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# “If There Be One Only, She Shall Inherit Half”: Explaining the Preservation of Islamic Inheritance Law in Tunisia’s 1956 Personal Status Code

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**“If There Be One Only, She Shall Inherit Half”: Explaining the Preservation  
of Islamic Inheritance Law in Tunisia’s 1956 Personal Status Code**

An Honors Thesis

Presented to  
The Faculty of the Department of Politics  
Bates College

In partial fulfillment of the requirements for the  
Degree of Bachelor of Arts

By

Gwendolyn Whidden  
Lewiston, Maine  
March 20, 2019

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## Abstract

After gaining independence in 1956, Tunisia abolished Shari'a courts, established a secular legal system, and implemented extensive reforms to Islamic family law. However, it preserved the provision of Islamic inheritance law according to which women inherit half as much as men in its new Personal Status Code. This thesis examines why Tunisia preserved Islamic inheritance law while reforming almost all other areas of family law after independence. Building on existing scholarship, I argue that the preservation of Islamic inheritance law in the Personal Status Code reflects concessions made to the religious establishment at independence concerning the nature of the code as part of the regime's strategy for political survival. I demonstrate that because the incorporation of religious themes into the legitimating ideology of Habib Bourguiba's regime required the regime to gain rhetorical support for the reforms from religious authorities, contestation over the regime's authority at independence compelled the regime to coopt rather than outright suppress the religious establishment, thereby forcing the regime to make concessions to the establishment in drafting the new code—including the preservation of traditional inheritance law—in order to gain their support. By analyzing how state ideology, political environment, and institutional capacity interact to shape state policy on family law, the thesis provides insight into the distinctive challenges Middle Eastern states face in attempting to reform Islamic law.

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# 1

## INTRODUCTION

On August 13, 2018, Tunisia's president Beji Caid Essebsi announced his intention to submit a draft law to Parliament instating gender equality in inheritance in Tunisia's family code, a proposal that sparked controversy both within Tunisia and throughout the Arab world. The law would make Tunisia the first Arab-Muslim country to overturn the provision in Islamic family law according to which women receive half as much inheritance as men and instate gender equality in inheritance. Describing inheritance equality as long overdue, Essebsi remarked that reform "should have been done in 1956, but the constitution did not provide for it then."<sup>1</sup> While women's and human rights groups have praised the proposal, it has produced significant backlash from Islamist, conservative, and even moderate groups and Muslim women who view it as an unacceptable departure from Islamic values.<sup>2</sup>

### *Subject and Justification of the Study*

Tunisia is widely viewed as one of the most progressive Arab countries. In particular, the small North African Muslim state is known for having a distinctive history of progressiveness with regard to women's rights. After gaining independence in 1956, Tunisia's government abolished Shari'a courts and radically reformed Islamic family law by promulgating a new Personal Status Code. The PSC was an innovative and ostensibly secular body of laws that modified regulations in Islamic law on marriage, divorce, alimony, custody, adoption, and to some extent inheritance, impacting almost every aspect of family life. Among its reforms, the code outlawed polygamy,

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<sup>1</sup> Ramy Allahoum, "Tunisia's President Vows to Give Women Equal Inheritance Rights," *Al Jazeera*, August 13, 2018.

<sup>2</sup> Stephen Quillen, "Tunisia's next Political Battle: Equal Inheritance Rights," *Al Monitor*, August 28, 2018.

gave women the right to initiate divorce, and abolished the unilateral right of the husband to repudiate his wife. The code also instituted a minimum age for marriage, made the registration of marriages and divorces mandatory, and required divorce to take place in court. These reforms constituted a significant departure from Islamic tradition and were among the first of its kind in the region.

Tunisian women would also become among the first in the Arab world to gain the right to work, vote, and open a bank account without spousal consent. The Tunisian state granted women the right to have an abortion eight years before women in the United States.<sup>3</sup> Today, the 2014 Constitution of Tunisia enshrines gender equality in the law, declaring the male and female citizens are “equal before the law without any discrimination.”<sup>4</sup>

Tunisia’s Personal Status Code, however, does not guarantee full equality between women and men in the law. Despite its remarkable innovations in other areas of family law, the code maintains traditional restrictions on women’s inheritance rights. Based on Islamic inheritance law, Section 103 of the code stipulates that “where there are any sons, the male inherits twice as much as the female.”<sup>5</sup> Tunisia’s inheritance law continues to grant women only half the share of inheritance that men receive. Given the code’s innovations in other areas of family law, the preservation of Islamic inheritance law in the Personal Status Code is puzzling. The modifications to traditional inheritance law in the code are not as striking as in other areas of family law and appear incongruent with the character of the reforms as a whole. Given that Tunisia secularized its legal system as a whole, it is even more puzzling that Tunisia preserved this particular prescription in Islamic law in the new family code. This observation raises the

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<sup>3</sup> Katrin Bennhold, “Women’s Rights a Strong Point in Tunisia,” *The New York Times*, February 22, 2011.

<sup>4</sup> Ahmed Nadhif, “Tunisian president calls for gender equality in inheritance law,” *Al Monitor*, August 21, 2017.

<sup>5</sup> Connor, “Reconciling Religion and the Constitution,” *Vardags*, August 24, 2018.

motivation question of this thesis: *why did Tunisia preserve Islamic inheritance law while reforming almost all other areas of family law after independence?*

No scholar in the literature on gender and the state in the Middle East and North Africa has systematically examined this inconsistency in Tunisia's family law reforms. Within the literature on the Middle East, scholars frequently note that the reforms to inheritance law in the PSC were less innovative than in other areas of family law, and some scholars call attention to the fact that the stipulation on inheritance inequality seemed incongruent with the character of the reforms as a whole, but none have offered an explanation for this inconsistency in the reforms. This thesis aims to contribute to the literature on state policies on gender in the Middle East by developing a more complete picture of the distinctive challenges Middle Eastern states face in attempting to reform Islamic law.

A systematic exploration of Tunisia's family law policy has several uses for researchers and analysts studying the Middle East in the current moment. Tunisia is regarded as the country at the forefront of the Arab world in gender equality today, and the successful reform of Islamic inheritance law in Tunisia could have a ripple effect across the Middle East and North Africa with broader implications for family law reform and women's rights in the region. Understanding why inheritance reform was previously unsuccessful is therefore useful to analyzing the potential for reform in Tunisia today as well as for gains in women's rights across the Middle East and North Africa. Moreover, an appreciation of the factors that shaped state policy on family law in Tunisia sheds light on the issues at stake in debates surrounding Islamic law and the role that religion should play in contemporary Muslim societies more broadly and can inform research in other areas of scholarship on the region.

*The Argument*



The central argument of this thesis is that the preservation of Islamic inheritance law in Tunisia's Personal Status Code reflects concessions made to the religious establishment's demands concerning the nature of the code as part of the post-independence regime's strategy for political survival. The theoretical framework I adopt to explain this policy outcome emphasizes the interaction between three critical factors: (i) state ideology (ii) political environment and (iii) institutional capacity. I suggest that the preservation of Islamic inheritance law in Tunisia's family code reflects the interaction of these three factors. Here, I briefly explain each factor and how it relates to this policy outcome.

(i) The first claim of this thesis is that state ideology, or what I also refer to as a regime's "legitimizing ideology," will influence the nature of family law reform. A regime's "legitimizing ideology" is a set of overarching rhetorical justifications a regime offers for its political authority.<sup>6</sup> I suggest that the degree to which a regime relies on religious themes or principles in its legitimating ideology will partly determine the nature of family law policy by delineating the kinds of policies the regime can adopt with respect to religion. To assess this claim, I examine the rhetoric of the post-independence regime in Tunisia in the speeches and statements of the state elite as well as foundational state documents such as the Tunisian Constitution.

(ii) The second claim of this thesis, however, is that ideology alone cannot explain the nature of family law policy. While ideology is important to explain policy outcome because it frames the policy choices available to a regime, explanations relying on ideology alone cannot account for instances in which a regime's policies contradict one another or the regime's own legitimating ideology. Two other factors are needed to explain the preservation of Islamic

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<sup>6</sup> Sarah Feuer, "Religious Establishment and Religious Survival" (PhD diss., Brandeis University, 2014), 19.

inheritance law in Tunisia: the political environment of opponents confronting the regime and the regime's institutional capacity.

“Political environment” refers to the configuration of the groups a regime perceives to be its political opponents and allies.<sup>7</sup> I suggest that the degree to which a regime's political opponents frame their demands and base their own claim to legitimacy on religious grounds will influence the nature of family law policy. Here, I draw on Sarah Feuer's theory in emphasizing the salience of a regime's political opponents in determining policy outcomes pertaining to the religious establishment. Feuer suggests that what is critical to determining policy outcomes is the degree to which opposition forces incorporate religious themes into their demands. Thus, confronting these demands, the regime must choose to either coopt the opposition by conceding to some of its preferences or to repress it. To assess this claim, I primarily examine secondary literature on the politics of the nationalist movement in Tunisia to assess this claim.

(iii) The third claim of this thesis, moreover, is that like a regime's legitimating ideology, political opposition cannot fully explain the nature of family law policy. This is because in advancing its political agenda and determining how to minimize political opposition, regimes confront another critical factor: the strength of their institutional capacity. I define “institutional capacity” in this thesis as the relative strength or weakness of the political party structure, which I measure as ideological consensus among party leaders and members.<sup>8</sup> I suggest that extent to which a ruling party has the capacity to carry out its political agenda determines whether the regime will coopt or suppress opposition forces; institutional capacity, as it interacts with

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<sup>7</sup> Feuer, “Religious Establishment,” 19.

<sup>8</sup> State capacity often refers to the institutional and administrative features of the state. This thesis examines state capacity more narrowly as the ideological cohesion within political party structure

political environment, thereby influences the nature of family law policy. To assess this claim, I focus on secondary literature on the ruling party in Tunisia at independence.

The theory developed in this thesis thus can be summarized as follows: while (i) the incorporation of religious themes into a regime's legitimating ideology will play an important role in determining the kinds of policies it can adopt with regard to Islamic family law, policy outcomes will be critically shaped by (ii) whether the political opposition confronting the regime bases their own claim to legitimacy on religious grounds and (iii) whether the regime has the institutional capacity to implement its political agenda without coopting religious opposition forces.

Overall, I demonstrate that because the incorporation of religious themes into the legitimating ideology of Habib Bourguiba's regime required the regime to gain rhetorical support for the reforms from religious authorities, contestation over the regime's authority at independence compelled the regime to coopt rather than outright suppress the religious establishment, thereby forcing the regime to make concessions to the establishment in drafting the new code—including the preservation of traditional inheritance law—in order to gain their support.

### *Organization of the Study*

The remainder of this thesis proceeds in four parts. Chapter Two provides the background information necessary to understand this thesis. The chapter contextualizes inheritance law within the family law reforms in Tunisia as a whole as well as the landscape of family law throughout the Islamic world. I highlight how both broad historical developments and specific state building activities paved the way for family law reform in Tunisia and

emphasize how the changes to inheritance law in the 1956 Personal Status Code appeared incongruent with the character of the reforms as a whole.

Chapter Three reviews the literature on gender and the state in the Middle East and North Africa to identify existing explanations of state policy on family law as well as highlight current gaps in the literature. The first section reviews scholarship on gender and state building in the Middle East. I highlight the inability of theoretical frameworks which view family law policy as a product of the state building process to explain the variation within Tunisia's family law reform. The second section reviews scholarship on the patriarchal practices of Middle Eastern states. I suggest that theoretical frameworks which view family law policy as a reflection of the patriarchal interests of the state also cannot fully explain the inconsistencies within Tunisia's reforms. The third section reviews scholarship on the relationship between religion and the state in the Middle East. I suggest that theoretical frameworks which view family law policy as motivated by state ideology provide a key perspective on this research question. The chapter concludes with an explanation of the argument proposed in this thesis.

The following two chapters assess the explanatory power of this argument. Chapter Four begins by examining Bourguiba's views on Islam and modernization and his strategic approach to achieving political goals to understand the legitimating ideology of Bourguiba's regime. I establish how the incorporation of religious themes into the regime's discursive justifications for its political authority created a framework within which the regime could maneuver and delineated the range of policy options it could adopt without opposing its own stated ideological commitments to religion.

Developing the argument laid out in Chapter Four, Chapter Five examines the political environment Bourguiba confronted at independence and the institutional capacity of

Bourguiba's regime to understand how the interaction of the regime's legitimating ideology with these factors influenced the nature of the Personal Status Code and thereby the outcome of inheritance reform. I highlight the support of religious forces for Salah Ben Youssef, Bourguiba's main political opponent, and emphasize the extent of Ben Youssef's popular support and the threat of internal dissent among Youssefist sympathizers within the Neo-Destour. My analysis demonstrates that because the incorporation of religious themes into the legitimating ideology of Bourguiba's regime required the regime to gain rhetorical support for the reforms from religious authorities, contestation over the regime's authority at independence compelled the regime to coopt rather than outright suppress the religious establishment, thereby forcing the regime to make concessions to the establishment in drafting the new code in order to gain their support.

## 2

### HISTORY AND POLITICS OF FAMILY LAW REFORM

Table 1: *Landmark Dates*

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<b>1881</b>	Beginning of French colonization
<b>Mid-1950s</b>	Height of nationalist struggle
<b>November 15, 1955</b>	Neo-Destour Congress in Sfax
<b>March 20, 1956</b>	Tunisia proclaims independence
<b>June 1, 1956</b>	Abolition of Shari'a courts
<b>August 13, 1956</b>	Promulgation of the PSC
<b>January 1, 1957</b>	PSC goes into effect
<b>July 25, 1957</b>	Abolition of the monarchy Habib Bourguiba appointed interim president by Parliament
<b>June 1, 1959</b>	Constitution officially adopted Bourguiba elected first president of Tunisia
<b>1980s-90s</b>	Emergence of Tunisian women's associations
<b>November 7, 1987</b>	Bourguiba ousted by Prime Minister Zine El Abidine Ben Ali
<b>1993</b>	PSC revised to allow women to transmit nationality to children
<b>December 18, 2010</b>	Arab Spring begins in Tunisia
<b>January 14, 2011</b>	Ben Ali resigns and flees
<b>December 21, 2014</b>	Beji Caid Essebsi becomes first democratically elected president
<b>August 13, 2017</b>	Essebsi launches COLIBE
<b>August 13, 2018</b>	Essebsi pledges to submit inheritance equality draft law
<b>November 23, 2018</b>	Cabinet approves law and sends to Parliament for ratification

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To appreciate what is puzzling about the preservation of Islamic inheritance law in Tunisia, it is necessary to contextualize inheritance law within the family law reforms in Tunisia as a whole as well as the landscape of family law throughout the Islamic world. This chapter provides the background information necessary to understand this thesis on family law reform in Tunisia, the status of family law in Islam, and the global landscape of Islamic law. The chapter begins by overviewing the history of modern Tunisia and Tunisia's distinctive path to family law reform. I highlight how both broad historical developments and specific state building activities paved the way for family law reform. The second section contextualizes family law in Islam and discusses the role of family law in defining the organization of power in society. I focus on the status of inheritance law in Islam specifically and how Islamic inheritance law privileges the cohesion of the patrilineal kin group. The third section overviews family law reform in Tunisia from independence to the present. I emphasize how the changes to inheritance law in the 1956 Personal Status Code were not as striking as in other areas of family law and appeared incongruent with the character of the reforms as a whole. The chapter concludes by briefly contextualizing Tunisia in the global landscape of Islamic law and inheritance reform.

### **The History of Modern Tunisia: An Overview**

Several recurrent themes have shaped the trajectory of modern Tunisian history that are key to understanding Tunisia's distinctive path of family law reform. Overall, modern Tunisia has been defined by the effort to create a political environment acceptable to both government and citizens, the attempt to modify or eradicate traditional beliefs and practices viewed as impediments to modernization while simultaneously preserving a national identity rooted in the precolonial past, and the effort to foster economic growth to provide a stable foundation for

political and social development.<sup>9</sup> As Kenneth Perkins suggests, the most consequential among these debates has centered on the value and role of Islamic tradition in Tunisian society.

Modern Tunisia has experienced rule by an indigenous monarchy, a colonial protectorate, and an independent republican government. From the precolonial to the independence period, much of what successive governments have viewed as obsolete in the modern world and sought to reform, including family law, has been associated with Islam. An appreciation of the development of both Western and Islamic forces throughout Tunisia's modern history is necessary to understand Tunisia's distinctive path to family law reform.

### *French Colonial Rule*

The point at which Tunisia's modern history begins is open to debate. The imposition of French colonial rule, however, is a turning point of unquestioned importance. The French Protectorate was established in Tunisia in 1881 and endured until Tunisia's independence in 1956. Unlike French rule in Morocco and Algeria, in ruling over Tunisia, the French essentially maintained the administrative structure they found in place upon occupying the country. French colonial officials preserved the framework of the indigenous government while establishing a French-supervised central administration that effectively controlled provincial governments.<sup>10</sup> This restructuring of the central and regional governments progressively consolidated French control over Tunisian society.

French colonial officials introduced changes to the existing government in order to centralize local and regional administration and consolidate administrative authority. They effectively superimposed features of the French bureaucracy onto the existing indigenous

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<sup>9</sup> Kenneth Perkins, *A History of Modern Tunisia* (New York: Cambridge University Press, 2005), 6.

<sup>10</sup> Charrad, *State's and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (London: University of California Press, 2001), 40.



administration to strengthen their control over the population. The French reduced the number of regional administrators (*qaid*s), for example, as a measure towards bureaucratic centralization.<sup>11</sup> They kept in place the bey of Tunis, who had been ruling as a member of an independent dynasty under a distant Turkish suzerainty, but stripped the monarch of effective power and endowed it instead in the *résident général*, the Supreme Representative of France in Tunisia.<sup>12</sup> While existing regional and local administrations were largely preserved, they were placed under French supervision. In many cases, Tunisian *qaid*s became no more than nominal leaders.<sup>13</sup>

An important feature of French bureaucratic expansion was the introduction of Western courts. The introduction of French courts endowed the state with two distinct judicial administrations: the religious courts, which adjudicated personal status cases and property disputes, and the *wizara* or secular state court, which was based on the French legal system and was granted authority over civil and criminal matters.<sup>14</sup> Preserving the religious courts was essential to virtually all Muslims.<sup>15</sup>

Although French officials refrained from infringing on the operation of the religious courts, they progressively introduced changes to the state court that established a network of French supervision over local Tunisian officials.<sup>16</sup> In 1896, the French placed the *wizara* under the control of the newly created directorate of judicial services, which was headed by a French judge. A decade later, the directorate attached French representatives to all Tunisian secular

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<sup>11</sup> Charrad, *States and Women's Rights*, 117.

<sup>12</sup> The bey of Tunis is the Tunisian monarch. A suzerainty refers to a sovereign or state that exercise some control over a state that is internally autonomous.

<sup>13</sup> Charrad, *States and Women's Rights*, 116-117.

<sup>14</sup> Perkins, *A History of Modern Tunisia*, 47.

<sup>15</sup> *Ibid.*, 45-47.

<sup>16</sup> *Ibid.*, 45.

courts, expanding a network of French supervision ostensibly parallel to but effectively in control of local government officials. Thus, while Islamic legal institutions remained intact during the colonial period, they lost much of their prestige and relevance in the public sphere over time.<sup>17</sup>

A second important feature of French bureaucratic expansion was the weakening of tribal organizations. In terms of social organization, the tribe or kin group is critical in the Maghreb because it has historically constituted the basic social unit of society.<sup>18</sup> Until the nineteenth century in most of the Maghreb, power was the basis of wealth, which was under constant threat if it was not linked to control over tribal groups. Ruling elites typically had little or no stable property; wealth in the form of land for settled populations and cattle for nomadic populations could quickly disappear in the case of war among tribes or displacement by another group, which frequently occurred.<sup>19</sup> The best way to retain wealth was thus to hold political power, or to be in control of other tribal groups.

While French occupation provoked fewer and smaller tribal rebellions in Tunisia than in Algeria or Morocco, tribal uprisings nevertheless occurred.<sup>20</sup> The French military suppressed a number of violent uprisings throughout its rule. Colonial rule thus had the effect of weakening tribal organization in Tunisia, maintaining a trend already present in the precolonial period.<sup>21</sup> Bureaucratic expansion and the development of a market economy further undermined the core political function of tribes. As it became increasingly costly to attempt to defend a territory from

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<sup>17</sup> Ibid., 6.

<sup>18</sup> Charrad, *States and Women's Rights*, 21.

<sup>19</sup> Ibid., 21.

<sup>20</sup> Ibid., 117.

<sup>21</sup> Ibid., 117.

interference by a central state, tribes gradually lost their political authority under the colonial period.

Finally, a third important feature of French bureaucratic expansion was the influence of the economic interests of the French on the form of colonial rule and on the development of social alliances within Tunisian society. Particularly in the early phase of colonization, powerful landowners and large companies dominated colonial agriculture. This pattern of land settlement differed markedly from that in Algeria, where the French military acquired land through physically displacing tribal groups. Seeking to avoid the costs of acquiring land through violent means, the French adopted an alternative land policy in Tunisia through which French settlers had to purchase land from Tunisian owners, albeit at an unfair price, instead of receiving it for free. As a result, capitalistic enterprise and the concentration of private property came to characterize colonial economic domination.<sup>22</sup>

Importantly, the pattern of economic exploitation in Tunisia resulted in the formation of an agricultural and industrial proletariat, composed mostly of agricultural laborers and industrial workers employed by the French.<sup>23</sup> French settlement created significant socioeconomic disruption in rural areas. As French settlers acquired property from what had previously been state, tribal, or *habus* lands, many rural Tunisians were displaced.<sup>24</sup> The displacement of the rural population created adverse effects on agricultural and craft production and in turn generated economic disruption in urban centers. When a labor movement emerged in the 1940s, labor

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<sup>22</sup> Ibid., 118-119.

<sup>23</sup> Ibid., 119.

<sup>24</sup> Habus land refers to land donated by individuals or families to endow religious institutions.

grievances aligned closely with the priorities of the nationalist movement so that the Tunisian proletariat became an important political force in the struggle for national independence.<sup>25</sup>

In sum, French colonial rule had significant implications for the Tunisian polity. In a shift of political power towards the center, the majority of Tunisian tribes lost their autonomy from central political authority. The beylical ruler and Tunisian officials who were in power during the colonial period also lost credibility in the eyes of the public. The beylical administration as a whole came to be perceived as an instrument of colonial rule and would later be delegitimized by the nationalist movement. Finally, the development of capitalistic enterprise helped generate a labor movement whose interests would converge with those of the nationalist movement.

### *The Nationalist Movement*

The Tunisian nationalist movement conducted an anti-colonial struggle through a tightly coordinated party that had branches throughout rural and urban areas of the country. The nationalist party served as the principle organizational and ideational instrument for national liberation from the 1930s to the 1950s. Known as the Neo-Destour, the party was founded in 1934 during a wave of nationalist sentiment through the amalgamation of several nationalist associations. Specifically, the party emerged from the radical wing formed after the split in the Old Destour party between traditionalist and secularist factions. Among the leaders of the Destourian radicals was Habib Bourguiba, the young lawyer who would ultimately negotiate Tunisian independence from France and serve as the first President of the Republic of Tunisia.<sup>26</sup>

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<sup>25</sup> Ibid., 119.

<sup>26</sup> Perkins, *A History of Modern Tunisia*, 95.

A broad-based party, Neo-Destour membership cut across social classes and regional affiliations and included both intellectuals, urban workers, and rural tribesmen.<sup>27</sup> The strength of the nationalist movement was largely due to the alliance between the Neo-Destour party and the dominant labor union, *l'Union générale tunisienne de travail* (UGTT), which collaborated to pursue nationalist goals. The collaboration between the two organizations allowed the movement to increase pressure against the colonial regime as French industrial owners and landholders became the target of both labor and nationalist resistance.

Nationalist movements must typically underplay their ideological differences to present a unified opposition to the colonizer. Ideological inclusion is thus often imperative to anticolonial struggles. The Neo-Destour party reflected this principle in both its ideology and strategy. Presenting national sovereignty as the explicit objective of the party and underplaying ideologies other than nationalism, party leadership included both liberal professionals and religious figures and scholars. The liberal orientation of the Neo-Destour stemmed from the legacy of the Young Tunisian party, a small group of young liberal intellectuals active in Tunis in the early twentieth century. Influenced by European culture and the reformist movement of the Young Turks in Turkey, the Young Tunisians aimed to bring modern education and culture to Tunisia to amend what they viewed as backwardness in Tunisian society. The Neo-Destour's conservative trend, on the other hand, stemmed primarily from the legacy of the Old Destour party, which promoted an ideology of traditional anticolonialism. Founded in 1920 by a small propertied class of urban Tunisians, the Old Destour advocated for the respect and preservation of Arab and Islamic culture while fighting for political rights.<sup>28</sup> The strength of the Neo-Destour lay in its

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<sup>27</sup> Charrad, *States and Women's Rights*, 203.

<sup>28</sup> *Ibid.*, 205.

incorporation of both the reformist legacy of the Young Tunisians and the commitment to Islam of the Old Destour. Importantly, however, these ideological orientations clashed sharply with each other as the nationalist struggle began to conclude.

Internal party conflicts arose as independence from France and the opportunity to gain political power in a new independent state became an increasing possibility. Two nationalist leaders representing competing radical and conservative orientations emerged at the forefront of the party: the reformist Habib Bourguiba and the pan-Islamist Salah Ben Youssef.<sup>29</sup> Bourguiba and Ben Youssef disagreed on the strategy to gain independence, appealed to different constituencies, promoted different visions for the independent state, and received different international support. Bourguiba and Ben Youssef came to represent the interests of different sectors of Tunisian society.

Generally, Ben Youssef appealed to nationalist forces, including tribes, rural migrants, and the religious establishment, that viewed national sovereignty as an opportunity to restore Tunisia to its precolonial past.<sup>30</sup> Ben Youssef was a strong proponent of pan-Arabism and pan-Islamism. Advocating solidarity with other Arab and Islamic nations, he promoted pan-Arabism and pan-Islam as the ideological foundation for the nationalist struggle and for the future Tunisian nation.

Bourguiba, in contrast, received support from the urban labor union, professional elites, and the populations of most coastal towns. In terms of the strategy to gain independence, Bourguiba advocated a gradual approach that utilized negotiation instead of the sustained armed violence advocated by Ben Youssef. While he publicly asserted his loyalty to Islam, Bourguiba

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<sup>29</sup> Ibid., 205.

<sup>30</sup> Ibid., 206.

sought to develop a distinctive Tunisian nation and an internationally connected modern state independent of the pan-Arab movement.<sup>31</sup>

Conflict between the two factions of the Neo-Destour reached a crisis in 1955. While Ben Youssef advocated armed violence against colonial forces, Bourguiba sought to enter negotiations with the French. Tunisian society became profoundly divided between the two nationalist factions to the point that Tunisia verged on civil war. In response to the crisis, Bourguiba called for a Neo-Destour Congress in November 1955 in a coastal city where Ben Youssef enjoyed little support. The presence of the labor union tilted the balance in favor of Bourguiba. While Ben Youssef was critically underrepresented at the congress, the labor union supported Bourguiba's instatement as the leader of the party.<sup>32</sup>

Tunisian independence was proclaimed on March 20, 1956. Bourguiba, as the leader of the winning faction of the nationalist movement, was appointed prime minister in 1956 and later elected president in 1957. The Tunisian monarchy, discredited among the public as an instrument of colonial rule, was abolished without conflict. Bourguiba would be elected president for life in 1975 and remain in power until his ouster in 1987.

In the wake of independence, Youssefist sympathizers were by and large purged from the political sphere. Bourguiba's regime sought to silence party members and coalitions that had supported Ben Youssef's faction. The purge of the Youssefist faction from the political sphere had several important consequences for the formation of the independent state. First, Bourguiba's faction remained largely unchallenged in the government for several years. The political authority of Bourguiba's faction would allow Bourguiba to shape Tunisia's political

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<sup>31</sup> Ibid., 208.

<sup>32</sup> Ibid., 208.

institutions in accordance with his vision for the modern state, which he viewed as the primary mechanism for modernizing Tunisian society. Second, both remaining tribes and the religious establishment lost their influence in the political sphere after independence. Expropriation of political power was the consequence for groups that had supported Ben Youssef during the nationalist struggle. Third, party division during the nationalist struggle generated a fear of political chaos and an obsession with national unity among the new leadership. Bourguiba's regime would continually emphasize the need for national unity in political speeches and mass media. Given the atmosphere of national enthusiasm at independence, most Tunisians were willing to give Bourguiba's nascent government a chance to build a new nation-state.<sup>33</sup>

#### *Post-Independence State Formation*

Following independence, Bourguiba's regime also attempted to consolidate state institutions. The political leadership—virtually all of whom were products of French education—established sweeping social reforms ostensibly to liberate Tunisians from beliefs and practices considered obsolete in the modern world and impediments to Tunisia's development. Targets of the reforms included the collective tribal ownership of land, local political autonomy, religious property rights, the power of Shari'a courts, and the legal privileges of extended kin. In terms of scale and impact, only Kemal Atatürk's reforms in Turkey in the 1920s are comparable example of sweeping modernization efforts in the Islamic world.<sup>34</sup>

In one of the most extensive reforms, the political leadership unified local administration throughout Tunisia's national territory. The new government created state and party institutions throughout Tunisia to challenge and ultimately replace local tribal solidarities. The expansion of the

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<sup>33</sup> Charrad, *States and Women's Rights*, 209-210.

<sup>34</sup> Perkins, *A History of Modern Tunisia*, 7.



administrative network following independence was especially remarkable. The number of government officials nearly tripled in five years, growing from thirty thousand to eighty-six thousand between 1955 and 1960.<sup>35</sup>

Importantly, the government attempted to impose state control over certain aspects of religion. In an extensive reform of collective tribal land ownership and religious property rights, the government dismantled the institution of *habus*, or land donated by individuals or families to endow religious institutions.<sup>36</sup> Through confiscating the property of the Habus Council, which managed land reserved to support mosques, Qur'anic schools, and other Islamic institutions, the government brought religious, educational, and charitable institutions that were the beneficiaries of the Council's funds under state control.

In another significant measure, the government unified Tunisia's justice system by integrating all courts into a single national system. The state abolished religious courts and absorbed the two existing Shari'a courts into the new judicial system, creating a unified system of secular courts. The abolition of religious courts effectively redefined justice in Tunisian society, as citizenship now superseded religion as the foundational principle of the judicial system.<sup>37</sup> As a whole, the government's legal reforms have been interpreted as paving the way for the promulgation of the Personal Status Code in August 1956.

In sum, the state building strategy of the post-independence leadership was to consolidate the authority of the national state by creating nationwide institutions. The political leadership sought to alter existing institutions to redefine social and power relations in Tunisian society. By expanding the administrative structure, limiting the independence of religious

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<sup>35</sup> Charrad, *States and Women's Rights*, 212.

<sup>36</sup> Perkins, *A History of Modern Tunisia*, 135.

<sup>37</sup> Charrad, *States and Women's Rights*, 214.

institutions, and abolishing the collective ownership of tribal land, the political leadership launched a radical state building program that promoted a new form of social organization in which the political authority of the state superseded the authority of the religious establishment and tribal groups. The state building activities pursued after independence ultimately paved the way for family law reform.

### **Islam and Family Law**

Islam constitutes the “idiom of unity”<sup>38</sup> throughout the Maghreb. It has historically linked otherwise disparate populations into a global Islamic community. Within the Islamic community, family law occupies a unique status at the core of the Islamic tradition.<sup>39</sup> Multiple legal principles that apply to family law are specifically articulated in the text of the Qur’an and as such must be respected by all Muslims.

Any family law promotes normative conceptions of gender. Indeed, the most explicit aspect of Islamic family law concerns gender relations. Structurally, Islamic law places women in a subordinate status to men by giving power over women to men as husbands and male kin.<sup>40</sup> Islamic law effectively permits the control of women by their kin group.

Any family law also offers a particular vision of kin relations. Family law promotes certain conceptions of solidarity between kin by privileging certain relations in the kinship unit over others, whether explicitly or implicitly. Western family law, for example, has typically privileged parent-child and spousal relations since the emergence of the modern nuclear family. Islamic law, in contrast, treats the marital unit as easily breakable and privileges the cohesiveness

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<sup>38</sup> Ibid., 28.

<sup>39</sup> Ibid., 28.

<sup>40</sup> Ibid., 28.

of the extended patrilineal kin group. Islamic law presents a vision of the family as an extended kin group united by strong ties between agnates, or male relatives in the paternal line.<sup>41</sup>

Taken together, the conceptions of gender and kinship embedded in family law promote a particular vision of society. As Mounira Charrad suggests, the way in which family law defines power relations and bonds of solidarity in the kin group, and the way in which these dimensions interact with gender, is key to understanding the distinctive role of Islamic family law in structuring Maghrebi societies.

### *Family Law in Islam*

Islam does not differentiate between theological principles and the principles that guide civic life. Laws regulating social life in Islamic societies are deeply rooted in religion. As such, Islamic law plays a central role in defining the social and moral structure of Muslim populations and the “Islamic way of life.”<sup>42</sup>

Islamic law is referred to as the *Shari’a*. While the Shari’a stipulates many aspects of private and social life, it contains the most explicit prescriptions in the areas of kinship and the family.<sup>43</sup> Specifically, it elaborates principles to be followed in matters of personal status, kin relations, family life, and property rights.

There is no single religious text that constitutes the Shari’a. Rather, the law is derived from four sources in decreasing order of authority. The two most authoritative sources are the word of God as represented in the Qur’an and the *Sunna*, or the behavior of the Prophet Muhammad as recorded in the *Hadith*. The third and fourth sources involve *qiyas* and *ijma*, or reasoning by analogy and community consensus. If a new issue arises which the two primary

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<sup>41</sup> Ibid., 28.

<sup>42</sup> Ibid., 29.

<sup>43</sup> Ibid., 29.

sources do not address, jurists and scholars turn to consensus and analogy with principles contained in the primary sources. These multiple processes have produced a number of religious schools.

Importantly, the two most authoritative sources of Islamic law—the Quran and the Hadith—the texts that pertain to women and the family contain room for multiple interpretations. The ambiguity of the texts has caused disagreement among Islamic scholars over the exact meaning of statements pertaining to women and the family and has resulted in a number of major accepted interpretations. The adaptability of Islamic texts is due in part to the absence of a centralized clergy in the dominant Islamic tradition, or Sunni tradition. Islam has adopted a different character in the variety of settings in which it has taken root.

Four major legal schools have developed within the Sunni tradition which contain small but important variations in legal regulations concerning women and the family. The school known as *Maliki* has historically predominated in the Maghreb. Of the four legal schools, the Maliki school has been most suited to the social structure of the Maghreb insofar as it allowed Maghrebi societies to adopt Islam with minimal changes to structures of extended patrilineage.<sup>44</sup>

#### *Islamic Inheritance Law*

Islamic family law is designed to sanction the control of women by male relatives and maintain the cohesion of the patrilineage. The subordinate status of women is one of the most consistent themes in the legal texts and exemplifies the vision of society embedded in Islamic law in which women are placed in an inferior position to men. Equally important aspects of the law are its toleration of a fragile marital bond and its identification of relations among agnates over marital relations as the critical bonds for an individual in society. This appears, for example,

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<sup>44</sup> Ibid., 30-31.

in laws on divorce and polygamy as well as inheritance which favor agnatic relatives over the spouse. As a whole, Islamic family law embodies a concept of kinship that privileges male kin in the paternal line.<sup>45</sup>

No other area of Islamic law privileges the rights of agnates as much as inheritance law. Specific regulations notwithstanding, Islamic inheritance law contains two consistent themes. First, inheritance law favors men over women. A woman always receives half as much inheritance as a man would in a comparable position. Second, inheritance law privileges agnatic relatives. It is not just men who are privileged over women, but specifically male relatives on the paternal line.

The prescriptions on inheritance lie at the core of Islamic family law. Many Muslims consider them “the most sacred and untouchable part of the Shari’a.”<sup>46</sup> Strict and precise, inheritance laws allow little personal choice in matters of succession.<sup>47</sup> Rather, the inheritance rights of an individual are largely dependent on kinship relations.

Under Islamic inheritance law, an individual can transfer only one-third of their property through their will. The other two-thirds are distributed by the law to specific relatives on the basis of kinship relation. The Qur’an identifies in meticulous detail the recipients of the remaining two-thirds as well as the hierarchy for the order of heirs and what share of property each heir is to receive. An individual cannot deprive an heir of their inheritance right, change the amount of an heir’s share, or alter the order in which heirs inherit. The textual prescriptions are

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<sup>45</sup> Ibid., 31.

<sup>46</sup> Ibid., 41.

<sup>47</sup> Ibid., 41.

imperative insofar as they constitute a divine commandment.<sup>48</sup> For example, the Qur'an stipulates inheritance rules with the following degree detail:

If there be more than two girls, they shall have two-thirds of the inheritance; but if there be one only, she shall inherit half. Parents shall inherit a sixth each, if the deceased have a child; but if he leave no child and his parents be his heirs, his mother shall have a third. If he have brothers, his mother shall have a sixth after payment of any legacy he may have bequeathed or any debt he may have owed... You shall inherit the half of your wives' estate if they die childless. If they leave children, a quarter of their estate shall be yours after payment of any legacy they may have bequeathed or any debt they may have owed. Your wives shall inherit one quarter of our estate if you die childless. If you leave children, they shall inherit one-eighth... This is a commandment from God. God is all knowing and gracious.<sup>49</sup>

It is noteworthy that while agnatism pervades Islamic family law, inheritance law diverges from pure agnatism in that it grants a share of property to relatives whom a standard of pure agnatism would exclude from inheritance, including fathers, mothers, daughters, son's daughters, sisters, uterine brothers, grandfathers, and grandmothers.<sup>50</sup> A rule of pure agnatism would exclude most of these recipients from succession, whereas Islam identifies them as heirs. Moreover, it has been suggested that agnates had even greater inheritance privileges before the advent of Islam, and that Islamic law in fact significantly reduced the agnatism that pervaded customary law.<sup>51</sup> Nonetheless, although Islamic law qualified agnatism, it did not eradicate it. Islam retained explicit forms of agnatism in family law and continued to privilege paternal male relatives in inheritance.

The rule according to which a woman inherits half as much as a man applies to all cases.<sup>52</sup> Regardless of her position in the order of heirs or her familial relation to the individual

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<sup>48</sup> Ibid., 41.

<sup>49</sup> Ibid., 41.

<sup>50</sup> Ibid., 42.

<sup>51</sup> Ibid., 42.

<sup>52</sup> Ibid., 43.

whose property is being inherited, a woman receives only half of what a man in the same position would receive.<sup>53</sup> For example, if a brother of the deceased individual receives the equivalent of ten thousand dollars, a sister would receive only five thousand. More dramatically, if a man leaves an estate and his only relatives are a son and a distant paternal male cousin, the entire estate would go to the son. However, if his only relatives are a daughter and a distant paternal male cousin, the daughter would receive only half of the estate, while the remainder goes to the distant cousin who would inherit as the nearest agnate. In each of these cases, the familial relation of the inheriting relatives to the deceased is identical; gender alone makes the difference in the distribution of property.

With gender inequality and agnatic privilege as two of its main features, Islamic inheritance law is suited to a society in which extended kin groups predominate as the form of social organization. In favoring distant male relatives over immediate female kin, Islamic inheritance law promotes the solidarity of the extended family. Inheritance by agnatic relatives supports a social structure in which individuals rely on agnates for resources and where the main source of solidarity lies with the tribal group.<sup>54</sup>

In sum, Islamic family law both regulates gender relations within the family and defines the organization of power in society more broadly. Inheritance law is central to understanding the organizing principles of a society, especially a society in which the economy is not dominated by market relations, because it reveals the desired patterns of the distribution of resources in that society. Islamic inheritance law can therefore be viewed as an instrument to maintain relations

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<sup>53</sup> This is true in all cases except uterine brothers and sisters, who inherit the same amount.

<sup>54</sup> *Ibid.*, 45.

within the patrilineage insofar as it privileges agnates in the distribution of the resources in society.

### **Family Law Reform**

On August 13, 1956—less than five months after it proclaimed independence—Tunisia promulgated a new Personal Status Code (PSC). The PSC altered Islamic family law and transformed women’s legal status in Tunisia in significant and unprecedented ways. The laws modified regulations in Islamic law on marriage, divorce, alimony, custody, adoption, and to some extent inheritance, impacting almost every aspect of family life. An appreciation of the character of the reforms as a whole is necessary to understand what is puzzling about the preservation of Islamic inheritance law in the new code.

#### *The 1956 Personal Status Code*

The PSC discarded the vision of the family as an extended kin group and replaced it with the vision of a conjugal family. Moreover, while it decreased the responsibilities of extended kin in family matters, it also increased women’s autonomy in their private lives.<sup>55</sup> The code abolished polygamy and the unilateral right of the husband to repudiate his wife, gave women the right to initiate divorce, and increased women’s custody rights. It made instituted a minimum age for marriage, made the registration of marriages and divorces mandatory, required divorce to take place in court, and identified the wife as responsible for contributing financially to the household. In addition, the code made adoption legally valid and required all citizens to have a

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<sup>55</sup> Ibid., 219.



patronymic name for. Finally, it abolished the institution of habus and modified certain rules on inheritance.<sup>56</sup>

It should be emphasized that the PSC was a top-down reform implemented by the leaders of the ruling party at independence; it was not a response to pressures from a grassroots feminist movement. Although women had participated in the nationalist struggle, no women's movement had developed in Tunisia before the promulgation of the code. Rather, the lawmakers behind the reform primarily viewed the PSC as an instrument of social change. They viewed code as a means of transforming kinship, which they viewed as necessary to encourage broader social change. The Minister of Justice who played a central role in drafting the code, for example, stated that he and his collaborators sought to eradicate practices they considered as "feudal," such as child marriages, polygamy, and divorce by repudiation, and orient Tunisia towards the "modern world."<sup>57</sup> Close collaborators of Bourguiba have also noted that they do not recall Bourguiba speaking specifically about the status of women at the time of the reform. Rather, they recalled his treating women's rights as part of the general emancipation of Tunisian society from the legacy of colonialism and outdated forms of social organization.<sup>58</sup>

Importantly, when the PSC was promulgated in 1956, the Ministry of Justice also published an official statement declaring the Islamic character of the new laws. The communiqué stated that "religious judges and scholars had participated in [its] preparation," that the code had been granted their approval, and that the code was based on Islamic sources.<sup>59</sup>

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<sup>56</sup> Ibid., 219.

<sup>57</sup> Ahmed Mesitri, Minister of Justice in 1956. In *States and Women's Rights*.

<sup>58</sup> Charrad, *States and Women's Rights*, 13.

<sup>59</sup> *L'Action Tunisienne*, September 3, 1956. In *States and Women's Rights*.

Lawmakers presented the code as a new phase of Islamic interpretation, similar to earlier phases of interpretation that have marked the evolution of Islamic legal thought throughout its history.<sup>60</sup> They distinguished it from Kemal Atatürk's reforms in Turkey, which abandoned Islamic law altogether in 1926 and replaced it with a civil code based on that of Switzerland.

In contrast, lawmakers emphasized the continuing faithfulness of the PSC to Islamic heritage. While it does not mention Islam explicitly, the PSC was framed as a necessary step to rejuvenate the Islamic tradition. To what extent the code is effectively Islamic or secular has been contested since its promulgation. The code radically reformed certain interpretations of Islamic law while at the same time retaining other elements of the Shari'a, including the articles concerning inheritance, dowry, and descent. In Charrad words, the PSC can thus be interpreted either "as an Islamic body of legislation inspired by secular norms, or a secular body of legislation inspired by Islam."<sup>61</sup>

The PSC was promulgated by a decree of the Tunisian bey before the abolition of the monarchy and without being debated in national assembly. The code met with only minor opposition due to the political environment in which it was implemented. The main opposition to the code came from the conservative factions of the religious establishment, but the establishment did not have sufficient political influence to successfully oppose government decisions.<sup>62</sup>

#### *Modifications to Inheritance Law*

One of the most puzzling aspects of the PSC is that the laws of inheritance remained by and large faithful to Islamic law. The Code maintained the two basic categories of heirs

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<sup>60</sup> Ibid., 221.

<sup>61</sup> Charrad, *States and Women's Rights*, 222.

<sup>62</sup> Ibid.

identified in the Shari'a: those who inherit based on their kinship relation to the deceased and those who inherit on the basis of agnatism. Moreover, the rule according to which a woman inherits half as much as a man was preserved. As Charrad notes, compared to the other developments of the code which expanded women's rights and privileged the conjugal family over the extended patrilineage, "the stipulations on inheritance were surprising."<sup>63</sup> The changes to inheritance law were not as striking as in other areas of family law; the stipulations on inheritance equality appeared incongruent with the character the reforms as a whole. Charrad, however, does not offer an explanation for this inconsistency in the reforms.

What is also puzzling, moreover, is that while the PSC preserved the stipulation on inheritance inequality, the code implemented reforms that expanded women's inheritance rights in other ways. For example, the code abolished the institution of *habus*. The *habus* system was often used to keep property within the agnatic kinship network by excluding female heirs or making them temporary beneficiaries.<sup>64</sup> Donating a *habus* allowed the patrilineal kin group to retain its property. By abolishing the system of *habus*, the code removed this mechanism to deprive women of their inheritance rights.

The code also introduced regulations for the procedure of wills. Wills could no longer be made orally, but had to be written, dated, and signed in order to be valid. An important change was introduced in regard to the children of a predeceased daughter specifically. As stipulated in Islamic law, a will could transfer no more than one-third of an individual's assets, with the remaining two-thirds distributed to specified heirs. Previously, in the case that a man's daughter had died and left a child, the child of the predeceased daughter could not be the beneficiary of

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<sup>63</sup> Ibid.

<sup>64</sup> Charrad, *States and Women's Rights*, 44.

his will, whereas the child of a predeceased son could. In contrast, the new code permitted a man to make the child of a predeceased daughter a beneficiary of his will, thus transferring one third of his assets to the female line. In a society in which the male line had been overwhelmingly privileged in inheritance, this constituted a significant change for female kin.

Two other reforms were introduced that restricted the inheritance privileges of agnatic relatives to the benefit of female relatives. First, the code significantly expanded the inheritance rights of the spouse. Under Maliki law, if there were no agnatic heirs, the remainder of an individual's heritage after specified heirs had received their share went to the state or to a public fund. This issue was handled differently under Hanafi law, but also in a way that disadvantaged the spouse. Under Hanafi law, if there were no agnatic heirs, the remainder of the heritage was distributed among heirs according to the shares specified in the Shari'a. The spouse, however, was excluded from this rule of "return."

Abandoning Maliki principles, the code adopted the system of return and permitted the spouse to be a recipient.<sup>65</sup> The implications of this reform were significant. Under the new law, an individual's inheritance in its entirety would now go to the spouse, whether male or female. This reform was another indication of the tendency of the new code to extend inheritance rights to members of the conjugal family over the extended patrilineage.

Second, and more dramatically, the code shifted the direction of property transmission to the conjugal family at the expense of extended kin. The new laws permitted women to either take precedence over agnatic heirs or to exclude them from inheritance altogether, stipulating that "the daughter and the granddaughter in the male line benefit from 'return' even in the presence of agnatic relatives in the category of brothers, paternal uncles, and their

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<sup>65</sup> Ibid., 229.

descendants.”<sup>66</sup> If a man died and left a daughter and a brother or a paternal uncle, under the new law the daughter would now inherit the entire patrimony, excluding from inheritance the brother or the paternal uncle of the deceased. Whereas under Maliki law the daughter would have received only half of the patrimony—and the other half would have been distributed to agnatic relatives—a woman now received twice as much as she previously did. Moreover, upon the daughter’s death, the property she had inherited would then pass to her children, thereby evading agnatic kin altogether.

As a whole, the PSC has been interpreted as favoring women. Like other areas of the code, the inheritance law reforms expanded women’s rights in significant ways. Importantly, however, the reforms also served to sanction the nuclear family. What was striking about the new inheritance laws was not only that women now excluded men from inheritance in certain cases, but that it was a particular category of male kin who were excluded: extended male relatives, including brothers, paternal uncles, and their children. Nonetheless, the new laws did not allow women to exclude the immediate male relatives of the deceased, including fathers, sons, or grandsons.<sup>67</sup>

What is important about the inheritance reforms is that they privileged descendants of both sexes—not just women—over extended kin. The reforms did not directly favor women as such. In the transmission of property, a child—whether male or female—was now prioritized over other kin, even if the other kin were male relatives. The male relatives that were excluded from inheritance in the new laws, including brothers, uncles, and cousins, “constituted the center of the circle within which relations of solidarity and reciprocal obligations were

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<sup>66</sup> Ibid.

<sup>67</sup> Ibid., 230.

historically emphasized in the Maghrebi kin group.”<sup>68</sup> The inheritance reforms represented a strengthening of the conjugal family to the disadvantage of the extended patrilineal kin group.

In sum, the PSC made drastic reforms to Islamic family law. As a whole, the code diverged from Islamic law in its conception of the family and in its specific regulations of kin relations. In regard to inheritance, it modified certain inheritance rules to favor the spouse and immediate descendants, including women, over agnatic relatives. These modifications represented a significant departure from the kin relations traditionally sanctioned in Islamic law. However, the code remained largely faithful to Islamic law and kept gender inequality in inheritance intact.

Upon the promulgation of the PSC, the government undertook extensive efforts to explain the family law reforms to the Tunisian population and to enforce their application. Judges were designated as social educators whose task was not only to apply the new laws, but to make the modifications to family life contained within the new family law understandable to Tunisian citizens. Conferences and seminars were also organized to explain and provide clarifications of the code, and national organizations were encouraged to partake in carrying out the social transformations that the code entailed. The PSC became a national project to which both citizens and the government were to contribute.<sup>69</sup>

#### *Family Law Reform to the Present*

The PSC constituted a radical reinterpretation of Islamic family law and laid the groundwork for further legal reforms that have placed Tunisia at the forefront of the Arab world in gender equality. The second major phase of family law reform occurred in 1993 under Zine El Abidine Ben Ali, who

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<sup>68</sup> Ibid., 230.

<sup>69</sup> Ibid., 230-231.

succeeded Bourguiba as president in 1987. The 1993 family law reforms centered around the Tunisian Code of Nationality and concerned women's citizenship rights specifically. Among the privileges conferred on agnatic relatives in family law, the patrilineage was historically privileged as the determinant of Tunisia nationality. Membership in the Tunisian political community passed directly from the male line.<sup>70</sup> In a considerable departure from traditional citizenship law, the reforms designated mothers as a source of citizenship in addition to fathers. For the first time, a woman could pass Tunisian nationality to a child regardless of the nationality of the father. The reforms were widely praised both in and beyond Tunisia for advancing women's rights and challenging the privileged status of the patrilineage. Importantly, women's activism played an important role in implementing the reforms. Women's organizations had emerged in Tunisia in the 1980s and 1990s, and in contrast to the promulgation of the PSC, women's rights advocates were active in the public debates leading up to the reforms.<sup>71</sup>

Recent developments in Tunisia suggest that a new phase of family law reform is underway. In the wake of the 2011 Jasmine Revolution—the anti-government uprising in Tunisia which toppled Ben Ali's regime and resulted in Tunisia's democratization—the Tunisian government has taken significant measures to instate gender equality in the law. In 2014, Tunisia's Constituent Assembly adopted a new constitution which declares male and female citizens equal before the law and made gender parity on electoral lists mandatory. Article 21 of the Constitution states that women and men “have equal rights and duties and are equal before the law without any discrimination,” and in fulfillment of this article,

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<sup>70</sup> Mounira Charrad, “Family Law Reforms in the Arab World: Morocco and Tunisia,” *United Nations Department of Economic and Social Affairs*, 6.

<sup>71</sup> *Ibid.*, 5.

political parties are now required to alternate the members of their candidate lists between men and women.<sup>72</sup>

In 2017, Beji Caid Essebsi—the leader of the secularist party Nidaa Tounes who became Tunisia’s first president in 2014—passed a landmark law criminalizing domestic violence against women. The law removed a clause in the penal code that allowed rapists to escape punishment if they agreed to marry their victims, making Tunisia the first Arab-Muslim country to abolish the rape-marriage law.<sup>73</sup> Later in 2017, Essebsi overturned a law prohibiting Muslim women from marrying non-Muslim men, also making Tunisia the first Arab-Muslim country to remove legal barriers to women marrying outside the state religion.<sup>74</sup> At the same time, Essebsi announced a proposal to review Tunisia’s inheritance, advocating the elimination of gender inequality in inheritance.

Essebsi announced the proposal with the public endorsement of Diwan al-Ifta, Tunisia’s highest religious establishment, which described the proposal as “reinforcing women’s position and guaranteeing the principle of equality between men and women in rights and obligations that is called for in our religion and in the Hanafi Sunni doctrine.”<sup>75</sup> Nonetheless, the proposal sparked controversy both in Tunisia and throughout the Arab world. Religious authorities at Al-Azhar, the university in Cairo considered the highest authority of Sunni Islam, condemned the proposal as counter to Islamic law. Al-Azhar scholars stated that gender equality in inheritance is “undebatable,” “contradicted Islamic edicts,” that the regulation of inheritance in Islam is determined by Shari’a law with “no space for independent reasoning or uncertainty,” and that Tunisia’s proposal “shakes the stable foundation of the

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<sup>72</sup> “What Tunisia Can Teach the United States About Women’s Equality,” *Carnegie Endowment for International Peace*, November 20, 2018.

<sup>73</sup> Mona Eltahawy, “Seven Years After the ‘Arab Spring’, Tunisia is Leading Another Revolution—on Women’s Rights,” *The Washington Post*, January 31, 2018.

<sup>74</sup> In most Muslim countries, Muslim men can marry Jewish or Christian women, but Muslim women can only marry Muslim men.

<sup>75</sup> Mai Shams El-Din, “‘Egypt is Not Tunisia’ When It Comes to Women’s Rights,” *Mada Masr*, August 22, 2017.



Muslim community.”<sup>76</sup> Opponents within Tunisia suggested that Tunisia faces more pressing issues than inheritance equality, and some claimed that inheritance equality is part of a foreign political agenda.<sup>77</sup>

Despite the controversy, Essebsi took a preliminary step towards inheritance reform in August 2017 by launching the Commission of Individual Freedoms and Equality (COLIBE), an independent committee tasked with recommending legal reforms to bring Tunisian law in accordance with the principles of the new Constitution and with international human rights standards. The Commission published its first report in June 2018, identifying Tunisian laws that undermine or violate individual freedoms and equality and recommending specific legal reforms. In regard to family law, the Commission recommended eliminating the provision of the Personal Status Code according to which women receive half as much inheritance as men.<sup>78</sup>

In a more tangible step towards reform, in August 2018 Essebsi pledged to introduce a bill to Parliament to instate gender equality in inheritance. Describing inheritance equality as long overdue, Essebsi claimed that “this should have been done in 1956 but the constitution did not provide for it then.”<sup>79</sup> Notably, however, Essebsi’s proposal stopped short of advocating full inheritance equality. Families who wish to continue observing the existing inheritance law can opt out of inheritance equality by formally expressing their wish to do so in their will in front of a notary.<sup>80</sup> The bill was approved by Essebsi’s cabinet in November 2018 and sent to Tunisia’s parliament to be debated and ratified.

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<sup>76</sup> Ibid.

<sup>77</sup> “Tunisia: Landmark Proposals on Gender Bias, Privacy,” *Human Rights Watch*, July 26, 2018.

<sup>78</sup> The Commission also recommended overturning the prohibition on conferring citizenship to foreigners who marry Tunisian women, removing the provision of the code which designates the husband as the head of the family, and made a separate recommendation for the decriminalization of homosexuality.

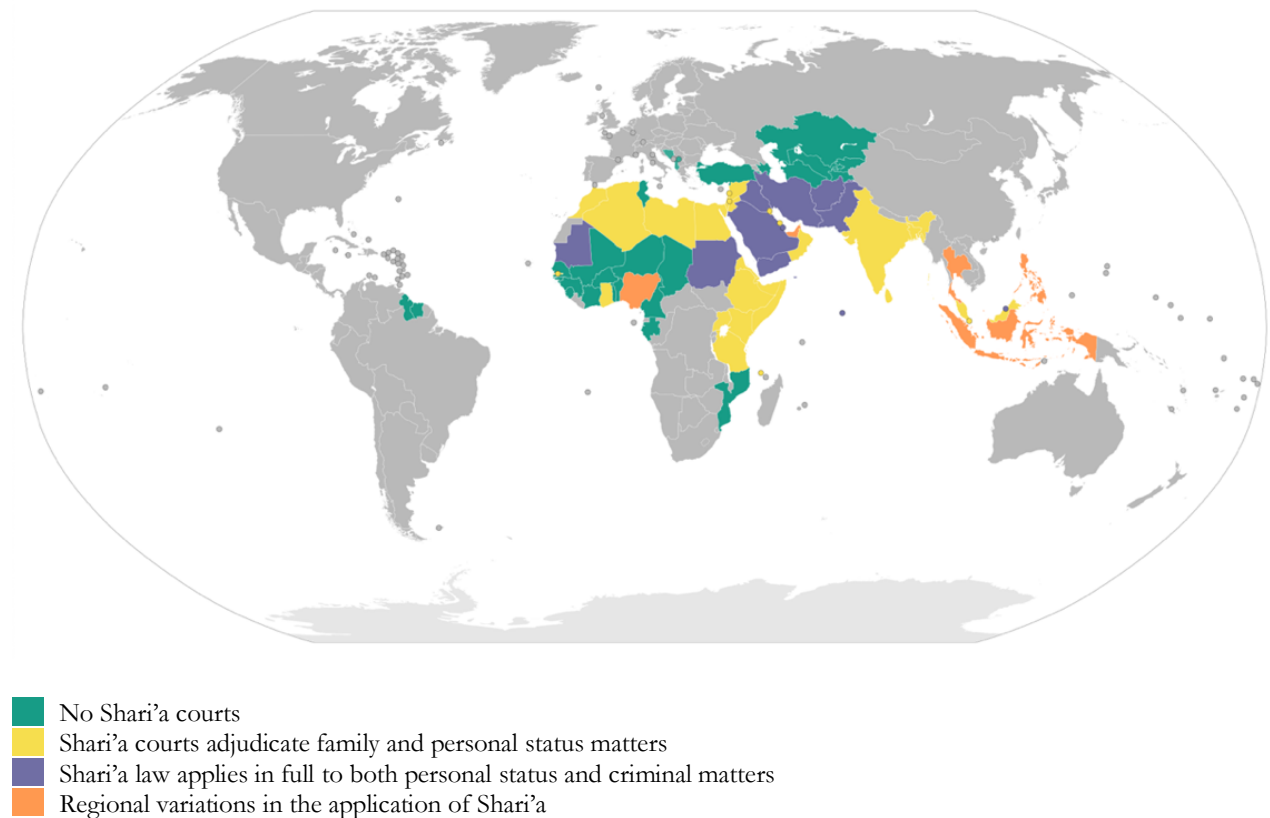
<sup>79</sup> “Tunisia’s President Vows to Give Women Equal Inheritance Rights,” *Al Jazeera*, August 13, 2018.

<sup>80</sup> “Ennahda Rejects Inheritance Equality,” *Human Rights Watch*, September 6, 2018.

## Islam and Family Law in a Global Context

Before turning to the literature review in Chapter Three, it is useful to briefly contextualize Tunisia in the global landscape of Islamic law and inheritance law reform. An appreciation of the application of Shari'a law throughout the Islamic world as well as the global landscape of inheritance law reform sheds light on important similarities and differences between Tunisia and countries in the Islamic world that have legally instated gender equality in inheritance.

Map 1: *Application of Shari'a in Muslim-Majority Countries*



Map 2: Role of Islam in Muslim-Majority Countries as Outlined in Constitutions

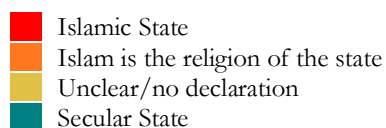
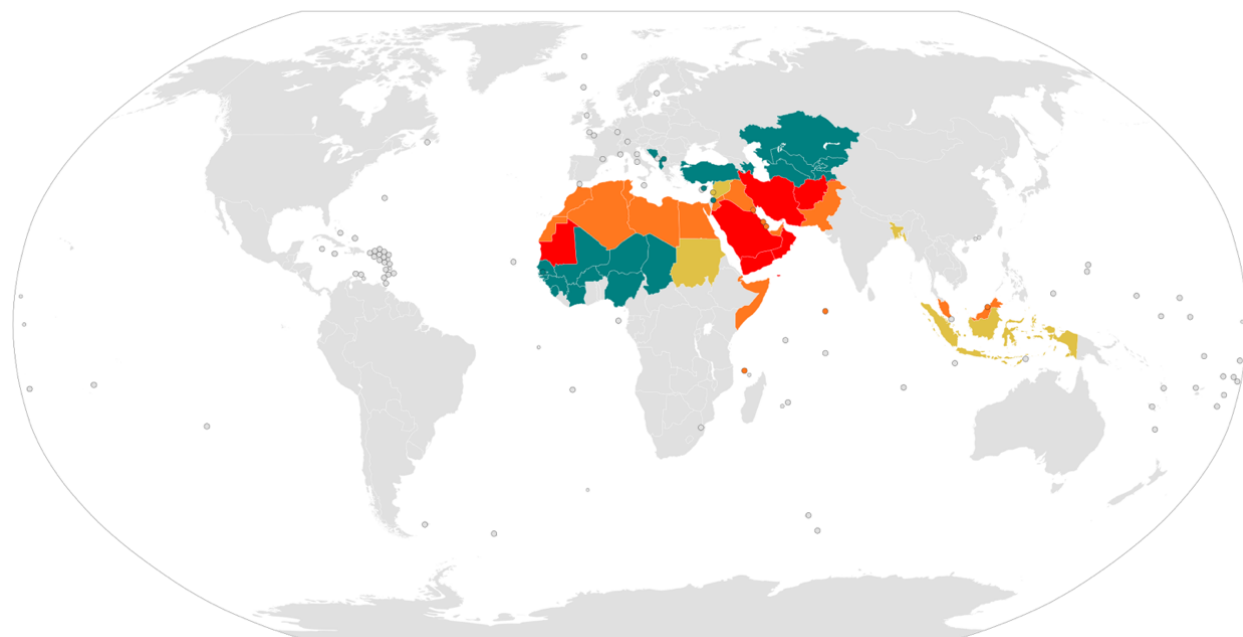


Table 2: Gender Equality in Inheritance in Muslim-Majority Countries<sup>81</sup>

Country	Region	Legal System	State Religion
<i>Albania</i>	Eastern Europe	Secular	None
<i>Azerbaijan</i>	Western Asia	Secular	None
<i>Bosnia and Herzegovina</i>	Eastern Europe	Secular	None
<i>Chad</i>	Central Africa	Secular	None
<i>Kazakhstan</i>	Central Asia	Secular	None
<i>Kosovo</i>	Eastern Europe	Secular	None
<i>Kyrgyzstan</i>	Central Asia	Secular	None
<i>Mali</i>	West Africa	Secular	None
<i>Mozambique</i>	Southern Africa	Secular	None
<i>Tajikistan</i>	Central Asia	Secular	None
<i>Turkey</i>	Western Asia	Secular	None
<i>Turkmenistan</i>	Central Asia	Secular	None

<sup>81</sup> I have included Mozambique in this table, where the population is 45% Muslim.

### *Shari'a Law and Political Institutions*

Shari'a law is applied to state laws in at least some form in 53 Muslim countries across the globe as well as a number of non-Muslim countries. The term Shari'a has come to stand for a broad range of applications of the law in Muslim-majority countries. In general, Shari'a has been incorporated into, or removed from, political systems throughout the Islamic world in three main ways.<sup>82</sup>

First, in approximately twenty-three Muslim countries, the state has declared the law to be completely secular and does not operate Shari'a courts. Countries that implement completely secular legal systems include Albania, Bosnia and Herzegovina, Kosovo, Azerbaijan, Kazakhstan, Tajikistan, Turkmenistan, Uzbekistan, Turkey, Tunisia, Senegal, Guinea-Bissau, Guinea, Sierra Leone, Cameroon, Gabon, Mali, Niger, Chad, and Mozambique.<sup>83</sup> It is noteworthy that the Central Asia countries were all former republics of the Soviet Union, which outlawed religion in the region for three quarters of a century until its collapse in 1991. It is also noteworthy that Tunisia is the only Arab country that implements a secular legal system.

Second, many Muslim countries implement a dual system in which the state applies secular law but the operation of Shari'a courts is permitted to adjudicate family and personal status issues for Muslim citizens. While the exact jurisdiction of Shari'a courts varies by country, it typically encompasses matters of marriage, divorce, guardianship, and inheritance. Kenya and Nigeria, for example, operate Shari'a courts that adjudicate personal status issues for Muslim citizens.<sup>84</sup> In a different variation, Tanzania operates a civil court

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<sup>82</sup> Ashlea Hollman, "The Convergence of International Human Rights and Sharia Law," *New York State Bar Association*.

<sup>83</sup> *Ibid.*

<sup>84</sup> "Islam: Governing Under Shari'a," *Council on Foreign Relations*, July 25, 2014.

system which applies either secular or Shari'a law according to the religious background of the defendant. Approximately thirty-two countries implement this form, including Morocco, Algeria, Libya, Gambia, Comoros, Somalia, Djibouti, Bahrain, Gaza Strip, Jordan, Kuwait, Lebanon, Oman, Syria, Bangladesh, and Malaysia.

Third, a number of Muslim countries implement a "classical Shari'a" system in which Islam is the official religion of the state and Shari'a serves as the foundation of the legal system. Fifteen countries implement this form of Sharia' law, including Egypt, Afghanistan, Pakistan, Iraq, Iran, certain regions in Indonesia, the Maldives, Malaysia, Mauritania, Nigeria, Sudan, Qatar, Saudi Arabia, the United Arab Emirates, and Yemen. In these countries, Shari'a law influences the entire legal system, including the areas of family and criminal law. In Pakistan, Iran, and Iraq, it is also forbidden to enact any legislation that is antithetical to Islam.<sup>85</sup>

Notably, Tunisia is unique among Muslim countries in that Islam is the official religion of the state, but the state implements a secular legal system. While the constitution of Tunisia declares that the country's "religion is Islam," the government is the "guardian of religion," and requires that the president be Muslim, the state has abolished the operation of Shari'a courts.

Tunisia is the only state in the Maghreb that does not operate Shari'a courts for family and personal status issues. Morocco, for example, implements a dual system in which secular courts adjudicate civil and criminal matters while Shari'a courts adjudicate personal status law. The Algerian legal system is also based on a civil law system adapted from the colonial period in which Shari'a courts adjudicate personal status law. Beyond the Maghreb, Tunisia is also the only state in the Middle East and North Africa in addition to Turkey that implements a completely secular legal system.

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<sup>85</sup> Ibid.

### *Inheritance Reform Throughout the Islamic World*

Limited progress has been made in inheritance reform in the Islamic world, although notable progress has recently been made in other aspects of family law such as marriage and divorce. While attempts to reform the Shari'a have been made, they have been largely unsuccessful.

Turkey is the only country in the Middle East and North Africa that has legally instated gender equality in inheritance. Almost a century ago in 1926, Kemal Atatürk implemented sweeping legal reforms in Turkey that greatly expanded women's rights in family and personal status issues. After gaining Turkish independence in 1922, Atatürk attempted to modernize Turkish society by launching a program of revolutionary political, social, cultural, and legal reforms. Among these reforms, Atatürk abolished Shari'a courts and introduced a secular civil code that expanded women's rights in family and personal status issues, including granting women equal rights in inheritance.<sup>86</sup> Again, it is noteworthy that no Arab country has legally instated gender equality in inheritance.

Beyond the Middle East, Albania, Azerbaijan, Kazakhstan, Tajikistan, Turkmenistan, Kyrgyzstan, Uzbekistan, Bosnia and Herzegovina, Kosovo, Chad, Mali, and Mozambique have formally instated gender equality in inheritance in the law, although the application of the law varies significantly by country. In all of these countries, the state has no official religion and implements a completely secular legal system.

In sum, Tunisia is the only country in the Middle East and North Africa in addition to Turkey that implements a secular legal system. It is distinctive, however, in that while the state abolished Shari'a courts, Islam is nonetheless the official religion of the state. In addition,

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<sup>86</sup> Ibid.

Turkey is the only country in the Middle East that has legally instated gender equality in inheritance. A number of Muslim countries in Central Asia and throughout Africa have also legally instated inheritance equality; no Arab country, however, has successfully reformed Shari'a inheritance law.

## **Conclusion**

This chapter has provided the background information necessary to understand this thesis on family law reform in Tunisia, the status of family law in Islam, and the landscape of family law in the Islamic world. It overviewed the history of modern Tunisia and Tunisia's distinctive path to family law reform, highlighting how both broad historical developments and specific state building activities paved the way for family law reform. It also discussed the status of family law in Islam and the role of family law in defining the organization of power in society, focusing on the status of inheritance law in Islam and how Islamic inheritance law privileges the cohesion of the patrilineal kin group. In addition, the chapter overviewed family law reform in Tunisia from independence to the present, emphasizing how the changes to inheritance law in the 1956 Personal Status Code were not as striking as in other areas of family law. Finally, it briefly contextualized Tunisia in the global landscape of Islamic law and inheritance reform. In the following chapter, I review the literature on gender and the state in the Middle East to identify existing explanations for the research question of this thesis.

## 3

### LITERATURE REVIEW

The answer to the research question of this thesis draws on several bodies of existing literature which focus on political, social, and ideological factors respectively as critical variables that shapes state policy on family law. This chapter reviews the literature on gender and the state the Middle East to identify existing explanations of state policy on family law as well as highlight current gaps in the literature. The first section reviews scholarship on gender and state building in the Middle East. I highlight the inability of theoretical frameworks which view family law policy as a product of the state building process to explain the variation within Tunisia's family law reform. The second section reviews scholarship on the patriarchal practices of Middle Eastern states. I emphasize that theoretical frameworks which view family law policy as a reflection of the patriarchal interests of the state highlight the important social and economic implications of family law reform but cannot fully explain the inconsistencies within Tunisia's reforms. The third section reviews scholarship on the relationship between religion and the state in the Middle East. I suggest that theoretical frameworks which view family law policy as shaped by state ideology with respect to religion provide a key perspective on this research question. The chapter concludes with the argument assessed in the remainder of this thesis.

#### **Gender and State Building**

The literature on gender and state building in the Middle East offers an important perspective on family law policy. This section discusses theories of state formation in kin-based societies that view state-tribe relations as the critical variable shaping state policy on family law.



It focuses primarily on Mounira Charrad's work *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*, which is the major work on gender and state building in the Maghreb and offers one of the most cited hypotheses on this topic.

#### *State Formation in Kin-Based Societies*

Kin-based social organization and the power of tribes in the political sphere were defining characteristics of the social and political context in which postcolonial state formation took place in the Maghreb.<sup>87</sup> Like much of the postcolonial world, focal points of solidarity in Maghrebi societies were concentrated in local collectivities rather than in nation-wide institutions. A major challenge confronting postcolonial states in the Maghreb was to establish national institutions in the fragmented social context inherited from colonial rule. State formation created tensions with local collectivities as states attempted to extend control over the territory of the nation-state. From a state building perspective, the challenge of state formation in the Maghreb was to integrate tribal collectivities into the new nation-state.

In analyzing state formation, it is necessary to establish a definition of the state and the nation. According to Max Weber, a state is an institution that claims the authority to make binding decisions for all, on the monopoly of force, and over a determinate territory.<sup>88</sup> The modern state is usually associated with an administrative apparatus. State formation therefore involves the extension of a central administrative control over a fixed territory and the maintenance of state authority within its boundaries.

Nation-building refers to the development of a collective identity and the integration of separate social collectivities into a unified society.<sup>89</sup> The relationship between state formation and nation-building is complex and highly variable. While countries often pursue state formation

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<sup>87</sup> Charrad, *States and Women's Rights*, 17.

<sup>88</sup> *Ibid.*, 18.

<sup>89</sup> *Ibid.*

and nation-building at once, some have a cohesive national identity when they begin to develop a central state, and others develop a national identity only after the development of a central state.

There is a direct conflict between local solidarities such as tribes, clans, or religious communities and the nation-state because each institution represents an alternative center of power and social control. State formation in kin-based societies requires the redirection of resources previously concentrated in local collectivities to national institutions. As the state seeks to redirect resources away from local collectivities, it challenges communal ties and embedded forms of social organization. The relationship between local solidarities and the nation-state is therefore typically characterized by ongoing tension.<sup>90</sup>

In terms of social organization, the tribe or kin group is critical in the Maghreb because it has historically constituted the basic social unit of society. A shared feature between the Maghreb and other Middle Eastern societies is their origin in tribal structures. As Nikki Keddie suggests, when analyzing the history of the Maghreb, it is necessary to consider how tribes have affected the society as a whole.<sup>91</sup>

From this perspective, the Maghrebi experience of state formation can be viewed as a history of tension between a group holding power in the political center and autonomous local collectivities resisting its control. Precolonial states in the Maghreb grew or declined depending on the degree of control they could assert over tribal areas in the territorial periphery. Tribes coexisted with partially bureaucratic centers that had shifting boundaries and often lacked strong local administrations.<sup>92</sup> In Keddie's view, Middle Eastern history could be reconstructed by

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid., 21.

<sup>92</sup> Ibid.

analyzing the “various permutations and combinations of a nomadic-agricultural-urban synthesis.”<sup>93</sup>

*State-Tribe Relations and Family Law Reform*

Building on this approach, Mounira Charrad argues that state building strategy as shaped by the relationship between states and tribes has been critical in shaping family law policy in postcolonial Maghrebi states. In her influential work *States and Women's Rights*, Charrad asks why Morocco, Algeria, and Tunisia followed different paths with respect to family law in the wake of independence even though all three states emerged from similar colonial contexts. She argues that the relationship between states and tribes, specifically the degree of state autonomy from kin-based solidarities, was the critical variable shaping state policy on family law in each state.

Charrad highlights that family law was politically relevant to tribal kin groups insofar as family law sanctions a particular form of social organization and distribution of power in society. Islamic law offers a vision of society in which the patrilineal kin group constitutes the basic form of social organization and the authoritative political unit. Tribes therefore favored Islamic law because it sanctions tribal structures. The fate of tribal structures was bound to that of Islamic law insofar as tribes could be either integrated into or eliminated from the nation-state depending on the family law policy adopted by the state.

Thus, to explain family law reform in Tunisia, Charrad argues that unlike in Morocco or Algeria, the Tunisian state developed in relative autonomy from tribal groups and could therefore adopt a family law that altered the traditional model of the kin group. The Tunisian state sought to reform family law, moreover, because in reforming family law it could restructure society so that tribal groups no longer served as a focal point of solidarity. The political

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<sup>93</sup> Ibid., 22.

leadership therefore pursued family law reform as part of a broader agenda to consolidate the authority of the modern state.

The theoretical framework Charrad develops to analyze family law policy focuses on long-term historical trajectories and strategies of the political leadership. Charrad's framework calls attention to how structural conditions delineated the range of options and strategies available to political leadership as it made alliances in seeking political authority. Overall, Charrad treats family law as part of the state building agenda. Her analysis views family law reform as part of the state's broader attempt to restructure social organization and the distribution of power in society as a whole.

#### *Theoretical Implications of the State Building Framework*

Charrad offers a convincing explanation of cross-national variation in state policies on family law in the Maghreb. Her argument explains why Tunisia was able to implement radical family law reforms in the wake of independence while Algeria and Morocco were not. What Charrad does not analyze, however, is the variation *within* Tunisia's reforms. Charrad notes that the stipulations on inheritance appeared incongruent with the character of the reforms as a whole but does not offer an explanation for this inconsistency in the reforms.

This gap in Charrad's analysis is significant because the variation within Tunisia's reforms suggests that there were constraints on the state that Charrad does not account for. It is possible either that Charrad overestimates the weakness of tribal structures in the wake of independence and that tribes were able to exert pressure on the state with respect to inheritance law, or that another variable exerted pressure on the state altogether.

I argue the latter. It is unlikely that societal actors such as tribal leaders were able to exert pressure on the state in the lawmaking process. The influence of tribes in the political sphere

had been significantly weakened under colonial rule, and given that the text of the PSC was developed by state elites without being debated in national assembly, it is not clear how tribal actors could have exerted pressure on the state in the process of drafting the code. Given their diminished bargaining power, moreover, it is also not clear why tribal actors would have sought to preserve inheritance law specifically over other areas of Islamic family law that implicated the political power of tribes more directly.

In sum, the literature on gender and state building in the Middle East emphasizes state building strategy as shaped by the relationship between states and tribes as the critical variable shaping state policy on family law. State building perspectives highlight the influence of tribal politics on policy outcomes and are useful to explain cross-national variation in state policies on family law. However, the state building approach cannot account for the variation within Tunisia's reforms. Tribal politics do not explain why Tunisia preserved Islamic inheritance law while reforming almost all other areas of family law after independence.

### **The Patriarchal State and Family**

Charrad's theoretical focus on state-tribe relations departs from a second prevailing approach to analyzing family law policy in the Middle East: the gendered and patriarchal practices of the state. The state building perspective argues that family law defines the organization of power in society. From this perspective, what is key to understanding the family law reforms in Tunisia is that they strengthened the conjugal family at the expense of the extended kin group in order to reorganize the distribution of power in society.

Were there elements of traditional social organization, however, that the post-independence state sought to preserve? That is, were there continuities between the distribution

of power in society sanctioned by Islamic law and the distribution of power in society envisioned by the post-independence state that compelled it to preserve Islamic inheritance law? A perspective focusing on the gendered and patriarchal practices of the state might suggest that Tunisia preserved Islamic inheritance law because the political leadership sought to maintain forms of patriarchal privilege in modern society. Preserving Islamic inheritance law served this end insofar as it preserved the social and economic power of men.

It is noteworthy that the PSC continued to identify the husband as the head of the family and to designate the husband as responsible for supporting his wife and children. The code also continued to proscribe women from passing Tunisian nationality or their family name to their children, and to prohibit Muslim women from marrying non-Muslim men.<sup>94</sup> The preservation of patriarchal privilege in other areas of the code supports the idea that the patriarchal interests of the state shaped Tunisia's family law policy. From this perspective, the preservation of Islamic inheritance law appears less puzzling when considered alongside other areas of the code that maintained patriarchal privilege.

There is a broad literature on the gendered and patriarchal practices of Middle Eastern states. This section overviews theories of the patriarchal state and family that view family law policy as a reflection of the patriarchal interests of state and society.

### *Patriarchal Society and Family*

The "Middle Eastern Muslim family" has long been viewed as a patriarchal unit, and it has been noted that Islamic family law serves to reinforce patriarchal gender relations within the family. The persistence of patriarchy in contemporary societies is a matter of debate, and some feminist scholars argue that patriarchy exists in industrialized societies. For example, Sylvia

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<sup>94</sup> Lilia Ben Salem, "Women's Rights in the Middle East and North Africa," *Freedom House*, March 3, 2010.

Walby distinguishes between the “private patriarchy” of the premodern family and the “public patriarchy” of the state and labor market in industrialized societies. Carol Patemen, on the other hand, argues that patriarchy is specific to the premodern historical period, and that in the modern liberal state, patriarchy has developed into a “fraternity” in which men have the right to rule over women in the private sphere but agree on a social contract of equality in the public sphere. John Caldwell and Deniz Kandiyoti, in contrast, locates patriarchy in a specific geographical zone—“the patriarchal belt”—characterized by kin-based agrarian societies.

The family is one of the only societal institutions that is often conceptualized as essential or natural.<sup>95</sup> The biological basis of kin relations and women’s reproductive capacities have historically contributed to this perception. This emphasis on biology has led to a functionalist view of the family among many sociologists which transcends culture. For example, Talcott Parsons argues that the modern family serves two primary functions: to socialize children into society’s normative system of values and to provide a stable emotional environment that will cushion male workers from the psychological damage of alienation in the workplace.<sup>96</sup> Specifically, these functions are carried out by the wife and mother, who serves the “affective” role of nurturer while the husband serves the “instrumental” role of earning the family’s income and maintaining discipline. Valentine Moghadam suggests that Parsons’s characterization of the family aligns closely with a contemporary Muslim view, which sees the family as “the fundamental unit of society and stresses the mother’s role in the socialization of children—particularly in raising ‘committed Muslims’ and transmitting cultural values.”<sup>97</sup>

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<sup>95</sup> Valentine Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (Boulder: Lynne Rienner Publishers, 2003), 114.

<sup>96</sup> Moghadam, *Modernizing Women*, 114.

<sup>97</sup> *Ibid.*

Patriarchal society is a precapitalistic form of social organization in which property, residence, and descent pass through the male line. In Kandiyoti's "classic patriarchy," the senior man has authority over all other members of the family including younger men, and women are subject to distinct forms of subordination and control. As Kandiyoti notes, the key to the reproduction of classic patriarchy lies in the operations of the extended patrilineal kin group. The subordination of women in kin-based societies is linked to the reproduction of the extended kin group insofar as childbearing is the central female labor activity. Moreover, just as in capitalism what a worker produces is not viewed as the property of the worker, in a patriarchal context a woman's products—whether children or commodities—are not considered her property, but rather those of the kin group and especially male kin. Male dominance is thus embedded in the social and economic structure of patriarchal societies.<sup>98</sup>

Like Christianity and Judaism, Islam arose in a patriarchal society.<sup>99</sup> Germaine Tillon argued that the origin of women's oppression in Muslim societies can be traced to the beginnings of patrilineal society. She identified the practice of endogamy, or marrying within the lineage, as the origin of women's oppression in patrilineal society long before the advent of Islam. Endogamy was important to patrilineal society because it maintained property within the patrilineage and thereby protected the economic and political interests of men. Tillon points out that Qur'anic reforms in fact provided women with certain legal rights absent in Judaism and Christianity as well as with protections absent in pre-Islamic Arabian society. For example, Islam banned female infanticide and entitled women to contract their marriage, receive dower, manage their private property, and receive shares in inheritance. Tillon suggests that norms and laws

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<sup>98</sup> Ibid., 118-119.

<sup>99</sup> Ibid., 121.



developed in the first centuries of Islam that granted male kin control over key aspects of women's lives were an attempt to meet a woman's needs in a society in which her domestic and childbearing roles rendered her dependent on male relatives.

The "belt of classic patriarchy" as Caldwell characterizes it includes areas stretching from North Africa and the Middle East to South and East Asia. In a contemporary context, tribal structure continues to represent the archetype of patriarchal organization and can still be found throughout the Central Asia and in parts of the Arab world and eastern Turkey.<sup>100</sup> The social organization of the tribe is based on blood ties and is patriarchal in the classic sense. Tribal identity is based on notions of common patrilineal descent. Germaine Tillion and Nikki Keddie both point out that endogamy increases the tendency to maintain property within families through the control of women in tightly interrelated lineages. Tribal societies, they suggest, therefore have "special reasons" to want to control woman in order to preserve the economic interests of men.<sup>101</sup>

#### *Patriarchal States and Family Law*

Building on this approach, Valentine Moghadam offers a Marxist-feminist perspective on state policy on family law in the Middle East that places the patriarchal state at the center of the analysis of state policy. In *Modernizing Women: Gender and Social Change in the Middle East*, Moghadam seeks to explain the causes and direction of social change in the Middle East and North Africa, especially as they have affected women's status and social position. Her central argument is that the gender and class systems are the key structural determinants of state policy on family law.<sup>102</sup>

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<sup>100</sup> Ibid., 122.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid., 14.

Marxist-feminists originally used the term “sexual division of labor” to refer to the ideological and material organization of the family, the workplace, and the society which originate in sexual difference between women and men, particularly in women’s reproductive capacity. Early Marxist-feminist theorists argued that patriarchy—or the system of male dominance over women—has historically coexisted with modes of production and that women’s status has therefore been shaped by both the sexual division of labor and class divisions within modes of production.

In contemporary scholarship, the term “gender” is used more broadly to refer to the meanings ascribed to the feminine and masculine, asymmetrical power relations between women and men, and the ways in which women and men are differently situated in and affected by social processes. Judith Lorber defines gender as “a process of social construction, a system of social stratification, and an institution that structures every aspect of our lives because of its embeddedness in the family, the workplace, and the state.”<sup>103</sup>

Combining Marxist-feminist analysis with sociological perspectives, Moghadam’s analysis of state policies on gender focuses on the ways in which gender systems are constituted by social and political structures. Gender systems, Moghadam suggests, are differently manifested under different material conditions as well as under different types of political regimes. State policies on gender vary significantly among kin-based, agrarian, developing, and advanced industrialized societies as well as among Marxist, liberal democratic, social democratic, and neopatriarchal states. Gender systems therefore are not static. Rather, they are reconstructed to adapt to changing political and material conditions in society.

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<sup>103</sup> Ibid., 15.

Fatima Mernissi's work highlights the sexual division of labor in Muslim societies, especially as it occurs within the family. Islam privileges patrilineal ties and identifies men as responsible to support their wives and children. In the Arab-Islamic family, according to Mernissi, the wife's primary obligations are to maintain a home, bear and care for her children, and obey her husband. The husband, in turn, is entitled to exercise his authority within the marital bond by restricting his wife's movements and appearance in public. Moghadam refers to this system described by Mernissi as the "patriarchal gender contract."<sup>104</sup> The patriarchal contract, Moghadam she, is both realized within the family and codified by the state in family law. Outside of the domestic sphere, the source of patriarchal control is thus politico-juridical: patriarchal control is exercised through state and legal institutions.<sup>105</sup>

Critically, Moghadam suggests that political regimes in the Middle East can be characterized as "neopatriarchal" states. Neopatriarchy describes modernized patriarchy, or the product of the encounter between modernity and tradition in a capitalistic context.<sup>106</sup> Whether Middle Eastern states are monarchies or republics or led by radical or conservative political leadership, she suggests, they share the essential features of neopatriarchy and are rooted in the patriarchal values and social relations.

From this perspective, Moghadam argues that changes to family law policy in the Middle East reflect the state's attempt to construct a new form of patriarchy suitable to a modern capitalist context. Family law policy reflects the interest of the state in preserving patriarchal values and social relations in modern society. Thus, insofar as patriarchal control is exercised

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<sup>104</sup> Ibid., 126.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid., 130.

through state and legal institutions, the state attempts to construct and reproduce patriarchy through the medium of the law.

Moghadam's theoretical framework focuses on broad social-structural conditions and how they inform the interests of the state to explain what shapes family law policy. Overall, Moghadam treats changes to family law as a reflection the state's inherent interest in preserving patriarchal power in modern society. Her analysis views family law reform as part of the state's broader attempt to adapt traditional patriarchal structures to modern political and material conditions.

#### *Gender and the Family in Islamic Law*

Judith Tucker offers a similar perspective on how family law policy is shaped by social-structural conditions that addresses their effects on property and inheritance law specifically. In *Women, Family, and Gender in Islamic Law*, Tucker examines how women and men have been constructed as gendered subjects through Islamic law throughout the history of the Islamic legal tradition. To explain why earlier jurists were unable to resolve doctrinal tensions in property and inheritance law in regard to the legal status of women, she argues that reformist jurists confronted the reality of family and societal expectations of patriarchal gender roles.

Tucker highlights how Islamic law is concerned to a significant degree with how property should be managed, transferred, and made to benefit its owners. The legal instrument most essential to property management—the contract—occupies a central status in the Islamic legal system.<sup>107</sup> The right of the individual to manage and dispose of their property through the contract is recognized and upheld in distinctive ways by Islamic law.

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<sup>107</sup> Judith Tucker, *Women, Family, and Gender in Islamic Law* (New York: Cambridge University Press, 2008), 133.

In many ways, she notes, Muslim jurists have historically made little distinction between women and men in their extensive discussions of the rules for handling property.<sup>108</sup> Whether buying, selling, endowing, or generally managing or disposing of property, any adult of age was considered a legal subject fully entitled to enter into contracts and exercise independent control over their property. Unlike much of the Western legal tradition, the marital status of a woman had no impact on her legal competence to acquire, manage, or dispose of property according to Islamic law.<sup>109</sup>

Although women's rights to manage and dispose of their property were largely identical to those of men, the Islamic legal tradition stipulated gender as key to the acquisition of property in ways that both benefitted and disadvantaged women. For example, the law specified that a wife should receive a dower from her husband as part of the marriage contract that became an undifferentiated part of her private property and could not be accessed or managed by any male relative.<sup>110</sup> The privileged female access to property through the dower system was counterbalanced, however, by inheritance laws that restricted the shares of inheritance of females and relatives in the maternal line.<sup>111</sup> In this way, Tucker suggests, Islamic law contained significant doctrinal tension in regard to the status of women and men as legal subjects and what role women should play in the legal system.

Tucker observes that late nineteenth- and early twentieth-century reformist jurists in many parts of the Middle East engaged with the question of the female subject in order to explain, and in certain cases amend, the differences between women and men as legal actors.

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<sup>108</sup> Tucker, *Women, Family, and Gender*, 135.

<sup>109</sup> *Ibid.*, 137.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*, 149.

Specifically, many jurists sought to address doctrinal tension in the issue of inheritance, especially the prescription that stipulated that a woman's share of inheritance is half that of a man's. Ultimately, however, reformist jurists did not attempt to alter the inheritance laws.

To explain why inheritance laws remained unchanged, Tucker suggests that when a woman's property entitlements were considered as a whole—including dower, maintenance, and the absence of any responsibility to support her family financially—women stood to acquire more property through Islamic rules of property transfer than men.<sup>112</sup> Importantly, this guarantee of equity in the law was based on the idea of a woman as a wife and mother whose disadvantage in inheritance was counterbalanced by collecting dower and support payments.<sup>113</sup> The concept of the equal female subject, she argues, was therefore trumped in practice by the reality that family and societal expectations of gender roles limited women's rights under the law.<sup>114</sup> The idea that women were wives and mothers whose primary role in society lay in the domestic sphere was justified discriminatory practices in family law, including unequal inheritance. Women's rights were infringed upon “where their identities as daughters, wives, and mothers intruded.”<sup>115</sup>

Like Moghadam, Tucker's focuses on the social-structural conditions that shape family law policy, especially the interaction between the gender and legal systems. Tucker treat's family law policy as a reflection of the structure of patriarchal society. Overall, Tucker's analysis views state policy on family law as a part of the broader gender system mediating the relationship between state and society.

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<sup>112</sup> Ibid., 151.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., 168.

<sup>115</sup> Ibid., 221.

*Theoretical Implications of the State Building Framework for Family Law Reform*

Moghadam and Tucker offer important perspectives on the gendered and patriarchal practices of Middle Eastern states. Both scholars' perspectives sharpen our understanding of the variables that shape state policies on family law in the Middle East. Moghadam's argument in particular offers a strong explanation of how gender and class systems interact in shaping family law policy. However, with their emphasis on sociological and historical analysis, both frameworks share a similar weakness with the state building perspective: they are useful to highlight structural forces that shape family law policy, but they cannot account for specific variations within state policy. Like the state building perspective, a gender system approach can explain cross-national variation in state policies on family law and why patriarchal structures persist in certain kinds of states, but they cannot explain inconsistency *within* a state's family law.

It is important to emphasize that Tunisia did reform other laws on inheritance implicating patriarchal privilege in significant and unprecedented ways. The state expanded the rights of female kin who had traditionally been excluded from inheritance in a way that tangibly diminished the privileges of male kin. While certain policies varied with some being more patriarchal than others, the family law reforms as a whole strengthened women's rights to the social and economic disadvantage of the patrilineal kin group. This weakens the explanatory power of a framework that points to the interest of the state in preserving patriarchy to explain the preservation of Islamic inheritance law in Tunisia. Social-structural frameworks do not provide the analytical precision necessary to explain why the state reduced patriarchal privilege in other areas of family law and even in certain areas of inheritance law while preserving the provision on inheritance inequality specifically.

In sum, the literature on the gendered and patriarchal practices of Middle Eastern states emphasizes the patriarchal interests of the state as the critical variable shaping state policy on family law. Perspectives focusing on gendered interests highlight the important social and economic implications of family law reform. However, the gender system approach cannot account for the inconsistencies within Tunisia's reforms. The state's interest in maintaining patriarchal privilege cannot explain why Tunisia preserved the prescription on inheritance inequality specifically while reforming almost all other areas of Islamic family law.

### **Ideology and Nation-Building**

In considering the region of the Middle East, it is surprising that scholars have largely overlooked a third approach to analyzing state policy on family law: the relationship between religion and the state. Given that Islam, like patriarchy, is a defining characteristic of Middle Eastern societies, the relationship between religion and the state seems to be an important factor to consider in analyzing state policy on Islamic family law.

It should be emphasized that there are multiple ways to frame what was puzzling about the preservation of Islamic inheritance law in Tunisia. This is due to the fact that family law reform in an Islamic context can be viewed as pursuing multiple goals. On one hand, as the state building perspectives suggest, the preservation of Islamic inheritance law was surprising because it seemed inconsistent with expansion of women's rights at the expense of the patrilineal kin group in other areas of family law. From this perspective, the inheritance laws were puzzling because they seemed incongruent with the state's broader attempt to restructure kin-based social organization in order to consolidate political authority.



On the other hand, the preservation of Islamic inheritance law was surprising because the state abolished Shari'a courts and secularized its legal system as a whole. As discussed in Chapter Two, the extent to which the PSC is secular has been contested since its promulgation. While the code does not mention Islam by name, political leaders emphasized the continuing faithfulness of the law to Islamic heritage and presented the code as a new phase of Islamic legal interpretation. Notably, scholarship on Islamic family law also suggests that unlike other areas of the law, inheritance laws as articulated in the Qur'an are strict and precise and are therefore considered to be the most sacred and untouchable part of the Shari'a. Thus, it is arguable that the inconsistencies within Tunisia's family law reforms reflected contestation between Islamist and secularist forces at independence that constrained the state's ability to reform inheritance law.

There is a broad literature on religion and the state in the Middle East. This section overviews theories of religion and state ideology in the Middle East that view the relationship between religion and the state, especially state ideology's with respect to religion, as the critical variable shaping state policy on religion.

### *Religion and the State*

One perspective on the relationship between religion and the state is offered by the religious economy school, which draw on rational choice theory in economics to explain differences in state policy towards the religious establishment. In *The Political Origins of Religious Liberty*, for example, Anthony Gill argues that the degree to which a state regulates the "religious market," or the public arena in which religious institutions compete for adherents, is determined by the political and economic interest of state leaders. Building on the assumption that political leaders are primarily concerned with their own survival and their ability to minimize social unrest, Gill argues that states are mostly likely to adopt policies restricting religious practice that serve this aim. In contrast, when political leaders

calculate that their interests would be better served by liberalizing regulations of religious practice, states are more likely to permit greater religious freedom.<sup>116</sup>

The religious economy approach highlights the role of political interest in determining policy towards the religious establishment. As Sarah Feuer notes, however, interest-based arguments cannot explain *why* leaders reason as they do, nor can they explain *how* the interests of leaders influenced specific policies shaping the religious realm. The assumption of that states act in their self-interest does not explain why or how leaders' preferences, and thus their political calculations and ensuing policies, change over time.<sup>117</sup>

#### *Ideology and the Religious Establishment*

Another perspective on the relationship between religion and the state emphasizes the role that ideology plays in determining policy outcomes concerning religion. Malika Zeghal, for example, argues that the dual modern and Islamic character of the Personal Status Code in Tunisia was instrumentalized by the post-independence regime in order to cultivate legitimacy and control political opposition. In *Varieties of Religious Establishment*, Zeghal highlights how the relationship between Islam, the Shari'a, and the state in Tunisia were transformed during the nineteenth and twentieth centuries in a way that generally undermined the role of the Shari'a in conceptions of secular law.<sup>118</sup> Shari'a law was transformed under both the colonial and postcolonial state, she notes, from a revealed source that operated as a guiding principle for adjudication into an "implicit point of reference regulating the interaction of two specific domains—the state and the family—that state elites saw as tightly connected."<sup>119</sup>

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<sup>116</sup> Anthony, *The Political Origins of Religious Liberty*. In "Religious Establishment and Religious Survival."

<sup>117</sup> Feuer, "Religious Establishment," 9.

<sup>118</sup> Malika Zeghal, "The Implicit Shari'a: Established Religion and Varieties of Secularism in Tunisia," in *Varieties of Religious Establishment* (London: Ashgate, 2013), 107-130.

<sup>119</sup> Zeghal, "The Implicit Shari'a," 110.

This shift in the use of Shar'ia as a guiding legal principle to the use of "implicit shar'ia" as a distant reference for the law, Zeghal suggests, reflected the emerging role of the modern state as a legislator. Wael Hallaq also suggests that the demise of Shari'a was brought about by the advent of the concept of nationalism in Muslim countries, primarily through the creation of the nation-state.<sup>120</sup> The transformation in the role of the state, in Hallaq's view, "is perhaps the most crucial fact about the so-called legal reforms."<sup>121</sup> Whereas the traditional ruler was subject to the law and left judicial and legislative functions and authority to the religious scholars, the modern state reversed this principle and assumed the authority to determine the law.

However, Zeghal emphasizes that although the 1956 Personal Status Code in itself did not invoke Shari'a, the official state narratives justifying the code insisted on its roots in Shari'a law as well as on its progressive and modernist aspects.<sup>122</sup> For example, the preface of the code introduced in 1958 suggested that the code aimed to make the law accessible and efficient while also insisting that the code was a specific interpretation of the Shari'a. The preface described secular law as more suitable than Shari'a law to promote Tunisia's development and modernization, but also referenced Shari'a as a legislation "faithful to the needs of the human person whatever the times and the conditions," a narrative which reflected religious authorities' conception of Shari'a law.<sup>123</sup> In this way, Shari'a was not entirely erased from narratives advanced about the code. State narratives insisted on both the modern dimension as well as the Islamic legacy of the code.<sup>124</sup>

Zeghal argues that the post-independence regime thus instrumentalized ideology in order to both cultivate a modern national identity as well as to control political opposition.<sup>125</sup> The insistence on

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<sup>120</sup> Wael Hallaq, "Can the Shari'a be restored?" in *Varieties of Religious Establishment*, 110.

<sup>121</sup> Hallaq, "Can the Shari'a be restored?"

<sup>122</sup> Zeghal, "The Implicit Shari'a," 116.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

the religious genealogy of the PSC in state rhetoric reflected the state's attempt to legitimize its political authority. Moreover, she argues, the state emphasized the law's interpretive character to mitigate political opposition of conservative religious authorities; Islam and modernity were rhetorically combined in the state's discursive justification of its political authority in order to appeal to both Islamist and secularist positions in Tunisian society. The state's rhetorical insistence on the dual modern and Islamic character of the Personal Status Code reflected the state's attempt to both cultivate modern Tunisian national identity as well as insulate its political power and legitimacy from religious opposition.

Sarah Feuer offers a similar perspective on the relationship between religion and the state that views ideology as a critical variable shaping state policy towards the religious establishment, but importantly, calls attention to two other variables that interact with ideology to determine policy outcomes. In *Religious Establishment and Religious Survival*, Feuer develops an overarching theory to explain why and how states in the Middle East endorse, identify with, and support religion. Feuer's central argument is that a regime's ideology of legitimation—that is, the rhetorical justifications it offers for its right to rule—influence the nature of the religious establishment in authoritarian states. An authoritarian regime's legitimating ideology, she suggests, influences state policy on the religious establishment insofar the regime's discursive justifications for its right to rule establish a framework within which the regime can maneuver and delineates the range of policy options the regime can adopt without opposing its own stated ideological commitments.<sup>126</sup> Despite the absence of normalized mechanisms of political turnover, authoritarian rules nonetheless know their regimes will be judge by how closely their policies adhere to their stated ideological preferences. Thus, to the extent that a

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<sup>126</sup> Feuer, "Religious Establishment," 21.

regime's legitimating ideology includes identification with citizens' religious identities, the regime will be either more or less compelled to support, identify with, and endorse religion in public.<sup>127</sup>

Although Feuer focuses on the regime's ideology as a critical variable shaping state policy towards the religious establishment, she argues that legitimating ideology alone cannot explain the nature of religious establishment or how the state's relationship to religious establishment changes over time. For example, ideology alone as an explanatory factor cannot account for why Moroccan and Tunisian regulations of religious education over time given that both regimes' ideologies remained constant throughout the period she examines. Rather, she suggests, two additional variables are needed to explain variation in state policy: the "landscape of the regime's political opponents and allies" and the regime's "institutional endowment."

Feuer extends Charrad's focus on the role of a regime's political supporters by also emphasizing the salience of a regime's political opponents in determining policy outcomes.<sup>128</sup> In addition, she highlights the strength of a regime's "institutional endowment," which she measures by the presence or absence of a hegemonic political party and the relative strength of bureaucracy, also determine the nature of policy outcomes.<sup>129</sup> Institutional resources, she argues, can determine a regime's ability to carry out policies in line with its ideology of legitimation. Moreover, the presence or absence of a dominant political party and strong bureaucracy can determine a regime's response to political opposition. Thus, when confronting oppositional forces, a regime's decision to coopt, repress, or ignore opposition depend on the institutional resources at its disposal. Strong institutional endowment facilitates the regime's ability to oppress its opponents, while a weaker institutional endowment compels the regime to coopt them

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<sup>127</sup> Ibid.

<sup>128</sup> Ibid., 24.

<sup>129</sup> Ibid., 27.

The theoretical framework Feuer develops to analyze state policy on the religious establishment seeks to identify a logic that governs the strategic calculations authoritarian regimes make in implementing policies as part of their strategy for political survival. In this way, Feuer's framework powerfully synthesizes both political, historical-institutional, and game-theoretic approaches to explaining policy outcomes in Middle Eastern states.

*Theoretical Implications of Religion-State Relations for Family Law Reform*

Gill, Zeghal, and Feuer offer important perspectives on the relationship between religion and the state in Middle Eastern societies. While the literature on religion and the state as a whole does not emphasize gender in its analysis of state policy, a framework focused on the relationship between religion and the state sharpens our understanding of the critical variables that shape family law policy in the Middle East. Rather than pointing to broad social-structural factors that shape the state's interests, state ideology introduces greater theoretical precision into explanations of state policy by focusing on the specific political and institutional contexts in which political decision-making occurs.

Building on this scholarship, to answer the research question of this thesis, I argue that the preservation of Islamic inheritance law in Tunisia's Personal Status Code reflects concessions made to the religious establishment's demands concerning the nature of the code as part of the post-independence regime's strategy for political survival. The theoretical framework I adopt to explain this policy outcome emphasizes the interaction between three critical factors: (i) state ideology (ii) political environment and (iii) institutional capacity. I suggest that the preservation of Islamic inheritance law in Tunisia's family code reflects the interaction of these three factors.

(i) The first claim of this thesis is that state ideology, or what I also refer to as a regime's "legitimizing ideology," will influence the nature of family law reform. As discussed in Chapter One, a regime's legitimating ideology is a set of overarching rhetorical justifications a regime offers for its political authority. I suggest that the degree to which a regime relies on religious themes or principles in its legitimating ideology will partly determine the nature of family law policy by delineating the kinds of policies the regime can adopt with respect to religion.

(ii) The second claim of this thesis, however, is that ideology alone cannot explain the nature of family law policy. Ideology is important to explain policy outcome because it frames the policy choices available to a regime, but explanations relying on ideology alone cannot account for instances in which a regime's policies contradict one another or the regime's own legitimating ideology. Two other factors are needed to explain the preservation of Islamic inheritance law in Tunisia: the political environment of opponents confronting the regime and the regime's institutional capacity.

"Political environment" refers to the configuration of the groups a regime perceives to be its political opponents and allies. I suggest that the degree to which a regime's political opponents frame their demands and base their own claim to legitimacy on religious grounds will influence the nature of family law policy. What is critical to determining policy outcomes is the degree to which opposition forces incorporate religious themes into their demands. Thus, confronting these demands, the regime must choose to either coopt the opposition by conceding to some of its preferences or to repress it.

(iii) The third claim of this thesis, moreover, is that like a regime's legitimating ideology, political opposition cannot fully explain the nature of family law policy. This is because in advancing its political agenda and determining how to minimize political opposition, regimes

confront another critical factor: the strength of their institutional capacity. I define “institutional capacity” as the relative strength or weakness of the political party structure, which I measure as ideological consensus among party leaders and members. I suggest that extent to which a ruling party has the capacity to carry out its political agenda determines whether the regime will coopt or suppress opposition forces; institutional capacity, as it interacts with political environment, thereby influences the nature of family law policy.

The theory assessed in the remainder of this thesis can thus be summarized as follows: while (i) the incorporation of religious themes into a regime’s legitimating ideology will play an important role in determining the kinds of policies it can adopt with regard to Islamic family law, policy outcomes will be critically shaped by (ii) whether the political opposition confronting the regime bases their own claim to legitimacy on religious grounds and (iii) whether the regime has the institutional capacity to implement its political agenda without coopting religious opposition forces.

In the following two chapters, I assess this argument by examining the rhetoric of the post-independence regime in Tunisia in the speeches and statements of the state elite as well as the secondary literature on the politics of the nationalist movement in Tunisia and the structure of the ruling party at independence. If my argument is correct, I should expect to find (i) the incorporation of religious themes into the legitimating ideology of the post-independence regime, (ii) political opposition forces challenging the political authority of the regime on religious grounds, and (iii) the cooption of political opposition due to ideological disunity among leaders and members of the ruling party.



## **Conclusion**

This chapter has reviewed the literature on gender and the state the Middle East to identify existing explanations of state policy on family law as well as highlight current gaps in the literature. Scholarship on gender and state building in the Middle East emphasizes state building strategy as shaped by the relationship between states and tribes as the critical variable shaping state policy on family law. Overall, state building perspectives highlight the influence of tribal politics on policy outcomes in Middle Eastern states. Scholarship on the gendered and patriarchal practices of Middle Eastern states, on the other hand, emphasizes the patriarchal interests of the state as the critical variable shaping state policy on family law. Perspectives focusing on gendered interests highlight the important social and economic implications of family law reform. Finally, scholarship on religion and the state emphasizes state ideology with regard to religion as the critical variable shaping state policy on family law. State ideology perspectives emphasize how the incorporation of religious themes into state ideology delineates the range of policy options available to the state in matters of religion. I suggest that this framework provides a key perspective on the research question of this thesis. The chapter concluded with a summary of the argument assessed in this thesis.

In the remainder of this thesis, I assess the explanatory power of this argument. Chapter Four begins by examining the incorporation of religious themes into the legitimating ideology of Bourguiba's regime. Chapter Five then examines the interaction of this variable with the political environment and the institutional capacity of the state at independence.

## **DELINEATING POLICY OPTIONS: THE LEGITIMATING IDEOLOGY OF BOURGUIBA'S REGIME**

To assess the explanatory power of the argument proposed in this thesis, this chapter examines Bourguiba's views on Islam and modernization and his strategic approach to achieving political goals to understand the legitimating ideology of Bourguiba's regime. Chapter Five will demonstrate how the interaction of this variable with the political environment and the institutional capacity of the state at independence influenced the nature the Personal Status Code and thereby the outcome of inheritance reform. Here, I begin by establishing how the regime's discursive justifications for its political authority created a framework within which the regime could maneuver and delineated the range of policy options it could adopt without opposing its own stated ideological commitments.

The first section examines Bourguiba's views on modernization and the role of Islam in modern state and society. It highlights the path of secular modernization pursued by Kemal Atatürk in Turkey to emphasize what was distinctive about Bourguiba's vision for the role of Islam in Tunisia's modernization. The second section examines the political ideology Bourguiba ascribed to as a nationalist leader. It considers how the distinctive politics of modernization Bourguiba confronted in Tunisia informed his strategic approach to implementing modernist reforms. The chapter concludes with a summary of the legitimating ideology of Bourguiba's regime outlined in the preceding sections.

## **Bourguiba's Views on Islam and Modernization**

A central claim of this thesis is that the nature of policy reform in Tunisia was informed in part by the regime's legitimating ideology, particularly the degree to which the regime's discursive justification of its political authority incorporated religious themes. A clearer understanding of this factor is necessary to analyze how its interaction with political and institutional factors affected the nature of family law reform.

### *Turkish Modernization: The Secularist Approach*

Comparisons are often made between Bourguiba and Kemal Atatürk in terms of secularist ideology and political strategy. As a result, scholars also frequently suggest that Bourguiba drew inspiration for the Personal Status Code from Turkey's secular reforms. It is therefore useful to examine the relationship between Islam and modernization in the Turkish context to sharpen our understanding of the legitimating ideology of Bourguiba's regime and Bourguiba's strategic approach to implementing modernist reforms.

Turkey is a unique and particularly radical example of a secularized nation in the Middle East.<sup>130</sup> Few leaders of Muslim countries have rejected their nation's Islamic heritage as Atatürk did upon gaining Turkish independence. Turkey's secular political model departed sharply from Islamic tradition and Arab and Middle Eastern convention and embraced the principle that modernization and development require Westernization and secularization. Atatürk attempted not only to separate political and religious authority in Turkey, but to abolish the influence of religious principles and values on almost every major aspect of Turkish society. Atatürk's

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<sup>130</sup> Najoua Kefi Handal, "Islam and Political Development" (PhD diss., Louisiana State University, 1989), 113.

reforms continue to challenge the identity of other nations throughout the Islamic world, where he is widely viewed as an extremist and uncompromising leader.<sup>131</sup>

It is noteworthy that preceding the establishment of Atatürk's secular regime, three major trends characterized Turkish nationalism: Islamism, Westernism, and Turkism. The Islamist trend was the most traditionalist. Its major representatives argued that the decline of the Ottoman Empire reflected of the neglect of the shari'a, which they viewed as the source of social justice and political stability in the Islamic community. They attacked the *tanẓimat*, a nineteenth-century law granting political equality to all Ottoman subjects, on the grounds that it represented a western legal code contrary to the shari'a. In short, the Islamists sought to restore power and prestige to the Ottoman empire and build sound political institutions, not through the introduction of European models, but through adherence to orthodox Islamic principles.<sup>132</sup>

The second trend of Turkish nationalism consisted of what sociologist Ziya Gökalp called "the zealots of Europeanism." Its major representatives were the leaders of the earlier *tanzimat* reforms who advocated to imitate Western nations in economics, technology, and the sciences and sought to base Ottoman political institutions and laws on European models and codes. This group was closer to Atatürk's secular ideology insofar as they viewed Western tradition as the means to promote Turkey's development.<sup>133</sup>

The third trend of Turkish nationalism consisted of the Turkists, a small group of Western-educated elite of which Atatürk was the major representative. Atatürk and his followers in the Republican People's Party rejected Islam insofar as they associated it with Arab cultural

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<sup>131</sup> Handal, "Islam and Political Development," 113.

<sup>132</sup> *Ibid.*, 122.

<sup>133</sup> *Ibid.*, 124.

imperialism and Ottoman decline and corruption.<sup>134</sup> They advocated for the integration of Turkey into Western civilization while retaining Turkey's distinctive identity. The Turkists' was to erase the cultural influence of the Islamic faith and Arab culture on Turkey—which was closely associated with the culture and institutions of the Ottoman Empire—and to restore Turkey to its pre-Islamic status.<sup>135</sup> Headed by Atatürk, the Republican People's Party prosecuted the war of Turkish independence and was well positioned after independence in terms of both power and prestige to model the modern Turkish state on Western institutions.

Upon gaining independence in 1923, Atatürk pursued rapid and sweeping reforms of Turkey's social, political, and economic life. Through his reforms, he sought to explicitly transform Turkey into a Westernized state and sever all ties to Arab and Muslim traditions embodied in the Ottoman Empire, which he viewed as outdated and as impediments Turkey's development. Atatürk projected himself as a secularist and modernizing reformer.<sup>136</sup>

It is useful to distinguish briefly between several types of modern secularism to understand what was distinctive about the path of secularization Turkey followed under Atatürk's regime. Donald Eugene Smith has identified four types of secularism in the modern era.<sup>137</sup> The first entails a clear separation of the polity from religious ideologies and ecclesiastical structures. The second type, by contrast, consists of the "expansion of the polity to perform regulatory functions in the socioeconomic sphere which were formerly performed by religious structures."<sup>138</sup> The third type is a "transvaluation' of the political culture to emphasize nontranscendent temporal goals and rational, pragmatic means,"<sup>139</sup> or in other words, to

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<sup>134</sup> Ibid., 125.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

emphasize secular political goals and values. Lastly, the fourth type entails the abolition or radical alteration of the role religion in the state and society.

The fourth type, which Kefi Handal describes as “radical secularization,” is the kind associated with the Atatürk’s reforms. Atatürk’s secularization sought to eliminate focal points of religious power, both political and social, and to radically transform the Turkish population’s value system. Among his reforms, Atatürk abolished of the Caliphate, eliminated the authority of the religious courts in civil matters, and dissolved the educational institutions of the ‘ulama. Dervish orders—religious orders associated with Sufi Islam—were outlawed and their monasteries shut down. With the introduction of the new Civil Code in 1926, all religious laws from the Ottoman Era—including family law—were discarded. New civil laws were based on the Swiss Code, the new penal code was based on the Italian mode, and commerce and property laws reflected the German model.<sup>140</sup> In 1928, the state was officially declared secular, thereby eliminating the constitutional provision that had established Islam as the official state religion under Ottoman rule.

Among Atatürk’s symbolic secular reforms, moreover, were the abandonment of the Arabic script and the introduction of the Western Gregorian Calendar. Men were also forbidden to wear the fez, and the wearing of the veil by women was outlawed. Sunday was designated as the day of rest instead of Friday, the Muslim holy day. In Turkey’s new capital at Ankara—which replaced Istanbul, the old seat of the caliph—no new mosques were built into its newer sections. Notably, the Islamic call to prayer and reading of the Qur’an were required to be done in the Turkish language rather than in Arabic.<sup>141</sup>

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<sup>140</sup> Ibid., 127.

<sup>141</sup> Ibid.

In sum, Atatürk sought the total transformation of Turkey into a secular Westernized nation. He aimed not only to modernize Turkish state and society, but to modernize them through the radical departure from Arab and Islamic tradition and the adoption of Western institutions, customs, and values. Atatürk's vision for Turkish modernization was thoroughly secular in both its rhetoric and policies.

*Tunisian Modernization: The Tunisian Personality*

There are clear parallels between Bourguiba and Atatürk as leaders of Western-oriented, European-educated nationalist parties who sought to alter the role of religion in modern Muslim society. Both leaders sought to construct new national identities following a long period of empire or colonialism, both were modernizers with autocratic personal and governing styles, and both developed legitimating ideologies that sought to supersede strong historical traditions and heritage.<sup>142</sup>

It is critical to note, however, that while Bourguiba both studied and admired Atatürk's reforms, Bourguiba and other Tunisian lawmakers explicitly distinguished their views on the role of Islam in modern society from the Turkish model. Bourguiba articulated a view of the relationship between Islam and modernization that was fundamentally distinct from the path of secularization followed in Turkey. The crucial difference between modernization in Tunisia and Turkey, both rhetorically and in terms of policy, was that Bourguiba did not seek to eliminate Islam from the public sphere entirely as Atatürk had done.

In 1965, for example, Bourguiba stated:

Ataturk's very critical attitude towards his people's religious heritage certainly explains why his action was received reservedly in Arab and Muslim countries where it did not invariably make a particularly deep impression. The founder of

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<sup>142</sup> Michael J. Koplow, "Mind Over Matter" (PhD diss., Georgetown University, 2013), 127.

modern Turkey regarded Islamic tradition as responsible for stagnation and an attitude of immobilism. In other words, as a brake rather than a lever.<sup>143</sup>

Bourguiba, in contrast, rejected the view that Islam is an inherently negative or stagnant force.

He did not view Islam itself as not the cause of its decline, but rather as the result of the overriding circumstances of colonialism:

Our own opinion on this matter—in light of the Tunisian experience, and of all that we have learned from the evolution of Islam—differs appreciably from these excessively radical conclusions. When decisive and overriding circumstances—the colonial phenomenon, for instance—brought the natural flow of life, and the progress of the nations to a halt, discouragement set in and faith became rigid.<sup>144</sup>

In contrast to Atatürk, Bourguiba considered the official rejection of Islam a political impossibility. Creating a secular state within the framework of the global Muslim community, he suggested, would alienate the state from its Arab neighbors:

The creation of a nonreligious State on Muslim soil was unquestionably a disturbing novelty for most Muslims and it was from this point that a hiatus occurred between the Mashreq<sup>145</sup> and the Maghreb countries.<sup>146</sup>

Rather, Bourguiba viewed Islam as inseparable from the political foundations of the modern state and from the social and psychological identity of an Arab-Muslim population. He continued:

We must not forget that for the Arab peoples, religion preceded the State. It gave laws before the State. And side by side with the State, religion should guide, inspire, and harmonize. We regard these two entities as complementary, not contradictory; we consider it better to unite them than to separate them.<sup>147</sup>

Indeed, Bourguiba suggested that Atatürk followed an entirely Western-oriented path because he was not an Arab:

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<sup>143</sup> Speech of Bourguiba, Ankara, March 15, 1965. In *Bourguibism: An Approach to the Politics of Modernization*.

<sup>144</sup> Ibid.

<sup>145</sup> The Mashreq refers to the eastern part of the Arab world.

<sup>146</sup> Speech of Bourguiba, Ankara, March 15, 1965. In *Bourguibism: An Approach to the Politics of Modernization*.

<sup>147</sup> Ibid.



Research was done to attempt to determine the origin of the Turkish race. It has been pointed out that the Turks were of Indo-European origin and that they had nothing in common with the Semites, the ethnological group of the Arabs and the Jews. To clearly mark Turkey's belonging to the European camp, family names were radically changed. Latin characters were substituted for the Arabic characters.<sup>148</sup>

Bourguiba's approach to religion and modernization is better described as a process of "desacrilization" than as secularization per se. While these terms are similar, they have essentially different meanings. Charles Gallagher has described desacrilization as "the removal of traditional taboos from core areas of social behavior."<sup>149</sup> The 1956 Tunisian Constitution, to be sure, declares that Islam is the religion of the state and Arabic its language. Atatürk eliminated both Islam and the Arabic language from the institutions of the state and institutionalized an entirely Western-oriented political system. Bourguiba, however, carefully differentiated his vision for Tunisia's modernization from Turkey's secularization:

Atatürk passed for being crazy about modernism. His sources of inspiration were to be found essentially secular, Now, we all know that the Turks are Muslims and profoundly attached to their religion, their faith sometimes even bordering on fanaticism. Overnight, not even one religious institution existed any longer. He wanted to shape his country to the image of France. But he had forgotten that the Catholic religion was propagated and served in secular France by a whole ecclesiastical hierarchy headed up by the Pope. The secularization caused ravages in the ranks of the Muslims. They experienced such decadence that they returned to the practices of the whirling dervishes.<sup>150</sup>

It is thus misleading to liken the legitimating ideology of Bourguiba's regime to Atatürk's insofar as Bourguiba did not seek separate religious and political authority. While both were modernists, Bourguiba, unlike Atatürk, was the ruler of an Islamic state. Bourguiba's intent was never to build a secular state, but rather to endow the state with religious authority and extend state control over the religious realm.

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<sup>148</sup> Ibid, 69.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

It is significant that a central component of Bourguiba's rhetoric of legitimacy during the anti-colonial struggle was the definition "la personnalité tunisienne," or the "Tunisian personality," through Arab-Islamic symbolism. For Bourguiba, as Normal Salem suggests, the cultural superstructure that defined the political community and lent historical legitimacy to his regime was Tunisian, and Islam was a fundamental component of this superstructure. It was thus an Islamic Tunisian cultural superstructure that became the source of symbolism used to cultivate legitimacy and maintain political authority.<sup>151</sup>

To be sure, the Tunisian cultural superstructure extended beyond Islam's influence. Bourguiba insisted on the recognition of the pre-Islamic history of Tunisia to demonstrate the existence of a specifically Tunisian identity before the advent of Islam:

It is certain first of all that people will feel a sense of pride in discovering that their history does not go back only twenty or thirty years, but well beyond. Of course, they know vaguely certain prestigious names such as Carthage or Kairouan. But we must also explain to them the reasons for our delay and for the centuries of decadence experienced by the country. We fight better against an evil when we know its origin.<sup>152</sup>

In his speeches, Bourguiba often referred to the Punic culture that developed through the encounter of the Berbers with Phoenician settlers as a specifically Tunisian variant of Phoenician civilization.<sup>153</sup> Nonetheless, Bourguiba identified Islam as a fundamental component of Tunisian identity:

Throughout history, Tunisia has been conquered many times. Only once did it become totally integrated with its conquerors. That was when the Arabs occupied it, bringing with them a religion which gave all believers the same rights.<sup>154</sup>

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<sup>151</sup> Mezran, "Negotiating National Identity: The Case of the Arab States of North Africa" (PhD diss., John Hopkins University, 2001), 174; Salem, "Habib Bourguiba," 262.

<sup>152</sup> Speech of Bourguiba, Le Kef, March 12, 1964. In "Negotiating National Identity: The Case of the Arab States of North Africa." Translation mine from French to English.

<sup>153</sup> Mezran, "Negotiating National Identity," 174.

<sup>154</sup> Speech of Bourguiba, December 7, 1962. In: *Lessons of Our History*, 16.

In a public debate regarding the veil, moreover, Bourguiba articulated the Tunisian personality explicitly through Arab-Islamic symbolism:

Let us put aside the various opinions on the [veil]. We well admit that [it] is part of the Tunisian personality although it is in no way aesthetic. In our present time, it is obvious that the colonial power is doing anything in its power to annihilate our personality by imposing French ways of life. We are not strong, we have no power, but we should do everything to preserve even some decadent symbols of our personality. This is the only way to preserve our entity. We will discuss this problem is no longer a threat to our national personality as was the case for the use of western clothes.<sup>155</sup>

He suggested that the veil—as part of the distinctive social customs of Islam—was a symbol of the Tunisian personality:

...I have posed in clear and precise terms the great social problem which has always been on the agenda of our discussions: is it in our interest to hasten, without sparing transitions, the disappearance of our habits, our customs, good or bad, and all these little things that together form, whatever we say, our personality? My response, given the exceptional circumstances in which we live, was categorical: No!<sup>156</sup>

Indeed, this speech reflects Bourguiba's political acumen, as he would call for the elimination of the veil after independence as a step towards the "liberation" of Tunisian women. Nonetheless, it is clear that Bourguiba identified Islam as a fundamental component of Tunisian identity. He continually articulated the goal of the nationalist struggle as "[saving] the country from assimilation...by affirming Tunisia's Arabo-Muslim personality."<sup>157</sup>

### *The Instrumentalization of Islam*

This does not suggest that Bourguiba's stance towards Islam necessarily arose out of his own convictions; there were also important political reasons for Bourguiba to embrace Islam.

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<sup>155</sup> Bourguiba, *My Life, My Ideas, My Struggle*, 38-39. In *Islam and Political Development: The Tunisian Experience*.

<sup>156</sup> "Le Voile," January 11, 1929, *L'Etendard Tunisien*. In *Habib Bourguiba, Islam, and the Creation of the Tunisian State*. Translation mine French to English.

<sup>157</sup> Speech of Bourguiba, Carthage, September 18, 1966. In *Habib Bourguiba, Islam, and the Creation of the Tunisian State*. Translation mine French to English.

During the nationalist struggle, as the previous quotation demonstrates, the Neo-Destour used Islam as an important anti-colonial political force. The nationalist movement presented Islam as a unifying feature that set the French and Tunisians apart. The symbols of Islam became the symbols of anti-colonial struggle and of Tunisia's nationalist movement. In the pivotal decade of the 1940s to the beginning of the 1950s, the crescent of Islam gained symbolic focus and mosques became a rallying point for marginalized political parties as well as a hiding place for arms.<sup>158</sup> Bourguiba publicly declared that the Neo-Destour and Islam were united in the nationalist struggle. "Certain men do not understand," he stated in 1957, "that the Destour strives towards the Muslim religion."<sup>159</sup>

Although the alliance between Islam and the Neo-Destour developed during a political period that demanded unity between anti-colonial forces, this perception remained true during the formulation of policy towards Islam in the post-independence period. The pivotal role of Islam as a symbol of Neo-Destour legitimacy during the anti-colonial struggle endowed it with legitimating significance such that it could not be totally eliminated from the political institutions or culture of modern Tunisia. Islam had served as a unifying force among otherwise ideologically disparate forces during the anti-colonial struggle. Bourguiba thus did not have a monopoly over Islam's symbolism at independence. Religious symbols had not been exclusively capitalized on by the Bourguibist faction of the Neo-Destour; they were also harnessed and manipulated by the conservative religious groups who rivaled Bourguiba's political power.<sup>160</sup> Ben Youssef in particular challenged Bourguiba in terms of this dimension of legitimacy. He

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<sup>158</sup> Ibid, 35.

<sup>159</sup> Speech of Bourguiba, the School of Leadership, Tunis, December 16, 1957. In *Bourguibism: An Approach to the Politics of Modernization*.

<sup>160</sup> Byrnes, "Bourguibism: An Approach to the Politics of Modernization within the Focus of the Decision-Maker" (PhD diss., University of Maryland, 1967), 37.

proposed the broad Arab-Islamic rather than the Tunisian “personality” as the basis for the historical legitimacy of the state, and consequently, favored a unitary Arab state rather than a Tunisian state.<sup>161</sup> Bourguiba’s acceptance of Islam can thus be also interpreted as a strategic move to consolidate his political position in the post-independence period. In embracing Islam—at least ostensibly—Bourguiba removed religion as a political weapon to be harnessed by oppositional forces.

It is important to emphasize Bourguiba’s flexibility concerning religion. Although he embraced Islam rhetorically, he did allow not it to bind him in political or juridical matters. For example, Bourguiba stated in 1960:

The Progress of Islam and its development necessarily supposes an effort for constant reexamination and the free exercise of thought in order to make answer to all that which might appear as stagnant or as over done in legislation, to all that which does not respond anymore to the exigences of a life of renewal and which is no longer in harmony with the given objectives in long term changes.<sup>162</sup>

Bourguiba continually maintained that there was a need for *ijtihad* to reinterpret the Qur’an and the Sunna according to the needs of changing social and economic conditions and modern society:

It happened that in my previous speeches I insisted on the role of reason vis-à-vis religion and I showed the necessity of continues efforts of research and reflection in the spiritual and temporal domains, in order to give our life a constant impetus towards progress and prosperity and to preserve our religion from stagnation, which will make it powerless, and to answer the needs of our contemporary society and [meet] the demands of our time. Didn’t they rightly say that Islam is made for every time and every place?<sup>163</sup>

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<sup>161</sup> Salem, “Habib Bourguiba,” 266.

<sup>162</sup> Speech of Bourguiba, Kairouan, September 3, 1960. In *Bourguibism: An Approach to the Politics of Modernization*.

<sup>163</sup> Speech of Bourguiba, Sousse, July 10, 1965. In *Bourguibism: An Approach to the Politics of Modernization*.

Moreover, he repeatedly emphasized that modernization required citizens to embrace interpretations of Islam that were more aligned with the demands of modern life:

Among my functions and responsibilities as the Head of State, I am qualified to interpret the religious law... As the spiritual leader of Muslims in this country, I declare to you that each of you will accomplish an obligation as meritorious [as a religious one] if you donate the equivalent of the cost of one's pilgrimage [to Mecca – one of five religious injunctions in Islam] to social welfare projects or when you invest in industrial businesses of your country, thereby refraining from soliciting foreign lenders.<sup>164</sup>

Bourguiba also described the struggle for economic progress in Tunisia in terms of a *jihad* against underdevelopment. When Bourguiba advocated to break the fast during Ramadan, he referred to the Sunna to justify and legitimize his recommendation:

Do you remember the Prophet's proclamation to the Muslim army that was marching toward Mecca during the month of Ramadan: "I want you to carry out the victory," he said, "when you arrive to Mecca, you must not be exhausted by fasting. Break the fast so that you will be able to achieve victory."<sup>165</sup>

In this way, Bourguiba promoted flexible and reformist interpretations of religious doctrine. In his effort to extend of state control over the religious realm, he instrumentalized Islam's reform to legitimize the regime's ostensibly secular policies.

Bourguiba's invocation of Islam elicited mixed reactions in Tunisia. To many of Bourguiba's supporters, the regime's invocation of Islam represented a broader and virtuous goal of demonstrating that Islamic principles were suited to address modern issues. To his opponents, his approach to religion masked a desire to marginalize Tunisian's traditional religious identities and practices. Regardless of his personal convictions about Islam, it is clear that Bourguiba sought to use religion as a tool of modernization and that this instrumentalization of Islam constituted a core component of the legitimating ideology of his

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<sup>164</sup> Speech of Bourguiba. In "Chronique Politique," *Annuaire de l'Afrique du Nord* 3 (1964): 138.

<sup>165</sup> Speech of Bourguiba, Carthage, January 25, 1973. In *Bourguibism: An Approach to the Politics of Modernization*.

regime.<sup>166</sup> While Bourguiba demonstrated considerable flexibility in his approach to religion, he nevertheless articulated religion as a constitutive element of the political authority of his regime. His rhetorical justifications for the regime's policies maneuvered within the framework of Islam. This ideology of legitimation both contrasted and overlapped in different measures with Bourguiba's political opponents at independence.

### **Bourguiba's Political Ideology**

No discussion of the legitimating ideology of Bourguiba's regime is complete without a discussion of Bourguibism. "Bourguibism," while often described as a political ideology, is better characterized as a set of negotiation strategies to achieve political goals tailored to the particular variant of the politics of modernization Bourguiba confronted in Tunisia than as a coherent ideology that informed his political decision-making. A central claim of this thesis, as earlier stated, is that the nature of policy reform in Tunisia was informed not just by the regime's ideology, but by the interaction of this variable with political and institutional factors. A clearer understanding of Bourguiba's strategic approach to achieving his political goals is also necessary to appreciate how the legitimating ideology of the regime interacted with political and institutional factors to affect the nature of family law reform.

#### *Bourguibism as Negotiation Strategy*

Every political leader confronts problems of establishing modernity within the environment of their particular polity. Bourguiba was known for his distinctive problem-solving approach to the politics of modernization. Specifically, he was known for adopting a problem-

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<sup>166</sup> Feuer, "Religious Establishment," 68.

solving approach tailored to the particular variation of the modernization politics he confronted in Tunisia.<sup>167</sup>

While he never wrote a treatise on his political experience, Bourguiba's political ideology has been articulated by many as a distinctive set of political ideas and methodologies. In contrast to Turkey, where Atatürk enshrined the six principles of Kemalism directly in his party's platform, Bourguiba's political ideology was more fluid and was not as clearly defined. This was due in large part to his focus on tactics over doctrine. "Bourguibism," as Michael Koplow explains, "began with a political orientation informed by the French Republican ideas of liberty, fraternity, and equality, and then pivoted toward applying Western norms and ideals to a homogeneously Muslim country."<sup>168</sup> Bourguiba viewed the methods for doing so as more important than the actual ideals, since his focus was on the endpoint of modernization rather than particular path he followed to get there. He was therefore more willing to adopt a flexible stance at the expense of always enforcing a hardline doctrine.

Bourguibism has elsewhere been described as the "the art of rational persuasion."<sup>1</sup> Bourguiba was known as a leader who used his charisma to achieve carefully thought-out political and social objectives. Moore suggests a core principle of Bourguibism is the idea that change can never truly be forced, whether the goal is political independence or the modernization of Tunisian society. Rather, Bourguibism views rational persuasion as the means to effect political, social, and economic transformation. Indeed, Bourguiba denounced political extremism and doctrinal rigidity. Bourguiba once wrote of the Pan-Arabist movement in Tunis

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<sup>167</sup> Byrnes, "Bourguibism," 4.

<sup>168</sup> Koplow, "Mind Over Matter," 133.



and Cairo that “their Oriental mentality does not allow them to understand that politics is the art of attaining the possible.”<sup>169</sup>

For the purposes here, Bourguibism can be taken as a style of political negotiation characterized by a combination of inflexibility in regard to principles with flexibility in the means used to implement them.<sup>169</sup> Bourguibism ascribes to a set of principles, but maintains a distinction between principles or goals, which are nonnegotiable, and methods or means, which are. Bourguibist strategy is willing to advance in gradual stages and accepts compromises that lead towards a particular ultimate goal. Moore suggests that Bourguibism is effectively a rationalization for political opportunism.<sup>170</sup> Bourguiba himself said of his negotiation strategy:

In the Middle East, Bourguibism has been interpreted to mean one thing only, and even that is misunderstood: take what is offered and then ask for more. This is equivalent to saying that one should accept anything. As an illustration the example is given of a debtor who out of a debt of a hundred millimes agrees to pay back only one. That is better than anything, it is said, and the creditor has only to go on asking. No, that is not Bourguibism. In point of fact, Bourguibism only accepts *a partial compromise insofar as it offers the possibility of taking everything owed.*

A better example could be taken from the art of strategy. Imagine you are in the position of someone who is trying to take a fortress held by an enemy who is stronger than you and from whom you cannot take everything at one blow. If he offers to let you have, say, a path which is useless, there is no point in accepting the compromise. But if he abandons a strategic position capable of becoming a point from which the whole system of fortifications can be taken, it would be criminal to refuse. So long as I feel myself incapable of taking the whole citadel by force, I would be failing in my duty *and harming the cause of my country if I refused to take a point which would enable me later on to take all the rest.*<sup>171</sup>

An appreciation of Bourguibism’s negotiation strategy is useful to analyzing how the interplay between the regime’s legitimating ideology and the political environment at independence affected the nature of family law reform insofar as it provides insight into

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<sup>169</sup> Moore, *Tunisia Since Independence*, 44.

<sup>170</sup> *Ibid.*

<sup>171</sup> Speech of Bourguiba, April 6, 1961. Emphasis mine. In *Tunisia Since Independence*.

Bourguiba's willingness to make concessions to his political opponents. As earlier discussed, despite its flexibility, the legitimating ideology of Bourguiba's regime defined the state's purpose and limited the range of policy options the regime could adopt without opposing its stated ideological commitments. Bourguiba's vision for Tunisia's modernization, to be sure, was to achieve parity with the West. Bourguiba articulated modernization and secularization as necessary to foster social and economic development in Tunisia and create a viable state. Indeed, Bourguiba's emphasis on Tunisia's pre-Islamic heritage can be viewed as an attempt to reorient Tunisian identity along nationalist lines distinct from an entirely Arab-Islamic narrative. Koplow goes as far as to suggest that "Every action by Bourguiba under the guise of the Tunisian state was evaluated based on these twin goals of modernization and secularization, and [actions] that conflicted with these aims were considered to be outside the sphere of acceptable political behavior."<sup>172</sup>

Nevertheless, it is important to emphasize that Bourguiba did not attempt to eradicate Islam from the public sphere entirely as Atatürk, for example, had done. Despite his goal to modernize Tunisia, Bourguiba understood that disregarding religion completely was politically impossible. He did not openly advocate secular reforms. Indeed, as Koplow notes, Bourguiba observed to his son after visiting Turkey that Atatürk "bit off more than he could chew in trying to do too much in too short of a time."<sup>173</sup> Rather, Bourguiba recognized Islam as a powerful force too deeply rooted in Tunisian society to be eliminated. For this reason, he undertook measures that would allow him to control and modernize Islam and extend state control over the religious realm. He discarded aspects of Islam he deemed as impediments to the

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<sup>172</sup> Koplow, "Mind Over Matter," 134.

<sup>173</sup> *Ibid.*, 135.

modernization and development and in doing so portrayed himself not as a secularist attempting to eradicate Islam, but as a Muslim reformer seeking to use religion as a positive force.

An appreciation of Bourguiba's strategic approach to implementing modernist reforms, while it provides insight into Bourguiba's willingness to make concessions to his opponents in the pursuit of his political goals, does not explain the circumstances under which he was willing to make concessions. Specifically, it does not explain why Bourguiba was willing to make a concession to his opponents in regard to inheritance law at independence. Understanding the interplay between the regime's ideology and the political environment as well as the institutional capacity of the state at independence, to which the following chapter turns, provides this insight.

## **Conclusion**

This chapter has examined Bourguiba's stated views on Islam and modernization and his strategic approach to achieving political goals to understand the legitimating ideology of Bourguiba's regime. It has demonstrated how the regime's invocation of religious themes in discursive justifications for its political authority created a framework within which the regime could negotiate that was distinct from the ideology of secularism.

Bourguiba articulated a view of the relationship between Islam and modernization that was fundamentally distinct from the path of secular modernization followed in Turkey. The regime's discursive justification of its political authority incorporated explicit religious themes. While Bourguiba projected himself as a reformer, he projected himself as an *Islamic*, not a secularist reformer. Bourguiba's rhetorical justifications for his modernizing reforms were grounded in the framework of Islam. Regardless of whether the incorporation of Islam into the legitimating ideology of Bourguiba's regime derived from personal conviction or political

necessity, it delineated the range of policy options the regime could adopt regarding religion without opposing its stated ideological commitment to preserving the Islamic identity of the state.

In the following chapter, I demonstrate how the interplay of the legitimating ideology of Bourguiba's regime with the political environment and the institutional capacity of the state at independence affected the nature of the Personal Status Code and thereby the outcome of inheritance reform.

## **THE LIMITS OF REFORM: POLITICAL OPPOSITION AND INSTITUTIONAL CAPACITY**

Developing the argument laid out in Chapter Four, this chapter examines the political environment Bourguiba confronted at independence and the institutional capacity of Bourguiba's regime to understand how the interaction of the regime's legitimating ideology with these factors influenced the nature of the Personal Status Code and thereby the outcome of inheritance reform. The chapter argues that the preservation of Islamic inheritance law in Tunisia's Personal Status Code reflects concessions made to the religious establishment's demands concerning the nature of the code as part of the post-independence regime's strategy for political survival. While (i) the constraints placed by the regime's ideology on the kinds of policies it could adopt played a role in determining the nature of the code, policy outcome was significantly conditioned by (ii) the religious base of the political opposition confronting the regime and (iii) the relative weakness of the regime's institutional capacity, specifically the existence of strong contestation over the ruling party's authority that precluded the regime from unilaterally imposing a secular political agenda without risking backlash from religious opposition forces.

I develop this argument by examining the political environment and the institutional capacity of the regime at independence. The first section examines the political environment of opponents Bourguiba confronted, highlighting the support of religious forces for Salah Ben Youssef, Bourguiba's main political opponent. The second section examines the institutional capacity of Bourguiba's regime, specifically the extent to which Bourguiba's faction of the Neo-Destour enjoyed hegemonic political authority. I emphasize the extent of Ben Youssef's popular

support and the threat of internal dissent among Youssefist sympathizers within the Neo-Destour.

The chapter demonstrates that because the incorporation of religious themes into the regime's discursive justification for its political authority required Bourguiba to gain at least rhetorical support for the Personal Status Code from religious authorities, contestation over Bourguiba's authority from the Youssefist opposition compelled Bourguiba to coopt rather than outright suppress the religious establishment, thereby forcing Bourguiba to make concessions to some of the establishment's demands in drafting the code—including the preservation of Islamic inheritance law—in order to gain their support.

### **Political Environment of Opponents at Independence**

The second central claim of this thesis is that while ideology is important to explain policy outcomes because it frames the policy choices available to a regime, it cannot fully explain subsequent variation. Explanations relying on ideology alone cannot account for instances in which a regime's policies contradict one another or the regime's own governing ideology. The contradictions within the reforms strongly suggest that the preservation of Shari'a inheritance law was not merely the outcome of ideology. Two other factors are needed to explain the inconsistency of Tunisia's family law reform: the political environment of opponents confronting the regime and the regime's institutional capacity. This section analyzes the first claim in greater depth.

#### *The Political Environment: Religious Nationalists and Leftists*

As Chapter Two has discussed, following World War I, Tunisia's emerging nationalist movement united two groups: The Destour party, founded in 1920 and representing a

traditional bourgeoisie of large merchant families and landowners, and the syndical movement under the leadership of Mohamed Ali el Hammi. In 1934, these two groups merged to form the broad-based Neo-Destour party. Within the Neo-Destour, a split emerged between a faction in support of Habib Bourguiba's preference for a negotiated settlement with the French, and a faction in support of Salah Ben Youssef, the secretary general of the Neo-Destour and Bourguiba's chief aid, who proposed a radical and potentially violent approach to defeating the French.<sup>174</sup>

Even before independence, Bourguiba had always intended to maintain a strong relationship with the French, writing in a policy statement in 1950 that Tunisian military weakness and strategic strength necessitated "the assistance of a great power. To the extent that it will admit the legitimacy of our demands, we want that power to be France, and we are fully prepared to cooperate with it on a footing of equality between our two people."<sup>175</sup> Bourguiba was committed to a process in which Tunisia's independence would be gained through negotiations with France and a relationship would be maintained once independence was achieved. Bourguiba neither sought to pursue armed confrontation with the French nor proposed that Tunisia should cut all ties from France and become part of a pan-Arab or North African state. Rather, Bourguiba sought to maintain a collaborative relationship with France and supported gradual advancement towards independence in order to maintain France as an ally.<sup>176</sup>

Ben Youssef and his supporters, on the other hand, sought an entirely different path to independence. Ben Youssef's faction of the Neo-Destour viewed the path to independence as a confrontational and potentially violent one and sought to partake in a larger pan-Arab

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<sup>174</sup> Feuer, "Religious Establishment," 74.

<sup>175</sup> Perkins, *Tunisia Since Independence*, 116-117.

<sup>176</sup> Koplou, "Mind Over Matter," 142.

movement that would expel France out of North Africa.<sup>177</sup> Later adopting the slogan “the rifle instead of the ballot box,”<sup>178</sup> Youssefists supported a far more radical and revolutionary agenda than the Bourguibist faction. Ben Youssef wanted neither to maintain a relationship with France nor to placate the French through a gradual move towards independence. Rather, Ben Youssef considered independence to require armed revolt, and sought France’s immediate departure from France and the entirety of North Africa, whether of its own volition or through violent expulsion.<sup>179</sup>

The division within the Neo-Destour, however, did not only reflect differing opinions concerning the best way to achieve independence. The division also reflected major disagreements over the extent to which religion should be incorporated into the institutions of the independent polity.<sup>180</sup> At the core of their public differences was a fundamental ideological split over the path that Tunisia should follow as an independent state. Bourguiba’s faction in the Neo-Destour were generally more secular, bilingual, “modernist” elites who had been educated at institutions such as the Sadiki School and supported Bourguiba’s emphasis on a “Tunisian personality” that transcended religious or ethnic identity. Ben Youssef’s support, in contrast, derived from a conservative faction within the Neo-Destour that included members of the Islamic establishment centered around the Zaytuna Mosque-University, rural tribesmen, and lower-class immigrants to the cities who were attracted to Ben Youssef’s pan-Islamic and pan-Arab rhetoric.<sup>181</sup> The impact of the Bourguibist-Youssefist divide on Bourguiba’s governance in the post-independence period is difficult to overstate. A brief overview of the political

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<sup>177</sup> Ibid, 143.

<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Feuer, “Religious Establishment,” 74.

<sup>181</sup> Ibid.



significance of the Zaytuna is useful to appreciate the association between the Zaytuna and Bourguiba's political opposition.

The Zaytuna mosque was built in 732 CE, followed five years later by the establishment of a *madrassa*, making it one of the oldest centers of Islamic learning in the world. From the eighth to the eleventh centuries, the Zaytuna was a leading—if not the leading—university on the African continent, known for its advanced theological studies and its courses in scientific and literary subjects. From the thirteenth century onward, the institution experienced a decline, and it was only in the late nineteenth century that Tunisia's political leaders sought to revive the school. In 1840, for example, the state restored the mosque's ancient library. In 1875, structural and curricular reforms were introduced, including courses in history and mathematics.<sup>182</sup>

During the colonial period, in contrast to other parts of the Franco-Arabic colonial territory, France did not succeed in establishing state sponsorship of the Zaytuna during the Protectorate. As a result, the Zaytuna became a center of political resistance to colonial authorities, a resistance that was articulated in terms of a struggle to preserve Tunisia's traditional Arab-Muslim heritage and identity. Moreover, once it became clear that they could not extend control over the Zaytuna, Protectorate authorities sought to prevent modernizing reforms to the institutions that many of its students were demanding.

In their efforts to reform the institutions, Zaytunian students confronted conservative professors inimical to radical changes in the institutions' structure and curricula. Disagreements between the old constituency of 'ulama and the younger generation of reformist students and professors precluded major pedagogical reforms to the Zaytuna through the Second World War. Through continued student protest and staffing shortages, the institution gradually declined.

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<sup>182</sup> Ibid., 193.

After World War II, reformists at the Zaytuna were successfully in implementing certain changes to the structure and curricula of the institution. The appointment of Tahar Ben ‘Achour as rector of the university in 1945 was a critical juncture in this respect, as Ben ‘Achour was among the generation of Zaytunians who had advocated for modernizing reforms to the institution and became in a position to implement them. Nonetheless, Ben ‘Achour’s successes were undermined by an increasingly complicated and antagonist relationship between Zaytunian students and the nationalist movement. In 1949, for example, a “Committee of Zaytunian Students” presented the Protectorate government with a list of demands, among which was the creation of a University of Tunisia under the name of Zaytuna University that would house faculties of theology alongside departments of the humanities and sciences. While the Committee initially found support among activists within the nationalist movement, by 1950, divisions emerged between Zaytunians and certain leaders within the Neo-Destour.<sup>183</sup> After Bourguiba orchestrated his expulsion from the party, Ben Youssef found support among Zaytunians in challenging Bourguiba’s position.

#### *The Zaytuna and the Early Reformist Movement*

It is noteworthy that one of the earliest advocates of family law reform in Tunisia hailed from—and was ultimately suppressed by—the Zaytuna. The dominant problem that concerned Tunisians with respect to family law during the nationalist struggle from the 1930s to the 1950s was whether Islamic law should be modified or left unchanged. Although the issue of family law and women’s rights had first surfaced in Tunisia in the 1920s, it did not receive significant attention until the early 1930s.

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<sup>183</sup> Ibid., 195.

In 1930, Tahar Al Haddad, a progressive scholar at the Zaytuna, published a book titled *Our Women in Law and Society*.<sup>184</sup> In the book, Al Haddad advocated for substantial reforms in laws governing the family and personal status. Arguing that Tunisian women were constantly debased, Al Haddad suggested that the purpose of his book was to argue for reform. Al Haddad called for changes in women's status and improvements in women's education as a way of making women better citizens, wives, and mothers. Among his views, Al Haddad opposed the veil and the seclusion of women, rejected polygamy and other forms of unchecked paternal power in families such as child and compulsory marriages, condemned unilateral repudiation, and urged the creation of divorce courts. Notably, he called for Muslim women's rights to equal inheritance.<sup>185</sup>

Al Haddad was greatly influenced by the "discursive theological framework of the Hanafi school in which '*ijtihad*' was based on arguments, justifications, rhetoric, and approbation."<sup>186</sup> In *Our Women*, Al Haddad claims that the Qur'anic and shari'a laws are not eternal, but rather are bound to a historical context. Because the essence of the Islamic faith is "justice" and "equality between people," polygamy and gender inequality, like slavery, are to be gradually abolished. "In its essence," Al Haddad writes, "Islam does not oppose the principle of equality in all its respects."<sup>187</sup> Al Haddad notes that during Muhammed's life, new laws and texts came to cancel earlier ones. Because of historical progress, he suggests, divine law is not eternal, but rather must be compatible with modern times.<sup>188</sup>

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<sup>184</sup> Charrad, *States and Women's Rights*, 216. Title translated.

<sup>185</sup> See Al Haddad, *Our Women*, 24. In *The Production of the Muslim Woman*, 102.

<sup>186</sup> Cherni, *Les Déparages de l'histoire*, 108. In *The Production of the Muslim Woman*, 102.

<sup>187</sup> Al Haddad, *Our Women*, 32. In *The Production of the Muslim Woman*, 104.

<sup>188</sup> Lamia Ben Youssef Zayzafoon, *The Production of the Muslim Woman* (Maryland: Lexington Books, 2005), 103.

Al Haddad was vehemently criticized for his views, ultimately costing him his career and reputation.<sup>189</sup> The Zaytuna, as the center of religious education and scholarship in Tunisia and a bastion of conservatism and tradition, condemned the book immediately as an shocking attack against Islam.<sup>190</sup> A commission was created at the Zaytuna tasked with evaluating the book, and ultimately reported that the book was blasphemous and supported the transgression of Islamic law and should therefore be banned. In compliance with the Zaytuna's recommendation, the prime minister at the time placed a ban on the book and ultimately dismissed Al Haddad from his position. Moreover, the shayks of the Zaytuna accused Al Haddad of heresy and issued a fatwa revoking his Zaytuna degree, his notary license, and barring him from an exam room.<sup>191</sup> Following the backlash against the book, Al Haddad was viewed as a traitor and excluded from public life.

It is also important to note that in addition to the colonial context, there was a generational and class conflict between Al Haddad and his opponents. The Zaytuna was led by the powerful and conservative old bourgeoisie of Tunis—including Tahar Ben Achour, whose endorsement of the code Bourguiba would seek at independence—who were working in concert with the French colonial authorities. The reformist movement of the 1920s and 1930s, on the other hand, was led by scholars of humbler origins. Al Haddad's harshest critics attacked Al Haddad on his evolutionary conception of the Qur'an and for threatening male privileges deriving from the Islamic laws of inheritance and the *habus* system.<sup>192</sup>

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<sup>189</sup> Zayzafoon, *The Production of the Muslim Woman*, 103.

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*, 97.

<sup>192</sup> *Ibid.*, 126.

Lamia Ben Youssef Zayzafoon has argued that the fatwa against Al Haddad was provoked less by his call for unveiling and educating “the Tunisian woman” than by his call for gender equality in inheritance, which, in his dialogic reading of the Qur’an, is not inimical to the “true” and egalitarian spirit of Islam. Al Haddad was the only Tunisian reformer who called for gender equality in inheritance.<sup>193</sup> Many Tunisian reformers before Al Haddad had called for the education and unveiling of Tunisian women, but none were persecuted to the extent that Al Haddad was. This suggests, according to Zayzafoon, that the underlying cause for the fatwa against him was his call for gender equality in inheritance. In high school textbooks, for example, only Al Haddad’s call to give Tunisian women a domestic education that would adequately prepare her to fulfill her future role as mother and wife is mentioned. His call for gender equality in inheritance—a call more subversive of the shari’a—has been suppressed within Tunisian academia.<sup>194</sup> In this way, she suggests, women’s rights came to embody the split between modernity and tradition in postcolonial Tunisia. While unveiling, work, and education were synonymous with inevitable social process, the shari’a laws came to represent an unchanging Tunisian essence that had to be protected from encroachment of Western culture.

In sum, the political environment of opponents Bourguiba confronted at independence was defined by the division between Bourguiba’s and Ben Youssef’s factions within the Neo-Destour. This division reflected not only differing opinions concerning the best way to achieve independence, but also major disagreements over the extent to which religion should be incorporated into the institutions of the independent polity. Insofar as Ben Youssef promoted the incorporation of Islam into the independent state, Ben Youssef drew support from religious

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<sup>193</sup> Ibid., 104.

<sup>194</sup> Ibid., 126.

forces in Tunisian society, especially from religious authorities at the Zaytuna Mosque University. Among their conservative leanings, religious authorities at the Zaytuna were hostile to the reformist movement of the 1920s and 1930s advocating for substantial reforms to Islamic personal status law. Importantly, Bourguiba's regime would consult Zaytuna authorities in drafting the Personal Status Code and seek their public support for the reforms.

### **Institutional Capacity at Independence**

The third central claim of this thesis is that like a regime's legitimating ideology, political opposition cannot fully explain the observed variation in the liberalization of the Personal Status Code. This is because in advancing its political agenda and determining how to minimize political opposition, regimes confront another critical factor: the strength of their institutional capacity. This section analyzes the regime's institutional capacity, which I measure as the ideological consensus among party leaders and members. My analysis challenges dominant assumptions that Bourguiba's faction of the Neo-Destour enjoyed hegemonic political authority at independence and could therefore outright suppress the religious establishment.

#### *The Impact of Internal Opposition*

Widespread religious discontent was too disorganized at independence to threaten Bourguiba's position.<sup>195</sup> As the previous section discussed, the institutional cohesion of the Zaytuna had declined under colonial rule to the point that the institution was too weak to directly challenge Bourguiba's faction. What is often overlooked, however, is that Bourguiba was challenged on more immediate political grounds within his own party. Even before independence, the cohesion of the nationalist movement threatened to collapse under the

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<sup>195</sup> Moore, *Tunisia Since Independence*, 61.

divisive impact of Youssefist opposition. An appreciation of Ben Youssef's support is central to understanding the regime's institutional capacity at independence because it demonstrates the fragility of Bourguiba's appeal. Ben Youssef's broad support reveals that stable political consensus had not yet been achieved in Tunisia, and thus, that the dissolution of religious opposition forces was not predetermined.

The ideological polarization between the Bourguibist and Youssefist factions of the nationalist movement escalated violently on the eve of independence. In April 1955, while Ben Youssef was still in exile abroad, France and the Neo-Destour reached an agreement on Tunisia's internal autonomy in which France maintained control over Tunisian foreign and defense policy but acknowledge that it no longer had the power to rule the country, paving the way for the Neo-Destour to develop a government.<sup>196</sup> The agreement also allowed French settlers to retain their property and court system while losing their political rights, granted the French language privileged status, and established close economic ties between France and Tunisia. Bourguiba backed the agreement and argued that it represented an important step toward full Tunisian independence.<sup>197</sup> Ben Youssef, however, was strongly opposed an agreement that would maintain a close relationship with the former colonial power in Tunisia, moreover an agreement that granted the French authority over Tunisia's foreign relations. Ben Youssef was committed to the position that Tunisian independence should be part of broad-based approach linked to independence for Morocco and Algeria and that a pan-Maghrebi armed revolt was the most efficient path to achieving an independent state.<sup>198</sup>

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<sup>196</sup> Koplou, "Mind Over Matter," 144.

<sup>197</sup> Perkins, *A History of Modern Tunisia*, 126-128.

<sup>198</sup> Koplou, "Mind Over Matter," 145.

When Ben Youssef returned to Tunisia in September 1955, he was received with significant popular enthusiasm.<sup>199</sup> Several weeks later in early October, once he determined he had sufficient support to attempt to challenge Bourguiba, Ben Youssef declared his opposition to the internal autonomy accords and publicly challenged Bourguiba's legitimacy as the leader of the nationalist movement.<sup>200</sup> In a Friday sermon at the Zaytuna Mosque on October 7<sup>th</sup>, Ben Youssef stated that the accords were a step backwards from Tunisian independence as they implicitly incorporated Tunisia as part of the French Union and that the accords abrogated the historical and legal legitimacy of the nationalist movement by fundamentally contradicting its Arab and Islamic character.<sup>201</sup> Ben Youssef's choice of venue for the sermon, as an article in *Le Matin* noted, was an important strategic move:

To make his political return, Ben Youssef could not have made a better choice: a large attendance and above all a day and place that would help him place himself not only in favor of total independence but also in fervent defense of religion. Salah Ben Youssef, in criticizing the protocols, this time presents himself as the defender of Arabism and of Islam against the secularism advocated by the Neo-Destour.<sup>202</sup>

By delivering his speech at the Zaytuna, which was both an important religious and nationalist symbol, Ben Youssef ensured that his critique of the nationalist movement would be widely disseminated.<sup>203</sup> At this point, Ben Youssef's opposition to Bourguiba was no longer an interpersonal rivalry; it became a public challenge to the legitimacy of the Bourguibist faction as the leaders of the nationalist movement. Ben Youssef posed a serious threat not just because of his opposition to the internal autonomy accords. More importantly, Ben Youssef threatened the

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<sup>199</sup> "Retour de Salah Ben Youssef à Tunis [The Return of Salah Ben Youssef to Tunis]," *Le Petit Matin*, September 14, 1955. In *Habib Bourguiba, Islam, and the Creation of the Tunisian State*.

<sup>200</sup> Moore, *Tunisia Since Independence*, 61.

<sup>201</sup> *Ibid.*, 145.

<sup>202</sup> "Retour de Salah Ben Youssef à Tunis [The Return of Salah Ben Youssef to Tunis]," *Le Petit Matin*, September 14, 1955. In *Habib Bourguiba, Islam, and the Creation of the Tunisian State*, 153. Translation mine French to English.

<sup>203</sup> Salem, *Habib Bourguiba, Islam, and the Creation of the Tunisian State*, 153.



authority of the Bourguibist faction because he presented his opposition to the accords in terms of a strategically different conceptions of the Tunisian state and the basis of its political authority. Ben Youssef's opposition represented the struggle between different societal coalitions mobilizing behind antagonistic conceptions of the legitimacy of the Tunisian state.

Bourguiba responded immediately by orchestrating the expulsion of Ben Youssef from the Neo-Destour. On October 8<sup>th</sup>, Bourguiba called for a meeting of the Bureau Politique to remove Ben Youssef as the party's secretary general and expelled him from the party the following day. Moreover, Bourguiba called for an extraordinary Party Congress on November 15<sup>th</sup> in Sfax to reaffirm support for the internal autonomy accords.

The conflict between Bourguiba and Ben Youssef reflected multiple dimensions of political struggle. As Norma Salem suggests, it represented both competition for effective leadership of the Neo-Destour, conflict between different societal coalitions, and conflict between different international alignments. At stake in the conflict between Bourguibist and Youssefist factions was the power to shape the direction of the independent polity.<sup>204</sup>

Notably, although Bourguiba called for the Congress on October 8<sup>th</sup>, the decision was not publicized for several days in order to attempt to mitigate Bourguiba's position, indicating that Ben Youssef had not lost all political support in the Party.<sup>205</sup> Moreover, while Ben Youssef had not been invited to the Congress, a closed door session of Congress decided to invite him at the last minute, again indicating that Ben Youssef continued to enjoy at least some support from Party members.<sup>206</sup> It should be emphasized that although Ben Youssef was politically isolated at the top of the Neo-Destour hierarchy, many militants who had worked with Ben Youssef in

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<sup>204</sup> Ibid., 154.

<sup>205</sup> Ibid., 153.

<sup>206</sup> Ibid.

the past did not support his exclusion from the party. Ben Youssef had controlled the Party during Bourguiba's absence from 1945-1949 and had positioned many of his own followers throughout the party structure.<sup>207</sup> Interestingly, during the three months between June and September when Ben Youssef had not yet returned to Tunisia, Bourguiba's speeches were free of any Islamic themes or references.<sup>208</sup> On the day the internal autonomy accords were signed and several days after Ben Youssef's return to Tunisia, however, Bourguiba gave a speech in Sfax calling for national unity which he ended with a quote from the Qur'an (3:103):

And hold fast,  
All together, by the Rope  
Which God (stretches out  
For you), and be not divided  
Among yourselves.

Ben Youssef declined the invitation, but the Congress convened nonetheless, officially reaffirming that the accords were a positive step towards independence and instating Bourguiba as the president of the Neo-Destour. In his opening speech, Bourguiba insisted on the Arab and Islamic dimensions of the Tunisian "personality," although he argued that by its geography and as part of the Maghreb, Tunisia was Western. While the Congress was in session in Sfax, Ben Youssef held a rally in Tunis drawing 20,000 people, where he again attacked the accords and called for Tunisia to affirm its Arab and Islamic character:

Tunisia...is an indivisible part of the Arab world...she is part of the Arab collectivity, nothing should separate her from it, contrary to what Bourguiba says...we cannot have any other destiny than an Arab destiny.<sup>209</sup>

Following the Party Congress, the struggle between Bourguiba and Ben Youssef shifted to rural areas in southwest Tunisia. In late October 1955, Youssefist supporters began carrying

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<sup>207</sup> Moore, *Tunisia Since Independence*, 63.

<sup>208</sup> Salem, *Habib Bourguiba*, 155.

<sup>209</sup> Ibid.

out guerilla attacks against Neo-Destour offices and proliferating through the southwest of the country, threatening to bring Tunisia to the brink of civil war. In January 1956, police raided Ben Youssef's home and arrested over seventy Youssefists.<sup>210</sup> Ben Youssef, who had been informed of the imminent raid, had already fled to Cairo.

The Congress of October 1955 marked a turning in the struggle for power between Bourguibist and Youssefist factions. With the assistance of French military forces, Bourguiba was ultimately able to suppress Ben Youssef's militias in the southern region of the country and moved forward in his negotiations with France, achieving full Tunisian independence in March 1956. Nevertheless, in his attempt to consolidate the hegemony of his political party after independence, it is clear that Bourguiba continued to view Youssefists as a significant threat to the regime. Following the January 1956 arrests of Youssefist supporters, for example, the regime instituted a special criminal court to try them because Bourguiba suspected that the national judicial system contained Youssefist supporters.<sup>211</sup> Moreover, although Ben Youssef had fled to Cairo after independence and was killed in 1961, when a plot to assassinate Bourguiba was uncovered in 1962, the regime accused the plotters of being Youssefist loyalists, executing or imprisoning the accused.<sup>212</sup> After a series of protests broke out in 1962 among student groups opposing the regime, *L'Action*—the mouthpiece of the regime—claimed that “Youssefists” had helped to instigate the opposition.<sup>213</sup>

In sum, upon closer examination, it is clear that the institutional capacity of Bourguiba's regime was precariously weak at independence. The struggle between Bourguiba and Ben

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<sup>210</sup> Ibid., 158.

<sup>211</sup> Ibid.

<sup>212</sup> Feuer, “Religious Establishment,” 75.

<sup>213</sup> Ibid.

Youssef demonstrates that Bourguiba's authority was not definitively consolidated. Stable political consensus had not yet been achieved; Ben Youssef remained a popular figure and had a sizable faction of supporters both in society and within the Neo-Destour. The extent of Ben Youssef's support reveals not only the fragility of Bourguiba's authority, but also the power of ideological appeals to religion and pan-Arabism, both of which posed a threat to the legitimacy of the regime.<sup>214</sup> Although Bourguiba had solidified his control over Neo-Destour institutions, it was not clear that he enjoyed the same level of support among the party's constituents. The strength of the Youssefist threat to Bourguiba's authority would compel Bourguiba to coopt rather than outright suppress the religious establishment, ultimately forcing Bourguiba to make concessions to some of the establishment's demands in drafting the Personal Status Code in order to gain their support.

### **Negotiating the Personal Status Code**

As the previous section demonstrated, while it is often taken for granted that Bourguiba's faction of the Neo-Destour enjoyed the hegemonic political authority and robust institutional capacity to impose its political agenda at independence, Bourguiba in fact confronted a strong Youssefist opposition contesting the legitimacy of his regime. The Youssefist opposition had a strong religious base, drawing support from the socially influential if politically weak Zaytuna.

This section demonstrates how the regime's ideology, the political environment of opponents, and the institutional capacity of the regime interacted to influence the nature of the Personal Status Code and thereby the outcome of inheritance reform. It shows how, because the

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<sup>214</sup> Moore, *Tunisia Since Independence*, 246.

incorporation of religious themes into the regime's discursive justification for its political authority required Bourguiba to gain at least rhetorical support for the Personal Status Code from religious authorities, the threat of the Youssefist opposition at independence compelled Bourguiba to coopt rather than outright suppress the religious establishment, thereby forcing Bourguiba to make concessions to some of the establishment's demands in drafting the code—including the preservation of shari'a inheritance law—in order to gain their support.

### *Laying the Groundwork for Reform*

Bourguiba did not attempt to unilaterally impose a new Personal Status Code. It is clear that in the months leading up to the promulgation of the code, Bourguiba strategically prepared the ground for his reforms to minimize opposition from religious forces. Bourguiba courted the religious authorities at the Zaytuna, even consulting Zaytuna authorities in drafting the code's text, to secure their endorsement of the code. Overall, the strategy Bourguiba pursued—exemplary of Bourguibist methodology—was to reform rather than to attack Islam, and to pursue changes incrementally rather than risk divisive backlash over the most controversial reforms while the regime's political authority was still unconsolidated.

In late April of 1956, in a move which had apparently been contemplated for months, Tahar Ben Achour was then appointed rector of Zaytuna University.<sup>215</sup> Although he had previously clashed with the nationalist movement, particularly when he issued a fatwa in 1933 concerning the naturalization of Muslims as French citizens, he was an important Maliki shayk from a distinguished family of religious scholars and had previously supported moderate reforms. Less conservative than many older shayks, Ben Achour was persuaded to support

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<sup>215</sup> *Le Petit Matin*, April 26, 1956; Achour's appointment was rumored in *L'Action*, December 19, 1955. In *Tunisia Since Independence: The Dynamics of One-Party Government*.

Bourguiba's reforms.<sup>216</sup> At the same time, Bourguiba removed potential opposition in the Ministry of Justice by reshuffling the sheiks who sat on the shari'a courts.<sup>217</sup> Almost all intended to sign a petition against the new Personal Status Code, but several were willing to accept positions as judges to apply the code when the religious courts were integrated into the state court in August. Through these steps, Bourguiba was able to obtain partial support for his controversial reforms from the influential circle of 'ulama.

Bourguiba also persuaded the Maliki Shayk El Islam Mohammed el Aziz Djait, who was consulted by the Ministry of Justice in 1956 in preparing the new Code, to accept the principle of the reform.<sup>218</sup> The Shayk was reported by *L'Action* on September 3<sup>rd</sup>, 1956 to have said that "As long as one conserves one's faith, religion can adapt; the main thing is to respect the spirit of Islam."<sup>219</sup> El Aziz Djait had previously demonstrated openness to reform while preserving the spirit of Islam, dispensing Tunisian workers from religious fasting, for example, while they were working in France during the First World War. Moreover, one of El Aziz Djait's relatives, Abdelaziz Djait, was also appointed to the honorific position of Grand Mufti. Abdelaziz Djait had previously been the rector of the Zaytuna as well as a Shayk El Islam, and the move endowed the government an air of religious legitimacy.<sup>220</sup>

Importantly, while previously serving as the Minister of Justice and Shayk al Islam, Abdelaziz Djait had begun to codify family law in the 1940s in order to integrate it into a single text both at the request of the French colonial authorities and at his own behest, as many 'ulama desired to standardize the law. For the jurists who had previously sought to reform the legal

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<sup>216</sup> Moore, *Tunisia Since Independence*, 51.

<sup>217</sup> *Ibid.*, 52.

<sup>218</sup> The Shayk El Islam is the highest religious position in Tunisia.

<sup>219</sup> *L'Action*, September 3, 1956. In *Tunisia Since Independence: The Dynamics of One-Party Government*.

<sup>220</sup> Moore, *Tunisia Since Independence*, 52.

system, the issue was not the shari'a itself, but rather the *ad hoc* process that characterized shari'a courts which they viewed as corrupt and unjust. This corruption was not the result of the substance of the shari'a, they explained, but rather of the procedures through which it was implemented. Djait thus sought to be integrate the law into a single text to be accessible to both judges and litigants.<sup>221</sup>

The 'Djait Code' was drafted by a large committee of 'ulama, lawyers, journalists, and intellectuals working under the patronage of the Ministry of Justice. The code addressed both land ownership and personal status issues and incorporated the provisions of the Maliki and Hanafi schools of law in these two domains. It should be emphasized that the Djait Code did not *reform* the shari'a; the substance of the shari'a remained unchanged. Rather, it simply integrated the law to facilitate its use in the courts. The text was organized into two columns, one for the Hanafi interoperation and the other for the Maliki school of law, leaving blank spaces where one school presented specific provisions on one issue the other school did not address. From this foundation, judges were to use their own judgements and could choose from either one or both of the columns, since these were not to be read as "competing" interpretations but rather as two collections of possible references that could be combined. Importantly, while the Djait Code was never applied under the Protectorate, it served as a template for the new personal status law drafted by the independent state in 1956.<sup>222</sup>

The Personal Status Code was promulgated on August 13<sup>th</sup>, 1956 and began to be applied in January 1957. While the Constituent Assembly, which also operated as a legislative body, had begun to convene in April 1956, the text of the code was neither discussed nor

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<sup>221</sup> Zeghal, "Implicit Shari'a," 120.

<sup>222</sup> Ibid.

presented to be voted upon by members of the Assembly. Rather, it was imposed by Bourguiba and his closest aides outside of the deliberative arena of the Assembly.

The code was strongly opposed by the press at the time. In particular, the newspaper *al-Istiqlal* disseminated the strong disapproval of many conservative ‘ulama from the Zaytuna.<sup>223</sup> Interestingly, in response to a request for a fatwa on the new Code, Djait published his opinion in September 1956 in *al-Istiqlal*. Cautiously critical of Bourguiba’s government, Djait wrote:

I say to those who requested a fatwa that it was not lawful for the sincere believe to cause discord, which spread dissension, provides hatred and resentment and destroys the nation’s unity. However, if the objective is to know the truth and the divine law, in order to request form the popular government the revision of the article contradicting the sharia’s regulation and if the request is made in a way to avoid providing disorder and trouble, then I want to reassure the authors of the request that I have done my duty and wrote to the Ministry of Justice to ask for modification of articles 14-18-19-21-30-35-88.<sup>224</sup>

The provisions of these seven articles out of the 170 of the code were unacceptable to most ‘ulama at the time except for a few who agreed to officially support the project on behalf of the state.<sup>225</sup> These articles—which criminalized polygamy, prohibited divorce by repudiation, and mandated divorce to take place before the court—represented a significant departure from Islamic law. It should be emphasized again, however, that the on the whole, the code was based on the Djait Code. The articles pertaining to inheritance, dowry, and descent respected shari’a law.<sup>226</sup>

Although the regime had the upper hand in negotiating the text of the code, a compromise was reached with the ‘ulama to secure their support. At the time, discussions in the Constituent Assembly were leading towards the recognition of Islam as the religion of the state.

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<sup>223</sup> Ibid.

<sup>224</sup> Muhammed Al-Aziz Djait, *AL-Istiqlal* 47, September 14, 1956. In *Varieties of Religious Establishment*.

<sup>225</sup> *Code of Personal Status*, 1956.

<sup>226</sup> Zeghal, “Implicit Shari’a,” 123.



Bourguiba thus agreed to endorse Islam as the religion of the state through Article 1 of the Constitution, which largely satisfied the ‘ulama. In exchange, the ulama had to accept certain violations of Islamic law in the new Personal Status Code.<sup>227</sup> Ben Achour, as the rector of the Zaytuna, ultimately gave his approval of the code: “We give our full confidence to a government that has declared itself a Muslim government in its first fundamental law, to proclaim laws that are accepted by the elite and the whole community.”<sup>228</sup>

The compromise, to be sure, was an unequal one. The contentious articles of the code were never modified towards a more ‘Islamic’ interpretation as Djait had advocated. The first article of the Constitution served as a symbolic compensation for religious opposition forces who wanted Islam to remain a prominent marker of Tunisian identity. Nonetheless, it is clear that Bourguiba neither outright repressed the religious establishment at independence nor disregarded the opinions of religious authorities in drafting the code. Rather, insofar as Bourguiba sought the Shayk’s public endorsement of the code, he negotiated the text of the code with the establishment and kept certain provisions of the shari’a intact.

#### *The Persistent Threat of Religious Opposition*

The timing of other of Bourguiba’s controversial reforms supports the claim that the outright repression the religious establishment was a political impossibility at independence given the regime’s relatively weak institutional capacity and that Bourguiba postponed a head on clash with the Zaytuna until his regime had consolidated political authority and neutralized potential centers of Youssefist opposition. It is significant that Bourguiba waited until 1958 before attempting one of the most difficult of his early reforms that directly attacked the

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<sup>227</sup> Ibid.

<sup>228</sup> Ibid, 116.

Zaytuna—that of the reforming the education system, which lay at the core of his modernization strategy. In 1958, he stated of his proposed reform:

When we were in opposition, living outside legal institutions and harassing the Protectorate regime to obtain recognition of our rights, I told myself that if the state apparatus passes into our hands, we would give priority to the problem of education. This indeed concerns the motor element, the brain which permits man to rise above the animal condition...[With] useful knowledge the human being is capable of miracles; but if the content [of education] is retrograde, the whole society falls back to the level of the herd.<sup>229</sup>

The reform, which took effect in October 1958, constituted an outright attack on the Zaytuna as an institution of conservative learning. Bourguiba sought to establish a coherent and unified system and significantly expand education.<sup>230</sup> The integration of the Zaytuna into the state education system, to be sure, entailed the suppression of old opposition forces to Bourguiba's regime. In the years before independence, no Tunisian would openly counter the Zaytuna because of the backing and prestige of Islam. Having consolidated the regime's political authority, however, Bourguiba was better positioned to outright attack the religious establishment. Outlining his reform, Bourguiba said of the Zaytuna:

[It] had the merit of opposing the current of Frenchification. This was not progress...only resistance...But today this is no longer sufficient. We have to be demanding. We have to advance and no longer be content with fixed positions. We are now free to adapt our education so as to catch up in the procession of civilization.<sup>231</sup>

It is important to appreciate that the dissolution of the Zaytuna was a risk, as a Party member who had been charged with educational reforms suggested in 1961, because the university's 16,000 students and 500 professors could revive political opposition to Bourguiba.<sup>232</sup>

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<sup>229</sup> Speech of Bourguiba, June 25, 1958. In *Tunisia Since Independence: The Dynamics of One-Party Government*.

<sup>230</sup> Moore, 53.

<sup>231</sup> Speech of Bourguiba, June 25, 1958. Cited *Tunisia Since Independence: The Dynamics of One-Party Government*

<sup>232</sup> Interview, December 2, 1961. In *Tunisia Since Independence: The Dynamics of One-Party Government*.

Most had no prospects for employment in the state's new unified system, as religious instruction had been cut to one to two hours a week in primary school and virtually eliminated in secondary education. While slightly more emphasis was accorded to religious instruction in the mid-1960s, the Zaytuna system of education was entirely eliminated. The remainder of the faculty of theology were integrated into the modern University of Tunis.<sup>233</sup> The Party member's comment suggests that the outright suppression of the Zaytuna was not a political possibility for Bourguiba at independence. Although the political influence of the Zaytuna had deteriorated by independence, the Zaytuna was nonetheless institutionally robust in 1956 and constituted a potential center of Youssefist opposition to Bourguiba's regime that, given the size of its student and faculty body, could not be immediately dismantled.

The timing of Bourguiba's attack on the strongest pillar of Islam—the custom of fasting during the month of Ramadan—also suggests that he postponed certain controversial reforms until the regime had consolidated political authority. His remarks on the proposed reform also reveal the enduring fear of the revival of Youssefist opposition. Although fasting was a custom adhered to even by almost all Tunisians, even those who had been exposed to Western traditions, Bourguiba attacked it on the grounds that it unnecessarily hindered economic and administrative activity. In February 1960, Bourguiba presented his campaign against fasting before political cadres:

I do not believe that religion should be able to impose such a sacrifice... This is an abusive interpretation of the religion. When fasting, man's physical forces are so depleted he is obliged to cease all activity. No dogma is justification for such a rhythm... All practices of this religion are issues of logical intentions. But when they become incompatible with the necessary struggles of this life, this religion must be amended.<sup>234</sup>

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<sup>233</sup> Ibid.

<sup>234</sup> Speech of Bourguiba, February 5, 1960. In *Tunisia Since Independence: The Dynamics of One-Party Government*.

Bourguiba also suggested that he consulted both Abdelaziz Djait and Ben Achour before proposing the reform:

I am not asking the people to give up the fast...But I am saying that if the fast risks endangering your health or interrupts the activity which is your means of living...then El Aziz Djait is there to give you the authorization to break this fast, which you will execute later when you are on vacation or retired.<sup>235</sup>

It is noteworthy that Bourguiba continues to maneuver within the framework of Islam in proposing the reform. Although his speech is virulently opposed to fasting, Bourguiba nonetheless frames the proposal as a reform of rather than an attack on religion and invokes the support of religious authorities.

Although Djait ultimately issue a fatwa at Bourguiba's request, it did not align with Bourguiba's expectations. Djait's fatwa maintained that fasting was a religious duty, exemption from which could be attained only in cases of illness or military jihad. He supported Bourguiba's proposal to close nightclubs during Ramadan, declaring that this was the real reason why people were tired during Ramadan, but did not dispense Tunisians from fasting. Djait and Ben Achour were both dismissed shortly after, and in late February, Bourguiba presented his own interpretation of the Qur'an in another appeal to the public:

As Head of a Muslim state, I also may speak in the name of religion...If I asked advice from these professors [Djait and Ben Achour], it is because our action must benefit from unanimous agreement...Unfortunately our professors belong to a certain category of people who refuse to reason and judge according to past experience and the teachings of the Qur'an."<sup>236</sup> Bourguiba concluded the speech saying: "In so far as the young prove to be incapable of coping with the effort of work and fasting, we must be tolerant. They can break their fast with a quiet conscience. This is my [fatwa].<sup>237</sup>

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<sup>235</sup> Ibid.

<sup>236</sup> Speech of Bourguiba, February 18, 1960. In *Tunisia Since Independence: The Dynamics of One-Party Government*.

<sup>237</sup> Ibid.

Bourguiba modified the working hours of the administration, but faced widespread opposition among religious authorities, members of his own party, and some of his own ministers.<sup>238</sup>

Addressing another meeting on Ramadan in the town of Sousse, where most party militants were religious conservatives, Bourguiba described his opponents as being “those slightly hit by the regime—revoked quids, retired teachers, dishonest civil servants, clients of the *Haute Cour* who have lost their lands or jobs. All this attractive crowd claim to constitute the last stronghold for the defense of religion. Their real motive, however is quite clear.”<sup>239</sup> Interestingly, in 1961, Bourguiba admitted that “many of my friends have advised me against bringing up the subject, for fear of upsetting public opinion,” and that while “the overwhelming majority of Destourians” understood his proposal, there were still “some misgivings and apprehensions” among party members.”<sup>240</sup>

Religious authorities demonstrated their disapproval of Bourguiba’s Ramadan policy in 1960 in subtle ways. In Kairouan, authorities celebrated the beginning and end of Ramadan one day later than Tunis had, thereby rejecting Bourguiba’s scientific determination of the lunar month.<sup>241</sup> Religious leaders in Sfax followed Kairouan, where the party was too weak and internally divided to enforce government policy on the population.

Protests broke out in Kairouan in 1961, on month before Ramadan, in response to the governor’s decision to transfer a teacher, Abderrahman Khelif. The second imam of Kairouan’s most important mosque, Khelif had delivered sermons denouncing the regime’s religious policy, especially its stance towards Ramadan. The population of Kairouan, viewing the removal of the

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<sup>238</sup> Moore, *Tunisia Since Independence*, 58.

<sup>239</sup> Speech of Bourguiba, February 26<sup>th</sup>, 1960. In *Tunisia Since Independence*. The Huate Cour was the special tribunal set up in 1956 to try Youssefist supporters.

<sup>240</sup> Speech of Bourguiba, February 8<sup>th</sup>, 1961. In *Tunisia Since Independence*.

<sup>241</sup> Moore, *Tunisia Since Independence*, 59.

popular imam as a threat to their religion, protested violently in the streets, even attacking the governor's official residence.<sup>242</sup> Ultimately, Bourguiba's offensive against Ramadan had limited success. Most Tunisians continued to publicly observe the fast. As Moore suggests, although Bourguiba had been able to implement significant reforms through careful diplomacy, including the reorganization of the legal system, the Personal Status Code, and educational reforms, the outcome of his Ramadan policy demonstrated both the persistence of religious opposition to the regime as well as the social influence of the religious authorities.

## **Conclusion**

This chapter has examined how the regime's ideology, the political environment of opponents, and the institutional capacity of the regime interacted to influence the nature of the Personal Status Code and thereby the outcome of inheritance reform. It has demonstrated that because the incorporation of religious themes into the regime's discursive justification for its political authority required Bourguiba to gain at least rhetorical support for the Personal Status Code from religious authorities, the threat of the Youssefist opposition at independence compelled Bourguiba to coopt rather than outright suppress the religious establishment, thereby forcing Bourguiba to make concessions to some of the establishment's demands in drafting the code—including the preservation of shari'a inheritance law—in order to gain their support.

Bourguiba did not attempt to unilaterally impose the Personal Status Code. Outright repression of the religious establishment was a political impossibility at independence given the strength of the Youssefist opposition's threat, which had a strong religious base. Rather, in the months leading up to the promulgation of the code, Bourguiba strategically prepared the ground

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<sup>242</sup> Ibid.

for his reforms to minimize opposition from religious forces. He courted religious authorities at the Zaytuna and consulted Zaytuna authorities in drafting the code's text to gain their endorsement of the code. Specifically, Bourguiba consulted the Shayk El Islam who had codified the family law under the French protectorate, and the text of the new code was largely based off of the Shayk's code, which respected shari'a law. Insofar as Bourguiba sought the Shayk's public endorsement of the code to cultivate his political legitimacy, he was forced to negotiate with religious authorities over the text of the code and thereby retain certain elements of the shari'a, including the provision on inheritance law, to gain their support.

The timing of Bourguiba's other controversial reforms supports the claim that the outright repression the religious establishment was a political impossibility at independence and that Bourguiba sought to postpone a head on clash with the establishment until his regime had consolidated political authority. Bourguiba did not attempt to directly attack the Zaytuna through education reform until 1958 and waited until 1960 to attempt to reform the custom of fasting, once the regime had consolidated its political authority. The backlash to Bourguiba's fasting reform, moreover, indicates that the religious establishment continued to enjoy strong popular support after independence. Taken together, the education and fasting reforms indicate that although politically weak, the social influence of the religious authorities as well as the connection of the religious establishment to the Youssefist opposition compelled Bourguiba to coopt rather than outright suppress the establishment at independence, thereby forcing Bourguiba to make concessions to religious authorities in drafting the Code.

## 6

### CONCLUSION

This thesis has examined why Tunisia preserved Islamic inheritance law while reforming almost all other areas of family law after independence. The central argument of the thesis is that the preservation of Islamic inheritance law in Tunisia's Personal Status Code reflects concessions made to the religious establishment's demands concerning the nature of the code as part of the post-independence regime's strategy for political survival. The theoretical framework I adopt to explain this policy outcome emphasizes the interaction between three critical factors: (i) state ideology (ii) political environment and (iii) institutional capacity. I suggest that the preservation of Islamic inheritance law in Tunisia's family code can be understood through the interaction of these three factors.

Over the course of the thesis, I developed the theory that while (i) the incorporation of religious themes into a regime's legitimating ideology will play an important role in determining the kinds of policies it can adopt with regard to Islamic family law, the effects of ideology on the nature of the family law policy will be critically shaped by (ii) whether the political opposition confronting the regime has a religious base and (iii) the relative strength or weakness of the regime's institutional capacity to implement its political agenda, measured as the degree of ideological consensus within the ruling party.

Overall, my analysis demonstrated that because the incorporation of religious themes into the legitimating ideology of Bourguiba's regime required the regime to gain rhetorical support for the reforms from religious authorities, contestation over the regime's authority at independence compelled the regime to coopt rather than outright suppress the religious



establishment, thereby forcing the regime to make concessions to the establishment in drafting the new code—including the preservation of traditional inheritance law—in order to gain their support.

Chapter Four examined how the regime’s discursive justification of its political authority incorporated explicit religious themes. Analyzing the speeches and statements of the state elite as well as foundational state documents, I demonstrated how Bourguiba’s rhetorical justifications for the political authority of his modernist regime were grounded in the framework of Islam. I emphasized that regardless of whether the incorporation of Islam into the regime’s legitimating ideology derived from personal conviction or political necessity, it delineated the range of policy options the regime could adopt regarding religion without opposing its stated ideological commitment to preserving the Islamic identity of the state.

Developing the argument laid out in Chapter Four, Chapter Five examined the interaction of the regime’s legitimating ideology with the political environment Bourguiba confronted at independence and the institutional capacity of the regime. Analyzing the secondary literature on the politics of the nationalist movement and Neo-Destour Party, I demonstrated how the outright repression of the religious establishment was politically impossible at independence given the strength of the Youssefist opposition’s threat, which had a strong religious base. I then analyzed how Bourguiba strategically prepared the ground for his reforms to minimize opposition from religious forces and demonstrated that insofar as he sought the religious establishment’s public endorsement of the code to bolster his political legitimacy, he was forced to negotiate with religious authorities over the text of the code and thereby retain certain elements of the Shari’a, including the provision on inheritance law, to gain their support.

This thesis aimed to contribute to the literature on state policies on gender in the Middle East by developing a more complete picture of the distinctive challenges Middle Eastern states face in attempting to reform Islamic law. While the argument of this thesis has theoretical implications for scholars studying the Middle East, it also has important limitations. The framework developed to analyze family law policy called attention to state ideology, religious politics, and strategies of the political leadership to explain policy outcomes. In theoretical terms, it focused on the role of state ideology rather than structural conditions in determining the kinds of policies a Middle Eastern state can adopt. It also treated the issue of family law and women's right as part of broader contestation over the status of Islam in modern society rather than larger state building efforts.

In focusing on the role of politics and ideology, I have deemphasized the role of social and economic structures as well as state interests that are often centered in analyses of state policies on gender. I have thus given less attention the material interests of state elite and the implications of property and inheritance laws for traditional economic structures in Tunisia. This represents a significant gap in my discussion given that many Neo-Destour leader and party members were landed elite whose economic interests were directly implicated in inheritance reform. An in-depth analysis of the identities, interests, and personal convictions of post-independence state elites in Tunisia was beyond the scope of this project, given that gathering this kind of primary source material requires lengthy and extensive field research. Examining the influence of the landed Neo-Destour leader and party members on the lawmaking process is therefore a fruitful avenue for further research on this topic.

In addition, my argument does not appear to explain why Bourguiba's regime did not reform Islamic inheritance laws after the regime had neutralized the religious establishment and

Youssefist opposition forces by the 1960s. Given then I take the religious nature of political opposition as a key factors influencing state policy on family law, this also represents a significant gap in my argument and suggests that my analysis overlooks other key variables at state in family law reform. I would suggest, however, that the issues that are most salient to debates concerning Islam and women's rights are not stable over time, and that factors constraining the regime in the decades after independence shifted with evolving social and political circumstances. As such, my argument is perhaps useful to analyze critical historical moments rather than normal or stable politics. Further research is required to understanding the evolution of inheritance law debates throughout the post-independence period and can shed light on the issues at stake in controversy surrounding inheritance reform today.

## Bibliography

- Abdo-Katsipis, Carla B. "Women, Political Participation, and the Arab Spring: Political Awareness and Participation in Democratizing Tunisia." *Journal of Women, Politics, and Policy* 38, no. 4 (2017): 413-429.
- Allahoum, Ramy. "Tunisia's president vows to give women equal inheritance rights." *Al Jazeera*, August 13, 2018. <https://www.aljazeera.com/news/2018/08/tunisia-president-vows-give-women-equal-inheritance-rights-180813172138132.html>.
- Al Mamun, Abdullah. "Islamic Law of Personal Status: Analysis of the Reforms of Islamic Family Law in Various Muslim Countries." *International Journal of Law, Humanities & Social Science* 1, no. 1 (2017): 16–22.
- Anderson, J. "The Tunisian Law of Personal Status." *The International and Comparative Law Quarterly* 7, no. 2 (1958): 262-279.
- Anwar, Zainah. *Wanted: Equality and Justice in the Muslim Family*. Selangor: Musawah, 2009.
- Arat, Yesim. "Women's Rights and Islam in Turkish Politics: The Civil Code Amendment." *Middle East Journal* 64, no. 2 (2010): 235-251.
- Bennhold, Katrin. "Women's Rights a Strong Point in Tunisia." *The New York Times*, February 22, 2011. <https://www.nytimes.com/2011/02/23/world/middleeast/23iht-letter23.html>.
- Benstead, Lindsay J. "Chapter 9: Gender and Sexuality." *Societies of the Middle East and North Africa*. Routledge, 2019.
- Ben Salem, Lilia. "Women's Rights in the Middle East and North Africa 2010 – Tunisia." *Freedom House*, March 3, 2010. <https://www.refworld.org/docid/4b99011cc.html>.
- Bessis, Sophie and Souhayer Belhassen. *Femmes du Maghreb: l'enjeu*. Edition Diffusion Du Livre, 1992.
- Borthwick, Bruce Maynard. *Comparative Politics of the Middle East: An Introduction*. New Jersey: Prentice-Hall, 1980.
- Bowering, Gerhard. *Islamic Political Thought: An Introduction*. New Jersey: Princeton University Press, 2015.
- Brown, L. "Bourguiba and Bourguibism Revisited: Reflections and Interpretation." *Middle East Journal* 55, no. 1 (2001): 43-57.
- Byrnes, James Donovan Leicester. "Bourguibism: An Approach to the Politics of Modernization within the Focus of the Decision-Maker." PhD diss., University of Maryland, 1967.

- Charrad, Mounira. *States and Women's Rights: the Making of Postcolonial Tunisia, Algeria, and Morocco*. London: University of California Press, 2001.
- Charrad, Mounira. "Family Law Reforms in the Arab World: Morocco and Tunisia." New York: United Nations Department of Economic and Social Affairs, 2014. Accessed March 2018. <https://www.un.org/esa/socdev/family/docs/egm12/PAPER-CHARRAD.pdf>.
- Charrad, Mounira. "Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation." *Washington and Lee Law Review* 64, no. 4 (2007): 1513-1527.
- Moghadam, Valentine M. *Modernizing Women: Gender and Social Change in the Middle East*. Boulder: Lynne Rienner Publishers, 2003.
- Connor, Maire. "Reconciling Religion and the Constitution: a Brief Overview of Family Law in Tunisia." *Vardags*, August 24, 2018. <http://vardags.com/family-law/family-law-in-tunisia>.
- Dan E. Stigall, "Law and the Lodestar: Tunisian Civil Law and the Task of Ordering Plurality in the Aftermath of the Jasmine Revolution." *Journal of Civil Law Studies* 1, no.7 (2014): 1-50.
- Eltahawy, Mona. "Seven Years after the 'Arab Spring,' Tunisia Is Leading Another Revolution on Women's Rights." *The Washington Post*, January 21, 2018. <https://www.washingtonpost.com/news/global-opinions/wp/2018/01/31/seven-years-after-the-arab-spring-tunisia-is-leading-another-revolution-on-womens-rights/?noredirect=on>.
- Eltahawy, Mona. *Headscarves and Hymens: Why the Middle East Needs a Sexual Revolution*. New York: Farrar, Straus and Giroux, 2015.
- Feuer, Sarah J. "Religious Establishment and Regime Survival: The Politics of Religious Education in Morocco and Tunisia, 1956-2010." PhD diss., Brandeis University, 2014.
- Gallagher, Charles. (1965). *International Journal*, 20(2), 276-278. doi:10.2307/40199545
- Grami, Amel. "Gender Equality in Tunisia." *British Journal of Middle Eastern Studies* 35, no. 3 (2008): 349-61.
- Johnson, Toni and Mohammed Aly Sergie. "Islam: Governing Under Sharia." *Council on Foreign Relations*, July 25, 2014. <https://www.cfr.org/backgroundunder/islam-governing-under-sharia>.
- Jones, Christina Chlora. "The Law of Bequest in the Context of Land Reform in Tunisia." PhD diss., School of Oriental and African Studies, 1974.
- Handal, Najoua Kefi. "Islam and Political Development: The Tunisian Experience." PhD diss., Louisiana State University, 1989.

- Hellman, Ashlean. "Can International Ideals and Muslim Religious Law Coexist?" *New York Bar Association*.
- Hyder, Gulam. "The Application of Shari'a Law in Some Different Countries and its Implications." *Shariah Journal* 24, no. 2 (2016): 321-340.
- Kelly, Sanja, and Julia Breslin. *Women's Rights in the Middle East and North Africa: Progress amid Resistance*. Plymouth: Rowman & Littlefield Publishers, 2010.
- Khedher, Rayed. "Tracing the Development of the Tunisian 1956 Code of Personal Status." *Journal of International Women's Studies* 18, no. 4 (2017): 30-37.
- Kimber, Richard. "The Qur'anic Law of Inheritance." *Islamic Law and Society* 5, no. 3 (1998): 291-325.
- Kleitziem, Sharon Bengel. "The Changing Status of Tunisian Women." MA diss., American University, 1971.
- Koplow, Michael J. "Mind Over Matter: Democratic Transitions in Ideological States." PhD diss., Georgetown University, 2013.
- Kuran, Timur. *The Long Divergence: How Islamic Law Held Back the Middle East*. New Jersey: Princeton University Press, 2013.
- Kuru, Ahmet T. and Alfred C. Stephan. *Democracy, Islam, and Secularism in Turkey*. New York: Columbia University Press, 2012.
- Lippman, Harold B. "Tunisia: A Study of the Dynamics of Nation-Building." MA diss., American University, 1968.
- Magnunson, Douglas Kent. "Islamic Reform in Contemporary Tunisia: A Comparative Ethnographic Study." PhD diss., Brown University, 1987.
- Masri, Safwan M., and Lisa Anderson. *Tunisia: an Arab Anomaly*. New York: Columbia University Press, 2017.
- Mayer, Ann Elizabeth. "Reform of Personal Status Laws in North Africa: A Problem of Islamic or Mediterranean Laws?" *Middle East Journal* 49, no. 3 (1995): 432-46.
- Mezran, Karim K. "Negotiating National Identity: The Case of the Arab States of North Africa." PhD diss., John Hopkins University, 2001.
- Mir-Hosseini, Ziba, et al. *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*. New York: I.B. Tauris, 2017.

- Moore, Clement Henry. *Tunisia Since Independence: The Dynamics of One-Party Government*. Berkley: University of California Press, 1965.
- Nadhif, Ahmed. "Tunisian president calls for gender equality in inheritance law." *Al Monitor*, August 21, 2017. <https://www.al-monitor.com/pulse/ru/originals/2017/08/equality-in-inheritance-raises-controversy-in-tunisia.html>.
- Perkins, Kenneth. *A History of Modern Tunisia*. New York: Cambridge University Press, 2005.
- Powers, David S. "The Islamic Inheritance System: A Socio-Historical Approach." *Arab Law Quarterly* 8, no. 1 (1993): 13-29.
- Quillen, Stephen. "Tunisia's Next Political Battle: Equal Inheritance Rights." *Al Monitor*, August 28, 2018. <https://www.al-monitor.com/pulse/originals/2018/08/tunisia-president-women-equal-inheritance-rights.html>.
- Rahman, Fazlur. *Islam & Modernity: Transformation of an Intellectual Tradition*. Chicago: The University of Chicago Press, 1982.
- Ruedy, John. *Islamism and Secularism in North Africa*. New York: Macmillan Press, 1996.
- Seval Yildirim, "Aftermath of a Revolution: A Case Study of Turkish Family Law," *Pace International Law Review* 17, 2 (2005): 347.
- Salem, Norma. "Habib Bourguiba: A Study of Islam and Legitimacy in the Arab World." PhD diss., McGill University, 1983.
- Salem, Norma. *Habib Bourguiba, Islam and the Creation of Tunisia*. London: Croom Helm, 1984.
- Smith, Donald Eugene. *Religion and Political Development*. Boston: Little, Brown and Company, 1970.
- Sumer, Aynur Uluatam. "Ataturk's Reforms Empowered Turkish Women and Set Example for the Developing World: A look at the remarkable transformation of a Nation." *Atatürk Society of America*, April 20, 2013.
- Tucker, Judith E. *Women, Family, and Gender in Islamic Law*. New York: Cambridge University Press, 2008.
- "Tunisia: Ennahda Rejects Inheritance Equality." *Human Rights Watch*, September 6, 2018. <https://www.hrw.org/news/2018/09/06/tunisia-ennahda-rejects-inheritance-equality>.
- "Tunisia: Landmark Proposals on Gender Bias, Privacy." *Human Rights Watch*, July 25, 2018. <https://www.hrw.org/news/2018/07/26/tunisia-landmark-proposals-gender-bias-privacy>.
- Zeghal, Malika. "The Implicit Sharia: Established Religion and Varieties of Secularism

in Tunisia,” in *Varieties of Religious Establishment*, ed. Winnifred Fallers Sullivan and Lori G. Beaman (London: Ashgate, 2013): 107-130.

Zayzafoon, Lamia Ben Youssef. *The Production of the Muslim Woman: Negotiating Text, History, and Ideology*. Maryland: Lexington Books, 2005.



## Glossary

<i>agnate</i>	male relative in the paternal line
<i>bey</i>	monarch, ruler (in Tunisia)
<i>beylical</i>	under the bey
COLIBE	Individual Freedoms and Equality Committee
<i>habus</i>	religious or charitable endowment, also known as <i>waqf</i>
<i>Hadith</i>	a collection of traditions containing the deeds and pronouncements of the Prophet Muhammad
<i>Hanafi</i>	one of the schools of legal interpretation in Islam, historically the law of a minority of Muslims in the Maghrib
<i>ijma</i>	community consensus
<i>ijtihad</i>	interpretation, the use of independent reasoning in law and theology
<i>Maliki</i>	one of the schools of legal interpretation in Islam, the school that has historically predominated in the Maghrib
Neo-Destour	Tunisian nationalist party, founded in 1934
PSC	the Tunisian Personal Status Code
<i>qadi</i>	religious judge
<i>qiyas</i>	reasoning by analogy
<i>résident général</i>	supreme representative of France during colonization
<i>Shari'a</i>	the holy law of Islam
<i>shaykh</i>	leader in a Muslim community, head of a tribe
<i>Sunna</i>	deeds and pronouncements of the Prophet Muhammad as recorded in the Hadith
<i>Sunni</i>	majority branch of Islam
<i>ulama</i>	religious scholars

*wazir*

court official, government minister

*Zaytuna*

Tunisian faculty of theology and center of religious scholarship

# Appendix A

## Maps and Tables

### Maps

1. Application of Shari’a in Muslim-Majority Countries (*Wikipedia Commons*).....37
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## Appendix B

### Note on Transliteration

The transliteration of Maghribi names into English requires choices on the part of scholars studying the Maghrib. While proper names in the Maghrib have historically been written in the French transliteration in scholarly writing, the transliteration of Arabic into French versus English largely differs in spelling. The system adopted by the *International Journal of Middle East Studies* (IJMES) is now widely used for the transliteration of Arabic into English.

When writing proper names in the text of this thesis, I have chosen to keep the French transliteration that readers are likely to encounter in other sources on this topic. Thus, I use Destour instead of the IJMES's Dustur. In the glossary, however, I transliterate common words according to the system adopted by the IJMES.

In addition, I have chosen to omit diacritics in the text of the thesis for the clarity and accessibility of the text to readers from all academic backgrounds. Thus, I use ulama instead of *'ulamā*, Shari'a instead of *Shari'a*, and Zaytuna instead of *Zaytūna*, among other key terms.