sup>2</sup> Olivier Roy, *The Failure of Political Islam* (London: IB Tauris, 1994).

<sup>3</sup> Olivier Roy, *Globalised Islam: the Search for a New Ummah* (London: Hurst, 2004).

<sup>4</sup> Asef Bayat, *Making Islam Democratic: Social Movements and the post-Islamist Turn* (Stanford, Calif.: Stanford University Press, 2007), 11.

government'.<sup>5</sup> However, in the following years it rapidly committed itself to the democratic process and, by the late 1980s, to working within a civil, democratic state. This transformation was not without its internal critics, however. Some of the earliest members left the movement in the late 1970s to form the small Progressive Islamists group, because they argued the then MTI was not yet ready for a political path. Others split off in the mid-1980s to form small, hard-line groups, some of which were involved in acts of violence. Again in the early 1990s a small number, including co-founder Abdelfattah Mourou, left the movement in protest at what they saw as its overly-aggressive approach. During the two decades of repression that followed tensions remained between those living in exile abroad and the thousands of members enduring long jail terms in Tunisian prisons. These internal debates over policy and strategy continue.

Yet, despite these tensions, the movement in its formal positions adopted a commitment to the democratic process (the movement conceded defeat after losing the October 2014 legislative elections), non-violent political change, political pluralism, and freedom, which party leaders framed as being among the *maqāsid al-sharī'a*, the higher objectives of the Islamic sharia. Strictly speaking the movement has not formally abandoned its goal of applying sharia, but rather postponed it for the long term until, Ennahdha says, there is a more just economic system and the Tunisian population understands and is willing to accept the implications. In one sense this is radical, in that Ennahdha has moved significantly away from the main Islamist current as represented by the Muslim Brothers in Egypt. At the same time, though, it has become a deeply conservative political party, that stands for identity, traditions, and culture, and which places the family, not the individual, as the most important unit in society. In fact it is these issues that the movement talks about in public, rather than the question of Islam, which is often downplayed in a country where public signs of piety are much more widespread and the religious space more diverse than when the movement first emerged as the champion of Islam in the 1970s. Even though in the post-2011 context Ennahdha projects itself as a party of the revolution in opposition to the surviving

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<sup>5</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 *Bayanat Dhikra al-Ta'sis l-Harakat al-Nahda al-Tunisiyya [Statements Commemorating the Foundation of the Tunisian Ennahdha Movement]* (Tunis: Ennahdha, 2012).

political and economic interests of the former Ben Ali regime, its policies are in fact more conservative than revolutionary. Movements like Ennahdha after often, even by their own members, likened to European Christian democrats. There are some similarities: the importance placed on cultural and moral issues (like religious education in schools), the championing of liberal democratic values and the belonging to a wider social movement that includes charitable, youth, and educational organisations.<sup>6</sup> But there are differences too. Christian democracy emerged in late 1940s Europe in part as an effort to salvage the Catholic church after the war and in opposition to communism and fascism, a context quite different to the gradual transformation of some Islamist movements. Furthermore Christian democracy developed and became assimilated into social democracy at a time when Christian religious observance was contracting, whereas Islamic observance in Muslim-majority countries like Tunisia is today stronger than ever. Christian democracy sought an economic policy that was somewhere between capitalism and state socialism, while Ennahdha and others like it (notably the AKP in Turkey) supports the free market and the capitalist project, taking IMF loans rather than proposing original economic approaches. The histories of Christian democracy and post-Islamism are clearly different, but it is their shared cultural conservatism that aligns them.

What is most useful about the post-Islamist debate here is in explaining the difficulties the Ennahdha movement has in formulating its programme in the post-2011 democratic context. For the post-Islamist evolution does not divest the movement of an Islamic influence but rather recasts the role of Islam and seeks to assert a cultural Islamic identity at the heart of public discourses. This is the point raised by Roy when he sees religious norms being re-moulded as conservative values.<sup>7</sup> He argues that the religious reference has become a ‘conservative sociocultural agenda’ and that post-Islamist ideology is not a blueprint for ruling but an ‘emotional and vague narrative’ most likely to centre on censorship and gender issues.<sup>8</sup> Similarly, Bayat notes that this post-Islamist turn remains largely untested in relation to individual liberties of minority rights, gender rights, and freedom of

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<sup>6</sup> William Hale, 'Christian Democracy and the AKP: Parallels and Contrasts', *Turkish Studies* 6, no. 2 (2005): 297-99.

<sup>7</sup> Olivier Roy, 'The Transformation of the Arab World', *Journal of Democracy* 23, no. 3 (2012): 17.

<sup>8</sup> Olivier Roy, 'There will be no Islamist Revolution', *Journal of Democracy* 24, no. 1 (2013): 17,14.

thought, religion and lifestyle.<sup>9</sup> The debates within Ennahdha since the fall of the Ben Ali regime revolved around precisely this question: the challenge of what it meant to adopt religious values as references and as markers of cultural identity while not enforcing them as explicit principles of law. Most obviously, after first proposing in early 2012 that the Islamic sharia should be mentioned in the new constitution as a source of legislation, Ennahdha soon conceded that this was too divisive a proposition in the new political climate. Its conception of sharia, it now said, was not as a discrete set of laws but as a broader inspiration.

But what did it mean to call on an Islamic reference when shaping a new vision of society? Freedom of expression, and the question of what limits might be placed on expression in order to respect religious values, soon emerged as an urgent test case. Elsewhere in the Arab region, this encounter between an evolved Islamism and the question of individual freedoms involving expression and creativity has produced new cultural formulations. In Morocco the Party of Justice and Development advocates ‘clean art’ (*al-fann al-nadhīf*) in opposition to what it sees as decadent Western art imported by secularists, which might use profanities, inappropriate language, or show relationships outside of marriage.<sup>10</sup> Likewise in Egypt, the televangelist Amr Khaled calls on artists to promote an Islamic revival through an alternative approach, ‘art with a mission’ (*al-fann al-hadif*).<sup>11</sup> In Tunisia these questions are still being negotiated and the relationship between public religion and modes of expression is still being tested. Since the 2011 uprising Ennahdha has taken particular care about the way it explains itself in public: there are frequent events highlighting its long history, its commitment to principles of justice, freedom, and development, and the sacrifice endured by its members through long years of prison and exile. The formal narrative of what the movement now stands for is cautiously framed. In a 2012 interview with his party’s newspaper, Rachid Ghannouchi, Ennahdha’s founder-leader, described it as:

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<sup>9</sup> Asef Bayat, ed. *Post-Islamism: The Changing Faces of Political Islam* (New York: Oxford University Press, 2013), 27.

<sup>10</sup> Said Graiouid and Taieb Belghazi, ‘Cultural production and cultural patronage in Morocco: the state, the Islamists, and the field of culture’, *Journal of African Cultural Studies* 25, no. 3 (2013).

<sup>11</sup> Karin Nieuwkerk, ‘Creating an Islamic cultural sphere: contested notions of art, leisure and entertainment. An Introduction’, *Contemporary Islam* 2, no. 3 (2008).

a civil party with an Islamic reference that seeks reform and one of its aims is to construct and it doesn't aim to destroy the foundations of the republic, but rather to establish a state of justice and development, and a society of tolerance and pluralism and human rights, without denying our Arab-Islamic space and without being alienated from real, daily life.<sup>12</sup>

The reconciliation of these two positions, a society of justice, tolerance, and pluralism that also respects a cultural identity, remained the challenge for Ennahdha as it sought to adapt to the new political freedoms on offer and the new compromises required since the 2011 uprising.

### **Competing visions of identity**

The second context through which this article considers Ennahdha's position on freedom of expression is the ongoing and still inconclusive historical competition over Tunisia's national identity, which is broadly between Tunisia's Arab and Islamic past and the Westernisation favoured by Bourguiba in particular from the mid-1950s onwards. Ennahdha has long emphasised the cultural element of its programme, a search for authenticity in a nation perceived as alienated from its own culture. In this sense the movement's reassertion of the Arab-Islamic project since 2011 is also its engagement in a long and unresolved debate over Tunisia's national identity that began in the Bourguiba era. These are what Sami Zemni calls 'political battles over historical memory',<sup>13</sup> and are a result of the decades-long competition over political power, symbols, and discourse, between the secularising regimes of Bourguiba and Ben Ali, and the Islamist movement. Alternatively put, after the uprising these were not battles about the shape of the political system, since views on this soon became virtually unanimous, nor about rival political ideologies, but rather about 'the "ways of life" of Tunisians,' namely the correct beliefs and conduct appropriate for post-2011 Tunisian society.<sup>14</sup> 'Rather than fight for specific ideological systems and for these ideologies' specific understandings of the state, Tunisian political elites cared, debated, and fought about

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<sup>12</sup> Anouar al-Jamaoui, 'al-'ustadh Rashid al-Ghanushi lil-fajr: nurid hukm al-balad bitafwid min al-sha'b wa bita'iid min al-nukhba al-muthaqqafa al-muwalīa al-thawra [Professor Rachid Ghannouchi to al-Fajr: We want a government of the country with the mandate of the people and with the support of the cultural elite who support the revolution.], *al-Fajr*, 26 October 2012

<sup>13</sup> Sami Zemni, 'The Extraordinary Politics of the Tunisian Revolution: The Process of Constitution Making', *Mediterranean Politics* published online 24 Jan (2014).

<sup>14</sup> Malika Zeghal, 'Competing Ways of Life: Islamism, Secularism and Public Order in the Tunisian Transition', *Constellations* 20, no. 2 (2013).

safeguarding their individual ways of life and about the attendant conception of freedom they imagined,' argues Malika Zeghal.<sup>15</sup>

The sense that post-colonial regimes alienated Tunisians from their authentic culture was present in the movement's writings as early as 1981. At the time it identified as the primary task of the MTI: 'The awakening of the Islamic identity for Tunisia until it regains its mission as a great base of the Islamic civilisation of Africa and putting an end to a state of dependency and alienation and delusion'.<sup>16</sup> Although the movement took a distinctly political stance from 1981 onwards the cultural aspect of the movement always remained present: the focus on moral and ethical comportment, the reassertion of cultural authenticity, and the emphasis on the markers of a marginalized religious identity. The sense of self-alienation remains just as present in the movement's public discourse today. For example, in April 2011, Sahbi Atig, a senior leader of the movement, described a familiar Ennahdha narrative in which the secularising regimes of Bourguiba and Ben Ali are seen as having marginalized Islam through a process of forced Westernisation that cut off Tunisians from their cultural heritage and their identity, an identity which he wrote is not 'an expression of a stagnant, glorifying, narcissistic attitude' but one that is a 'progressive concept' based on Islam and Arabism. 'It is a factor of unity and a source of inspiration and is open to the current era, the gains of modernism, the capability of its recruits and all the best that humanity has produced'.<sup>17</sup> In another article, Atig sought to define what it meant to espouse an Islamic reference, which he said was neither theocratic nor in contradiction to democracy, but rather was 'an expression of and a respect for the identity of the people' given that 'every state has its enduring values and references which you cannot overstep'.<sup>18</sup> In other words, a significant part of the movement's political activities are involved in staking a claim to represent the symbols and language of their vision of a modern, democratic, Muslim state. Although frequently dismissed by the secular and leftist opposition as merely tactical, this recourse to an identity question is instead a

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<sup>15</sup> Zeghal, 'Competing Ways of Life', 255.

<sup>16</sup> Harakat al-ittijah al-islami, 'al-Bayan al-ta'sisi'.

<sup>17</sup> Sahbi Atig, 'Al-huwiyya wa-l-hadatha [Identity and Modernity]', *al-Fajr*, 22 April 2011

<sup>18</sup> Sahbi Atig, 'Al-dimuqratiyya wa-l-marji'iyya [Democracy and the Islamic Reference]', *al-Fajr*, 24 June 2011



fundamental pillar of Ennahdha's self-conception as a political movement. It is now engaged in updating this identity vision to incorporate Atig's sense of the need to evolve in tune with what he called 'the values of modernity'. In the months and years after 2011, when Ennahdha emphasized the need for 'consensus' in the political transition it meant not just pragmatic political agreements over the wording of legal texts or procedural arrangements for elections, but a consensus about the shape and form of Tunisian society in the post-Ben Ali era and it sought to forge that consensus around the pillar of identity. This was a very public rejection of the way the previous regime had deployed official Islam as a legitimising and controlling force, and was thus an attempt to rewrite the role of religion in political life while simultaneously defending the principle of a non-theocratic, civil, democratic state.

### **A climate of free speech prosecutions**

Little more than a year after the uprising, Tunisian judges began hearing a series of prosecutions in which Ben Ali-era laws were invoked to punish defendants for infringing the still-ambiguous limits of free speech by what they had said, written, sung, painted or sculpted. In March 2012, a blogger, Jabeur Mejri, from Mahdia, was jailed for seven and a half years for a posting on the social media site Facebook that included lewd caricatures of the Prophet Mohammad. Amnesty International named Mejri a prisoner of conscience and his co-accused, Ghazi Beji, fled abroad and was granted political asylum in France. In May 2012, Nabil Karoui, owner of the private television station Nessma, was fined for broadcasting the film *Persepolis*, which some had complained was blasphemous in its depiction of the Prophet. An art exhibition, entitled *Printemps des Arts*, at the Palais Abdellia in Tunis in June 2012, was met on its final day with a public protest against some artworks deemed critical of Islam. Prosecutions were brought against two of the artists for 'undermining public morality'. In December 2013, the rapper Alaa Eddine Yaakoubi, who uses the stage name Weld El 15, was jailed for a second time for performing a song critical of the authorities. In September 2013, a union leader Walid Zarrouk, was ordered to be held in detention for writing a Facebook posting that personally criticized a former justice minister and the serving prosecutor

general of the Tunis Tribunal for ‘politicized’ prosecutions. In May 2014, Azyz Amami, a young blogger who played a prominent role in the demonstrations against the Ben Ali regime, was arrested on suspicion of possessing cannabis shortly after his involvement in a new campaign of protest against the police and in support of young demonstrators accused of crimes during the original uprising.

Most of these prosecutions, though not all, took place under the coalition government led by Ennahdha after its victory in the October 2011 elections and as a result some Tunisians argued these cases were evidence of an ideologically-driven climate of restricted freedoms that heralded an Islamist illiberalism. Nadia Jelassi, head of fine arts at the Institut Supérieur des Beaux Arts de Tunis, was charged with undermining public morality for her sculpture depicting the torsos of three veiled women sinking into a circle of stones at the *Printemps des Arts* festival. Although she was never put on trial, she argued the attempted prosecution and Ennahdha’s public position left artists feeling extremely vulnerable and facing a ‘culture of permanent ambiguity’. ‘The question of liberty for me is fundamental. It is the freedom to criticise everything, including religion and ideas, of course. Criticising religion doesn’t mean mocking Muslims. To criticise is not to insult,’ she said.<sup>19</sup> A second artist, facing a similar charge for an artwork displayed in the same exhibition, left the country after receiving death threats.

However, the connection between the prosecutions and Ennahdha was not always clear. The free speech prosecutions were brought not under new laws introduced by Ennahdha but under the Ben Ali-era penal code, which remained unreformed, ambiguous, and highly problematic. One of the most commonly used articles in these prosecutions was article 121.3 of the criminal code, which set a jail term of between six months and five years for anyone convicted of acts to ‘disturb public order or undermine public morality’. This law had been used under Ben Ali to prosecute political dissidents, and was used again after the 2011 uprising to prosecute the cases against Mejri, the Facebook blogger, Karoui, the Nessma television director, and the artist Jelassi. In the case against

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<sup>19</sup> Nadia Jelassi, Author interview, Tunis, 11 June 2013.

the rapper Weld El 15, whose song criticized the police, other articles were used: article 125, which set a punishment of up to a year in jail for insulting a public servant in the course of his or her duties; article 247, which set up to six months in jail for defaming a public official; and article 226, which prohibited the hampering of public morality or decency through acts or words.

Not only did the penal code remain unreformed, but with it the judiciary. Judicial reform was limited in the first three years after the uprising, apart from the summary dismissal of 82 judges by the then Ennahdha justice minister, Nouredine Bhiri, in May 2012, which Human Rights Watch criticized as an ‘unfair and arbitrary’ process.<sup>20</sup> An administrative court later ordered many of the judges be reinstated. The Ben Ali-era High Judicial Council, a rubberstamp body which oversaw judicial appointments and dismissals, was not replaced until April 2014 when the Temporary Authority for the Supervision of the Judiciary was created. Some of the free speech prosecutions appear to have begun with conservative, Ben Ali-era judges who continued to oppose public criticism of the institutions of state, particularly the police, even after the uprising. In other cases there was a more direct link to the executive. The case against the sculptor Jelassi, for example, was brought by the public prosecutor.

Finally, although some Ennahdha leaders spoke out publicly against what they saw as the excesses of free speech, so too did a number of other non-Islamist political leaders. For example, after the protests against the *Printemps des Arts* exhibition, all three senior figures in the coalition government criticized the artists. Hamadi Jebali, the Ennahdha prime minister, Moncef Marzouki, the president and former leader of the Congrès pour la République party (CPR), and Mustapha Ben Jaafar, speaker of parliament and head of the Ettakatol party, issued a joint statement criticising not only the violent protests but also the artists themselves. They denounced the ‘attack on the sacred’, which they said was not an example of freedom of opinion or expression but was intended to

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<sup>20</sup> Human Rights Watch, ‘Tunisia: Mass Firings a Blow to Judicial Independence’, 29 October 2012, <http://www.hrw.org/news/2012/10/29/tunisia-mass-firings-blow-judicial-independence>.

provoke discord in fragile times.<sup>21</sup> Mehdi Mabrouk, the then culture minister and not an Ennahdha member (although he had been a member of the MTI in the early 1980s), said in a press conference at the time that though art may sometimes be provocative it should not ‘attack sacred symbols’.<sup>22</sup> In other cases some criticised free expression when it was directed against the institutions of state. Marzouki, the president and former CPR leader, grew increasingly frustrated with the personal attacks both he and the ‘troika’ coalition government faced in the media and he described the press as a counter-revolutionary force guilty of ‘disinformation, absurd opinion polls, the worst bad faith and exploiting rumours, slurs and insults to destabilize the “troika”’.<sup>23</sup> In July 2014, after Ennahdha had resigned from government, the appointed prime minister, Mehdi Jomaa, reacted to the killing of 15 soldiers by Islamist militants in the Chaambi mountains by ordering the closure of a radio and a television station as well as several mosques and dozens of charitable associations, all of which he said had been inciting violence against the state. Frustration with the sudden emergence of a free, vibrant, and critical public debate was not confined to Ennahdha.

### **Ennahdha and the question of free speech**

During the years of Ben Ali’s repression against the Islamists, which began shortly after the 1989 elections, Ennahdha, like other opposition parties, held freedom of expression as a key demand. In the early stages of the crackdown the party’s newspaper *al-Fajr* was closed down and its editor, Hamadi Jebali jailed after it ran an article criticising military courts in Tunisia. Although Ennahdha’s political activities within Tunisia during the 1990s and early 2000s were severely curtailed, it did take part in a 2005 opposition coalition largely organized by the Parti démocrate progressiste (PDP) which pledged to work together against the regime, beginning with a hunger strike on 18 October that year. The coalition, the 18 October Collective for Rights and Freedoms

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<sup>21</sup> Leaders, 'Les trois présidents: déjouer les plans des extrémistes par l'unité et la solidarité', *Leaders*, 13 June 2012, <http://www.leaders.com.tn/article/les-trois-presidents-dejouer-les-plans-des-extremistes-par-l-unite-et-la-solidarite?id=8677>.

<sup>22</sup> Afef Abrougui, 'Tunisie : Le ministère de la Culture ferme une galerie d'art', *Nawaat*, 14 June 2012, <http://nawaat.org/portail/2012/06/14/tunisie-le-ministere-de-la-culture-ferme-une-galerie-d-art>.

<sup>23</sup> Moncef Marzouki, *L'invention d'une démocratie: les leçons de l'expérience tunisienne* (Paris: La Découverte, 2013), 43.

*(Al-Hay'a 18 Uktubir lil-Huquq wa al-Hurriyyat fi Tunis)*, produced a written text in late 2007 representing an agreed, cross-party vision of a future democratic Tunisia. Among their goals, along with women's rights, a civil state, and free and fair elections, was a detailed section on freedom of opinion and conscience, which reflected the spectrum of opposition involvement ranging from Ennahdha through the centre-left to the Parti communiste des ouvriers de Tunisie (PCOT). It stated that although the opposition movements relied on different ideological and conceptual references they all agreed on: freedom of conscience as an individual choice, including the right not to choose a religion; the right not to suffer discrimination for religious conviction; the importance of respecting international conventions on freedom of conviction and conscience; an acknowledgement of the place of Islam in Tunisian culture and civilisation; and the place of freedom of expression and opinion as the 'cornerstone' of a project for a democratic society.<sup>24</sup> There were concessions both from the left and from Ennahdha, which here seemed to be engaging in a slow, post-Islamist ideological evolution by explicitly embracing key individual freedoms. Although the opposition collective dissolved by 2009, Ennahdha carried through many of these commitments to its election manifesto for 2011, which explicitly endorsed freedoms of expression, belief, thought, and creativity.<sup>25</sup>

However, these freedoms became less absolute in the emerging political debate following the uprising. Ennahdha, in its election campaign and after winning the vote, began to deploy a conservative moral code in what had rapidly become a period of sharp political polarization. In part this was the result of the pressure it faced from critics as it began to rule during a still unstable period when many held high expectations of rapid economic recovery and swift democratic transition. Secular parties targeted Ennahdha, decrying it as an ideological movement secretly intent on installing a theocracy. Ennahdha responded defensively but also took a clear, socially conservative stance, hoping to rally allies to its cause. For example, on 26 June 2011 there was a small demonstration at the cinema AfricArt in central Tunis against a documentary film about

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<sup>24</sup> Collectif 18 octobre pour les droits & les libertés en Tunisie, 'Notre voie vers la démocratie', Tunis, 2007.

<sup>25</sup> Ennahdha, 'Barnamaj Harakat Ennahdha: Min 'ajl tunis al-hurriyya wa-l-'adala wa-l-tanmiyya [For freedom, justice and development in Tunisia]', Tunis, 2011.

secularism in Tunisia entitled *Ni Allah, ni maître!* (Neither God nor master). The film's Tunisian director, Nadia el-Fani, had recently described herself as an atheist during a television interview. Ennahdha condemned the violence of the demonstration, but also described el-Fani as 'provocative'. Nourredine Arbaoui, the party's spokesman at the time, said:

The question of not believing in God is a question of freedom of opinion. God has given man all the freedom not to believe in him. But to present herself on Tunisian television and to say she doesn't believe in God and that she's in a war against Islamists, that's something else. That's something provocative.<sup>26</sup>

What was striking was that a similar position on this issue was adopted by different tendencies within the movement who often disagreed on other questions, tendencies that might in broad terms be labelled moderate and conservative. Thus, Hamadi Jebali, Ennahdha's first prime minister and a recognized pragmatist, spoke out strongly against the October 2011 broadcast of *Persepolis*, a cartoon film about the Iranian revolution dubbed into Tunisian colloquial Arabic which included a scene with a representation of God. Jebali described this as 'a flagrant attack on the divine' and as a provocative incitement to hatred on the basis of religion. He emphasized '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 (*al-taṭāwul 'alā al-'aqā'id wa al-muqaddasāt*)'.<sup>27</sup> On other issues movement leaders had differing views, for example on the movement's relationship with rival Salafist organisations, on whether Ennahdha should be a political party or a proselytising social movement, or on whether there should be an explicit reference to Islam as a source of legislation in the constitution. However, they shared a similar public, conservative position on the need to limit freedom of expression when it came to critiques of religious belief.

Initially the movement seemed to hope it could use such an approach to win over support from more conservative Islamist groups, including even the Salafists. However, although Salafist groups did initially rally behind Ennahdha they soon began to challenge the mainstream Islamist

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<sup>26</sup> Nouredine Arbaoui, author interview, Tunis, 8 July 2011.

<sup>27</sup> Hamadi Jebali, 'Bayan: la li-l-I'tida' 'ala 'aqida al-sha'b, na'am li-himaya al-masar al-siasi [Statement: No to Attacks on the People's Faith, Yes to Protecting the Political Process]', 9 October 2011.

movement as insufficiently Islamic. Within months Salafists were openly confronting the Ennahdha-led government. Some rioted at the US Embassy in September 2012, in protest at the YouTube film *Innocence of Muslims*, others preached against Ennahdha in local mosques or were responsible for repeated attacks on dozens of Sufi shrines across the country.<sup>28</sup> It was clear they held very different visions of what was ‘sacred’ even from within Tunisia’s own religious heritage. Ennahdha’s response was slow and ambiguous. At first it sought to negotiate with Salafist leaders but it soon found this was ineffective. Ennahdha was losing youth activists from within its own ranks to Salafist groups, who offered a more emotive, less pragmatic discourse and a clear demand for an Islamic state under sharia law. Eventually in mid-2013 the Ennahdha-led government began to crack down, designating one prominent group, Ansar al-Sharia, a terrorist organisation and arresting many of its members. In internal training sessions, Ennahdha sought to encourage its younger members to accept the movement’s political compromises and to critique Salafist textual literalism. But some Ennahdha leaders also used the Salafist challenge in order to insist on the articulation of a public role for religion. Habib Ellouz, a preacher from Sfax and one of the Ennahdha members most involved in dialogue with the Salafists, argued for a law against blasphemy that would prevent ‘provocations’, as he described some secular artworks and blog posts, as a way to resist radicalism: ‘If you want to see more al-Qaeda supporters in Tunisia then be flexible on blasphemy.’<sup>29</sup> As challenges came from both secular and Salafist rivals, so Ennahdha sought refuge behind the articulation of this broad and ambiguous conservative moral code.

Although Ennahdha’s position on freedom of expression seemed the result of a consensus decision within the movement, the public discourse disguised a wide range of different private views. Ellouz’s position, for example, represented one of the most conservative views in the movement. This was also reflected in his record in the constituent assembly, where he voted contrary to the movement’s official position several times. In January 2014 he supported a failed amendment that would have made Islam the principal source of legislation and then supported

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<sup>28</sup> International Crisis Group, ‘Tunisia: Violence and the Salafi Challenge’, 2013.

<sup>29</sup> Habib Ellouz, Author interview, Tunis, 3 July 2013.

failed amendments to exclude freedom of conscience from the constitution and to exclude a ban on political exploitation of mosques. Other Ennahdha figures, who were often but not exclusively younger, took more flexible positions. Jawhara Tiss, 28, an elected Ennahdha deputy, said she opposed the prison sentences handed down in many 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.'<sup>30</sup> Not all of these divisions were simply between exiles and former prisoners; there were moderates and hardliners in both categories. In some cases the differences were generational, but more often they divided between those who saw Ennahdha as essentially a proselytising movement, who tended to be more socially conservative, and those who saw it as a political party, who tended to be more ready to make ideological compromises. Within the movement there had simply not been sufficient debate about precisely what freedom of expression should mean. This explains the frequent ambiguity in Ennahdha's official pronouncements, which directly reflects Bayat's highlighting of the ambiguity inherent in this post-Islamist evolution.<sup>31</sup> One Shura Council member described an unresolved internal debate: some argued that there should be an agreement on what was sacred and that there should be no attacks on the beliefs of others in order to avoid conflict, while others accepted that citizens should have the right to criticise religion as part of a healthy societal debate. 'There are many interpretations of religion. Should we be strict like the Salafists or enlarge our definitions a bit? Where are we? What we're left with is ambiguous: both respecting the sacred and respecting the right of free expression.'<sup>32</sup> These internal differences on freedom of expression and other questions later emerged in debates and voting over the constitution at the National Constituent Assembly.

In considering the nature of critiques of religious belief, Ennahdha leaders did seek to draw out the difference between intellectual criticism, which they regarded as legitimate, and insults or offence, which they regarded as dangerous and provocative. In part this was about the intention of

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<sup>30</sup> Jawhara Tiss, author interview, Tunis, 2 July 2013.

<sup>31</sup> Bayat, *Making Islam Democratic: Social Movements and the post-Islamist Turn*.

<sup>32</sup> Ennahdha Shura Council member, author interview, Sousse, 2 June 2014.



the act involved, and in part it was about the tone and manner of the criticism. This argument draws a line between rational and emotional argument, as if one was more valuable than the other. Zied Ladhari, a lawyer and Ennahdha representative at the assembly, stressed this difference:

We distinguish between what we consider red lines and what we consider criticisms or reflections of intellectual tradition, which are absolutely important for the freedom of every society. We need to create some division between the two things. When you go to a library in Tunis you will find the books of Nietzsche, for example. When we are dealing with philosophical ideas, intellectual production you are free to develop your ideas. But when you are insulting people, when you are attacking personally some person in their reputation and their private life there are legal provisions forbidding that behaviour. When you are using words to denigrate and insult, when you are not criticising the religion but insulting the people who believe in that religion, then we have to distinguish between the two things.<sup>33</sup>

Although the issue of intention was behind this division between intellectual criticism and mere insult, the question of intent did not appear in any of the written proposals Ennahdha put forward for its plans for ‘protection of the sacred’. Nevertheless there was a moral order behind Ennahdha’s provisions that appeared to allow room for intellectual debate but which excluded provocation or insult. Artists, in particular, did not seem to fall within the protections Ennahdha applied to intellectual debate. In interviews with Ennahdha members there was a frequent sense that artists were members of a secular elite who were intent on using the new post-uprising freedoms to provoke the Islamists or to advocate for a secular political cause by criticising religion. Tiss, the young Ennahdha deputy, said:

The artist has to have in mind that they are not the only ones who live in Tunisia. There are other people with other ideas. Because of this political polarisation and this sharp political conflict they do not want to believe that Ennahdha is for freedom of speech ... this is why all the artists’ works are provocative. It is not that art should be away from politics but away from exploitation by political parties.<sup>34</sup>

Although there were no formal efforts to limit artistic expression, there was a clear sense among Ennahdha members that provocative art was destabilising and encouraged conflict and that this was against their sense of the correct moral order for society.

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<sup>33</sup> Zied Ladhari, author interview, Tunis, 1 July 2013.

<sup>34</sup> Tiss, author interview.

The movement's response to the *Printemps des Arts* exhibition in June 2012 was particularly revealing. Sahbi Atig, head of the Ennahdha bloc in the Constituent Assembly, stated that freedom of expression and artistic creativity were not absolute but should reflect the morals and beliefs of the Tunisians and, at a time when the drafting of the constitution was underway, called for a constitutional article to criminalize the 'violation of the sacred' (*al-ta'addī alaā al-muqaddasāt*).<sup>35</sup> Two months later, in August 2012, the party submitted a draft bill to 'criminalize the violation of the sacred' (*tajrīm al-mass bi-l-muqaddasāt*) with up to two years in jail and a large fine. It was effectively a proposal to outlaw blasphemy. The bill was not debated and did not become law. It may have been a maximalist position on the part of Ennahdha. However, it did reveal the restrictions the movement envisaged for freedom of expression at that moment. The bill set out a broad definition of 'the sacred', which included places of worship, God, his prophets, the Quran and the Sunna (the teachings and practices of the Prophet). It offered a long list of actions that would constitute a violation of 'the sacred', including insults, curses, mockery, ridicule and disparagement or disgrace carried out in words, images or actions, including illustrations or caricatures.<sup>36</sup> In this loose formulation there was no mention of intention and whether the author of the supposed violations intended to insult or mock with their actions. In a memorandum forming part of the draft bill, its authors explained they chose to take action in response to the Danish cartoons of the Prophet, published in 2005, and several recent local cases of 'violations' of the sacred, which they listed as: the broadcasting of a film that portrayed a representation of God (apparently a reference to *Persepolis*); a case in March 2012 in which someone had spray-painted a Star of David on the entrance to the *al-Fath* mosque in central Tunis; another incident the next day in Ben Guerdane, on the Libyan border, where several copies of the Quran were torn up and thrown outside a mosque; and finally the *Printemps des Arts* exhibition in June 2012. It noted other countries had also enacted

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<sup>35</sup> Sahbi Atig, 'Na'am li-tajriim al-ta'addi 'alaā al-muqaddasat [Yes to the criminalisation of attacks on the sacred]', 12 June 2012.

<sup>36</sup> Habib Khedher, 'Mashru' al-qanun yata'alluq bi-tanqiyh wa-'itmam ba'd 'ahkam al-majalla al-jaza'iyya wa-tajrim al-mass bi-l-muqaddasat [A draft law on the revision and completion of certain provisions of the Criminal Code and the criminalization of violation of the sacred]', 1 August 2012. [http://www.anc.tn/site/main/AR/docs/projets/56\\_2012.pdf](http://www.anc.tn/site/main/AR/docs/projets/56_2012.pdf)

legislation to prevent religious prejudice and said that this should now become part of the Tunisian penal code.

### **Free speech in the constitution**

The most obvious test of the tension between freedom of speech and the protection of the ‘sacred’ came in the drafting of Tunisia’s new constitution, the principle task allotted to the Constituent Assembly elected in October 2011. To draft the constitution the assembly was divided into six commissions. Freedom of expression was dealt with by the Commission on Rights and Freedoms, which had nine Ennahdha representatives among its 22 members. The commission invited outside speakers and experts to offer ideas and advice and then debated among themselves the precise wording of their part of the document. Constitutional articles evolved through several drafts. The restrictions on freedom of expression grew tighter and tighter as the drafting progressed. The commission’s initial draft, dated 25 June 2012, proposed that freedoms of expression and media be guaranteed on condition they do not violate public order or morals (*al-nizām al-‘āmm wa al-‘akhlāq al-ḥumēda*).<sup>37</sup> By the time the first full draft of the constitution appeared, in August 2012, freedom of expression was ‘a guaranteed right and freedom’ apparently without limits, 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.<sup>38</sup> At this stage a number of high-profile Ennahdha leaders were arguing in favour of broader restrictions on freedom of expression. Sahbi Atig, leader of the Ennahdha bloc in the assembly, appeared on a television talk show in November 2012, in which he defended broader restrictions by using the language of international human rights. He favoured the restrictions mentioned in international covenants, he said, an apparent reference to the International Covenant on Civil and Political Rights of 1966 (ICCPR), which in Article 19 states that freedom of expression may be subject to restrictions, if provided by law and if necessary, for

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<sup>37</sup> Constitutional Commission on Rights and Freedoms, ‘Mutabi‘a a‘mal al-lajna al-qarra al-ta‘sisiiyya lil-huquq wa-l-hurriyyat min frfir i‘la 18 juaan 2012 [Follow-up activities of the Constitutional Commission on Rights and Freedoms between February and 18 June 2012]’, National Constituent Assembly, Tunis, 2012.  
<http://www.anc.tn/site/main/AR/docs/rapports/constits/rapports.jsp?cid=2>

<sup>38</sup> al-Chourouk, ‘Al-shuruq tanfarid bi-nashr a‘wwal nuskha min mashru‘ dustur al-jadid [Al-Chourouk exclusively publishes the first text of the new draft constitution]’, *al-Chourouk*, 8 August 2012,  
<http://www.alchourouk.com/Ar/article.php?code=565818>.

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. 'I myself in my mind I don't go further than the UN on that issue,' Atig said. But then he added: 'Actually I am between two things, and this is a problem even in the issue of the sacred: between the relationship of respecting the sacred and freedom of creativity. It's a good question for debate'.<sup>39</sup> Again the ambiguity remained unresolved.

Within the Commission on Rights and Freedoms there was indeed strong debate and a clear division of opinion within the group: those who believed in very limited restrictions on freedom of expression and those, among them all the Ennahdha representatives, who pushed for the broader array of restrictions in line with Article 19 of the ICCPR. Salma Mabrouk, an Ettakatol party deputy who later joined the centre-left secularist al-Massar, argued in favour of the least possible restrictions on freedom of expression as a reaction against the authoritarian legacy of the former regime. She argued that the Ben Ali government had misused legal provisions that protected public order as a way to curb any dissent and feared that maintaining this provision would threaten individual freedoms. Her sense of the role of the constitution was as a safeguard for the individual citizen against state interference and over-reach:

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. We want to avoid this and to protect all freedoms in general ... Freedom of expression is a magnificent gift of the revolution.<sup>40</sup>

She argued that any limits to freedom of expression should follow principles of necessity and proportionality to the rights of citizens. She emphasized the individual right of the citizen to challenge any abuse of power and argued that the constitutional court, which would determine whether laws were in line with the new constitution, would play an important role in protecting freedoms. However, Mabrouk and others inside the commission were eventually forced to give way and a draft of the constitution that appeared in April 2013 showed a significant reversal for her argument. Freedom of expression, media, and publication could now be limited by a law protecting

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<sup>39</sup> Nessma TV, 'al-a'hadd al-siasi [Political Sunday],' Tunis, 4 November 2012.

<sup>40</sup> Salma Mabrouk, author interview, Tunis, 8 July 2013.

the rights, reputation, safety and health of others – a tighter set of restrictions than the commission’s first draft a year earlier. Mabrouk and many other opposition representatives at the assembly argued at this stage that several articles had been changed unfairly during the editing process by Ennahdha representatives, a charge Ennahdha denied. There was deadlock at the assembly for several weeks in protest until a way forward was agreed.

Ennahdha representatives within the commission argued their case on two fronts. First, they framed their support for freedom as deriving from a religious inspiration, specifically as a commitment from within the *maqāsid al-sharī‘a*, the higher objectives of the Islamic sharia. However, this was a commitment they viewed as bringing with it a responsibility to respect a ‘consensus’ view of Tunisian identity. ‘All people have an absolute right to express themselves about anything they think about, but this should be within a consensual framework that everyone agrees. This freedom should be constructive and should not create anarchy,’ said Monia Ibrahim, an Ennahdha representative on the Commission on Rights and Freedoms.<sup>41</sup> This consensual framework was one they envisaged as derived not from law but from within the nation’s culture, in which education and a shared religious heritage would encourage citizens to respect one another. In this understanding is the idea that restricting freedom of expression protected an atmosphere of tolerance by preventing division and, as Ibrahim put it, ‘anarchy’. It was the limits on individual freedoms that would forge the consensus. Thus Farida Labidi, the president of the Commission on Rights and Freedoms and a senior Ennahdha leader and lawyer, stressed the need for a consensual framework and argued that the constitution should not just defend freedom as the basis of all liberties but should also respect the identity of the Tunisians, which she defined as ‘an Arab-Muslim identity that is open to different cultural and civilizational experiences’.<sup>42</sup> ‘The constitution will be read as one entity and is designed for one population with a Muslim background’, she said. Ennahdha saw the need to construct a consensus in part to avoid a return to the political and social isolation the movement faced under the former regime and to avoid the dangerous isolation

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<sup>41</sup> Monia Ibrahim, author interview, Tunis, 2 July 2013.

<sup>42</sup> Farida Labidi, author interview, Tunis, 4 July 2013.

experienced by the Muslim Brotherhood in Egypt, but in part too because of their wish to portray Tunisian society as homogenous in its shared Arab-Islamic identity.

The second Ennahdha argument was to conceive of the state as playing the role of guardian, protecting and guaranteeing freedoms. This was a different conception to their secular and leftist opponents, who sought freedom from the state. Thus for Ennahdha some freedoms needed government regulation as protection. ‘We adopted a very clear philosophy when we started to draft the constitution: there are liberties that are absolute and others we have to regulate and intervene in their ratification to create a legal framework to guarantee them,’ Labidi said. Often this was done by appealing to existing international conventions. Thus for freedom of expression Labidi proposed the same restrictions that appear in Article 19 of the ICCPR, including restrictions to protect morals, which by April 2013 was still not part of the draft constitution. It was also clear even at this stage, in mid-2013, that Ennahdha recognized that the next parliament, in which it hoped to be one of the largest parties, would still be able to determine individual rights even after the ratification of the constitution. As Labidi said: ‘The people are sovereign and will vote for their representatives and these people will design the laws. The people will elect their representatives and the coming parliament, not the constitution, will choose their rights. It’s obvious’.<sup>43</sup> By the final version of the constitution, voted on in January 2014, the restrictions relating to freedom of expression had tightened even further, in favour of Ennahdha. The final article, Article 31, guaranteed freedoms of thought, expression, media, and publication and said none could be subject to prior censorship. But an additional article, Article 49, allowed for a law to restrict these freedoms in order to protect the rights of others, public order, national defence, public health or public morals, as long as it respected proportionality and necessity. It was to be up to the judicial authorities to prevent violations of rights and freedoms. The final version was in line with Ennahdha’s position, while also accommodating some, though not all, of the concerns of their secular rivals.

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<sup>43</sup> Labidi, author interview.

Ennahdha's position throughout the constitutional drafting process was constrained in many ways. Sometimes deputies from rival parties managed to introduce compromises and impose concessions that restricted Ennahdha's ambitions, particularly with growing public pressure for a conclusion to the long-drawn out constitutional drafting process. Broader public reactions also constrained Ennahdha, for example the sharp public reaction against the movement's early effort to endorse sharia law as a source of legislation and the persistent criticism of its perceived laxity towards Salafist violence. In addition the internal disputes within Ennahdha itself, often disguised behind ambiguous public pronouncements, forced the movement to step carefully in order to maintain unity. Occasionally these differences surfaced in public. For example, during voting on the constitutional article protecting freedom of expression, 16 deputies in the assembly backed an amendment that would have criminalized attacks on the sacred, specifying the sacred to mean God, the Quran, and the Prophet. The amendment was withdrawn before a vote but among its supporters were 10 Ennahdha deputies, including the hawkish Habib Ellouz and one member of the Commission of Rights and Freedoms, Nejb Mrad, a journalist and early member of the movement.<sup>44</sup> In another session, 17 Ennahdha representatives voted for a failed amendment that would have taken away the state's protection of freedom of conscience.<sup>45</sup> The movement was not as united as it claimed to be.

There was still the question of protecting the sacred, which also affected the limits drawn around freedom of expression. The first draft of the constitution in mid-2012 included a role for the state as the guarantor of religion and gave the state the power to 'criminalize all attacks on the sacred' (*tujarrim kul i 'tidā' alaā al-muqaddasāt al-diniyya*).<sup>46</sup> However, this provoked much public debate and criticism and the wording was withdrawn, an early concession by Ennahdha. Yet Ennahdha representatives in the months that followed clearly regarded the sacred as still in need of

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<sup>44</sup> al-Bawsala, 'Droits et libertés. Article 30', al-Bawsala, Tunis, January 2014.  
<http://www.marsad.tn/fr/constitution/article/30>

<sup>45</sup> al-Bawsala, 'Vote sur un amendement de l'article 6: Supprimer la liberté de "conscience"', 4 January 2014.  
<http://majles.marsad.tn/fr/vote/52caefeb12bdaa7f9b90f45d>

<sup>46</sup> al-Chourouk, 'Al-shurūq tanfarid bi-nashr [Al-Chourouk exclusively publishes]'.

protection. Monia Ibrahim, the Ennahdha representative on the rights and freedoms commission, said:

The sacred (*al-muqaddasāt*) is clear for Muslims. All we are asking is for respect of these sacred elements. There should be a kind of respect to these sacred elements in the way that others would respect our belief in the sacred.<sup>47</sup>

They received advice from the outside experts on human rights and constitution drafting who spoke to the assembly and who told them it was not suitable to include articles of criminalization within the constitution, but that this should be dealt with later and separately as legal amendments to the penal code. Yet a similar formulation gradually made its way back into the final document, though this time without any criminalizing element. By April 2013 the draft constitution gave the state the right to ‘protect’ the sacred and by the final version, in January 2014, the state’s right to protect against harm to the sacred was explicit and placed in the prominent first stage of the constitution ahead of the section dealing specifically with rights and freedoms. This element was included in the long and ambiguous Article 6, which had been the subject of several amendments and several votes. The final article decreed that the state guaranteed freedoms of belief, of conscience, and of worship, and gave the state the right to ‘protect the sacred’ and prevent ‘harm’ to it (*himāya al-muqaddasāt wa man‘ al-naīl minha*). It also said the state was committed to spreading the values of moderation and tolerance and to preventing calls to *takfīr*, declaring another Muslim to be an unbeliever.<sup>48</sup> Many Ennahdha representatives had originally opposed a provision banning accusations of apostasy in early January 2014 but several days later, after a last-minute dispute in which a member of the assembly accused an Ennahdha representative of calling him an enemy of Islam, the article was debated again. This time Ennahdha conceded to an amendment banning accusations of apostasy. The final version of Article 6 passed with 152 votes in favour, including those of 69 Ennahdha representatives (out of an original 89 elected in October 2011). Ennahdha’s positions, then, had evolved under public pressure and through negotiations with the political opposition during the

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<sup>47</sup> Ibrahim, author interview.

<sup>48</sup> National Constituent Assembly, ‘Constitution of the Republic of Tunisia’, Official Printing Office of the Republic of Tunisia, Tunis, January 2014. Available from: <http://www.iort.gov.tn>



drafting process. This reveals the process of post-Islamist evolution is shaped not just by internal ideological evolution but also by the compromises imposed by being in government and by being forced to negotiate with an opposition and to answer media critics. In fact within the movement, arguments often remain unresolved and were cloaked in ambiguity. Bayat's conceptual post-Islamist shift from 'religion and responsibility' to 'religiosity and rights' had in this case merely been delayed, not fully embraced. Thus, for example, the resulting Article 6 was vague and contradictory. It defended freedom of conscience, which implied the right to change one's religious conviction and to express this change freely. However, the article also gave the state broad power to prevent unspecified harm to the unspecified 'sacred', a formulation that would give judges and politicians much leeway in writing judgments or laws that restricted rival interpretations of religion or critiques of religious belief.

## **Conclusion**

In the wake of the 2011 uprising, the Islamist movement Ennahdha proposed a programme of cultural authenticity, in which it drew inspiration from an Islamic reference but no longer sought the creation of Islamic state, nor Islamic sharia as a source of legislation. The movement advocated strongly in favour of the newly-won freedoms of the uprising and at the same time sought to establish a new role for religion in the public sphere, which both freed religion from the instrumentalising control of the state and yet protected religious values as the pillar of Tunisian identity. Ennahdha proposed that Tunisians should be able to freely express their religious belief in a way denied them under the Ben Ali regime but should also live under a state that defended and guaranteed their religious values. This 'protection of the sacred' lay at the heart of the Arab-Islamic identity that Ennahdha championed and around which it sought to forge a societal consensus. This was part of a long process of post-Islamist evolution, in which the movement retained an Islamic reference as part of its ideology, but instead of trying to Islamise the state sought rather to assert a cultural Islamic identity. Often, as when applied to the question of freedom of expression, this was clouded in an ambiguity that signalled still-unresolved debates within the movement about the

details of its political vision and what exactly it meant to adopt religious values as a political reference. This ongoing dialogue mirrors historical debates elsewhere about the relationship between individual freedoms and religious values, such as those within the socially conservative European Christian democracy movements. One result of this slow post-Islamist evolution is that eventually Ennahdha is likely to divide into a religious movement, focusing on proselytising and spreading moral values, and a political party, ready to accept the pragmatism and policy challenges required in government.

This article has traced Ennahdha's embrace of the 'protection of the sacred' and its relationship with freedom of expression to demonstrate how the movement worked to reconcile its commitment to freedom, broadly expressed, and the 'Arab-Islamic space' it espouses. This internal debate played out in a climate of frequent free speech prosecutions, which drew on vague Ben Ali laws and which depended on a judiciary that was still unreformed and lacking independence, as well as mixed messages from across the political elite about what ought to constitute the limits to freedom of expression in an Islamic nation.

Ennahdha deployed a conservative moral code when its leaders spoke out in public against the 'provocations' of art exhibitions or bloggers or television directors or singers who they perceived as infringing the values of the 'sacred'. In mid-2012 it drew up a draft law banning blasphemy, which although never debated, revealed the thinking behind the movement's conception of free speech restrictions. These ideas were challenged during the long process of drafting the new constitution, when secular opponents of Ennahdha advocated in favour of individual freedoms as a safeguard against the over-reach of the state. Ennahdha, on the other hand, argued for a 'consensus' view of Tunisian identity in which restricting freedom of expression would encourage tolerance, prevent division, and uphold public order rather than allowing a descent into 'anarchy'. The movement insisted that the state play a role as a guarantor of these freedoms through regulation. In part this was framed as coming into line with international law, but the movement introduced the concept of 'protection of the sacred' to give the state vague and ambiguous powers to act to prevent

harm to religious values. For Ennahdha this was what it meant to defend freedoms while at the same time to espouse a religious reference and to defend an Arab-Islamic identity.

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