

University of Chicago Law School

## Chicago Unbound

---

International Immersion Program Papers

Student Papers

---

2019

### True Democracy? : Tunisia and the Road Ahead

Jacob A. McGee

Jacob.McGee@chicagounbound.edu

Follow this and additional works at: [https://chicagounbound.uchicago.edu/international\\_immersion\\_program\\_papers](https://chicagounbound.uchicago.edu/international_immersion_program_papers)

---

#### Recommended Citation

McGee, Jacob A., "True Democracy? : Tunisia and the Road Ahead" (2019). *International Immersion Program Papers*. 114.

[https://chicagounbound.uchicago.edu/international\\_immersion\\_program\\_papers/114](https://chicagounbound.uchicago.edu/international_immersion_program_papers/114)

This Working Paper is brought to you for free and open access by the Student Papers at Chicago Unbound. It has been accepted for inclusion in International Immersion Program Papers by an authorized administrator of Chicago Unbound. For more information, please contact [unbound@law.uchicago.edu](mailto:unbound@law.uchicago.edu).

# **True Democracy? Tunisia and the Road Ahead**

**Jacob A. McGee**

**September 2019**

## **Table of Contents**

Introduction .....	1
Part I – A Long Transition.....	6
A. History and Exceptionalism .....	7
B. Transition and Success .....	8
C. A Transition Still in Progress .....	10
Part II – A Burgeoning Democracy .....	12
A. Elections and Representation .....	13
B. Freedom of Speech .....	16
C. Freedom of Religion.....	19
D. Women’s Rights .....	23
Part III – Obstacles to a Healthy Democracy .....	29
A. Corruption.....	29
B. Lack of a Truly Independent Judiciary .....	31
Conclusion .....	33

## Introduction

A young man in his twenties arrived outside a local governor's office with a complaint. His only livelihood—selling fruits and vegetables on the streets to passersby—had been abruptly and humiliatingly taken away from him by a police officer. According to the officer, the man did not have the required permits that he needed to sell such wares, so the officer confiscated his wheelbarrow full of produce. But for the man, this was all he had.<sup>1</sup>

When the governor refused to listen to him or even see him, the young man became desperate. He felt like he had no other options. If he could not sell his food items on the street, how else could he provide for his family of eight?<sup>2</sup> Weary from a life in a country where he saw no future, he doused himself in fuel and grabbed a match. Then he set himself on fire.<sup>3</sup> The day was December 17, 2010. The man was Mohamed Bouazizi. And the country where the local governor refused to hear the entreaties of one of its citizens—Tunisia.<sup>4</sup>

Were this an ordinary day in a prosperous and democratic country, the event might have gone unnoticed. The international media, and maybe even Bouazizi's fellow citizens, would have quietly ignored the man's grievances and gone about their business. They could dismiss the tragic death as an isolated incident, perhaps a suicide hastily considered after a brief nervous breakdown.

---

<sup>1</sup> Rania Abouzeid, "Bouazizi: The Man Who Set Himself and Tunisia on Fire," January 21, 2011, <http://content.time.com/time/magazine/article/0,9171,2044723,00.html> (accessed September 5, 2019).

<sup>2</sup> Ibid.

<sup>3</sup> Peter Beaumont, "Mohammed Bouazizi: the Dutiful Son Whose Death Changed Tunisia's Fate," January 20, 2011, <https://www.theguardian.com/world/2011/jan/20/tunisian-fruit-seller-mohammed-bouazizi> (accessed September 5, 2019).

<sup>4</sup> Ibid.

But this was *not* an ordinary time in Tunisia, nor in the broader Arab world. In December 2010, high unemployment, inflation, political corruption, and suppression of freedom of speech and other liberties were fuel for a fire that was waiting to be lit.<sup>5</sup> Far from an isolated incident, Bouazizi's death unleashed a torrent of pent-up frustration in Tunisia and the rest of North Africa and the Middle East.<sup>6</sup> Socio-economic and political tensions had been simmering under the surface for years. Bouazizi's death was simply the catalyst, offering a precise moment when these tensions could finally boil over.

In the weeks that followed, mostly-peaceful street demonstrations led to the ouster of Tunisia's dictator-president of 30 years, Zine al-Abidine Ben Ali.<sup>7</sup> The so-called "Jasmine Revolution" would be the first of many revolutions and attempted revolutions throughout the Arab world in 2011, a series of major political events that would come to be known as the "Arab Spring."<sup>8</sup>

But unlike Tunisia, the results of these extraordinary events in most of these Arab countries have been "discouraging."<sup>9</sup> As of the date of this writing, civil war persists in Syria, Yemen, and Libya,<sup>10</sup> and Egypt's once-celebrated revolution has been co-opted by the army and

---

<sup>5</sup> Ayodeji K. Perrin, Introduction to the Special Issue on the Arab Spring, 34 U. Pa. J. Int'l L. I, i (2013).

<sup>6</sup> Kevin Gregg, "Text 'Revolution' to Vote": Social Media's Effect on Popular Consent and Legitimacy of New Regimes, 31 B.U. Int'l L.J. 315, 316 (2013). "Tunisians view their revolution as one born out of widespread discontent with the existing system."

<sup>7</sup> BBC, "Profile: Zine al-Abidine Ben Ali," June 20, 2011, [www.bbc.com/news/world-africa-12196679](http://www.bbc.com/news/world-africa-12196679) (accessed September 5, 2019).

<sup>8</sup> John F. Murphy, *Primary National Security Threats Facing the United States: The Magnitude of Their Threats and Steps That Have Been or Might Be Taken to Counteract Them*, 50 Int'l Law. 111, 131 (2017).

<sup>9</sup> John Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 46 U. Balt. L. Rev. 277 (2017).

<sup>10</sup> Bassem Mroue, "Syria's Aleppo Symbol of Assad's Wins and of Enduring War," August 13, 2019, <https://www.apnews.com/86266d459a364094810e0ebdcd2ce18b> (accessed September 5, 2019).

largely unraveled.<sup>11</sup> The hope around much of the world that democracy would finally take root and flourish in the region has mostly remained unrealized.

Tunisia, on the other hand, is supposed to be different. In much of the scholarly literature related to post-revolution Tunisia, it is often assumed that the country is a model for the region of what real democracy can look like. Free and fair elections have been held, and peaceful transitions of power have taken place.<sup>12</sup> Thus, the story goes, Tunisia is a democracy. Whether Tunisia actually functions as a democracy, or should even be considered a democracy at all, is a question that is usually left unasked.

However, a very different story unfolds when you walk the streets of Tunisia and talk to everyday people, or even when you talk to the country's leaders. One well-known politician told me, "I don't like the term 'revolution' because it implies there has been a change of system or culture. There has not been much change. Only change at a high level."<sup>13</sup> Former president (and current presidential candidate) Moncef Marzouki said, "We traded a corrupt dictatorship for a corrupt democracy."<sup>14</sup>

---

<sup>11</sup> John Waterbury, "*A Revolution Undone: Egypt's Road Beyond Revolt* by H. A. Hellyer," March/April 2017, <https://www.foreignaffairs.com/reviews/capsule-review/2017-02-13/revolution-undone-egypt-s-road-beyond-revolt> (accessed September 5, 2019).

<sup>12</sup> Lilia Blaise, "Tunisia's Democracy Is Tested, and Pulls Through, After a President's Death," July 26, 2019, <https://www.nytimes.com/2019/07/26/world/africa/tunisia-president-death-democracy.html> (accessed September 5, 2019).

<sup>13</sup> Fadhel Omran. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>14</sup> Moncef Marzouki. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

A few scholars agree. Some have called Tunisia's new system a "semblance of democracy,"<sup>15</sup> while others have written that the country has experienced a "purported democratic transition."<sup>16</sup> According to Eric Gobe and Lena Salaymeh, many Tunisians see the formation of the new Tunisian governmental system as largely a "reconfiguring of preexisting power dynamics, rather than a fundamental shift in the sociopolitical, economic, or legal infrastructure of Tunisia."<sup>17</sup> Similarly, Lina Khatib argues that it remains to be seen whether Tunisia will transition to a true liberal democracy.<sup>18</sup>

So which is it? Is Tunisia a functioning and healthy democracy that offers a model for the rest of the Arab world to follow? Or has the country simply rearranged the proverbial government furniture, with old power structures and corruption largely still in place?

This paper argues for a middle-ground position. Tunisia is indeed a *burgeoning* democracy with great potential for future growth and political stability. Specifically, much progress has been made in the establishment of free and fair elections, free speech, freedom of religion, and women's rights. However, much work remains to be done. The average Tunisian citizen, and even many politicians, regularly complain about the problem of systemic corruption and the lack of a truly independent judiciary. For these reasons, I argue that Tunisia is a burgeoning democracy, not quite a complete and flourishing democracy. Nevertheless, Tunisia's

---

<sup>15</sup> John F. Murphy, *Primary National Security Threats Facing the United States: The Magnitude of Their Threats and Steps That Have Been or Might Be Taken to Counteract Them*, 50 Int'l Law. 111, 132 (2017).

<sup>16</sup> Eric Gobe & Lena Salaymeh, *Tunisia's "Revolutionary" Lawyers: From Professional Autonomy to Political Mobilization*, 41 Law & Soc. Inquiry 311, 313 (2016).

<sup>17</sup> *Ibid*, 312.

<sup>18</sup> Lina Khatib, *Political Participation and Democratic Transition in the Arab World*, 34 U. Pa. J. Int'l L. 315, 318 (2013).

limited success (so far) can and should be celebrated as a potential way forward for broader democratic reforms throughout North Africa and the Middle East.

Rather than examining a single facet of democracy with a deep but narrow scope, this paper offers an integrated approach across multiple categories of what constitutes a true democracy, seeking to fill a gap in the current scholarship by questioning whether Tunisia is even a democracy at all. Among international legal scholars, however, there is little agreement on what defines a “true democracy.” Thus, this paper largely follows the three “floor” requirements of democracies offered by Tom Ginsburg and Aziz Huq: 1) free and fair elections 2) freedom of speech and association, and 3) adherence to the rule of law.<sup>19</sup> This paper encompasses these requirements for democracy in Parts II and III when I examine six distinct categories: voting and representation, freedom of speech, freedom of religion, women’s rights, corruption, and an independent judiciary. Along with this methodology, what separates this paper from other scholarly works is its sources: personal interviews with Tunisian thought-leaders in addition to traditional secondary literature.<sup>20</sup>

Based on these first-hand interviews with Tunisian politicians and human rights activists, and combined with newspaper articles, scholarly papers, and other secondary sources, this paper proceeds in four parts. Part I provides an overview of Tunisia’s democratic transition after the Jasmine Revolution in 2011. Along with a brief history of Tunisia’s democratic reforms, Part I surveys the successes of the Tunisian revolution and examines the potential explanatory reasons

---

<sup>19</sup> See generally Tom Ginsburg and Aziz Huq, *How to Save a Constitutional Democracy* (Chicago: The University of Chicago Press, 2018).

<sup>20</sup> These interviews were conducted in Tunisia in March 2019 through a generous grant by the University of Chicago Law School. Special thanks must be given to Aican Nguyen, the International Immersion Program director, for coordinating and planning this trip.

for Tunisia's unique place in the so-called Arab Spring. Part II argues that Tunisians have indeed succeeded in creating a burgeoning democracy, particularly in the areas of free and fair elections, freedom of speech, freedom of religion, and women's rights. Part III raises causes for concern for the future of Tunisian democracy, specifically examining the areas of systemic corruption and the need for a truly independent judiciary. Finally, the Conclusion offers a way forward for democratic reforms in Tunisia that would help the country complete the transition to a full and flourishing democracy.

### **Part I – A Long Transition**

“The success of the Arab Spring will be judged not by the articulation of lofty democratic ideals in Tahrir Square or the streets of Tunis, but rather by whether those ideals are translated into lasting, concrete democratic reforms,” writes Juliet Sorensen.<sup>21</sup> In Tunisia, unlike many other countries that experienced revolution during the Arab Spring, the ideals that were championed in the streets in 2011 were later given a voice through free and fair elections. In 2014, only three years after the revolution, some 3.2 million Tunisians voted in parliamentary elections that the International Republican Institute called “a credible process that was well organized, orderly, and allowed voters to express their will at the ballot box in a manner that was unfettered and private.”<sup>22</sup> These polls persisted despite threats of violence from extremist groups who sought to derail the democratic process.<sup>23</sup> By all accounts, the first post-revolutionary

---

<sup>21</sup> Juliet Sorensen, *Ideals Without Illusions: Corruption and the Future of A Democratic North Africa*, 10 Nw. U. J. Int'l Hum. Rts. 202, 9 (2012).

<sup>22</sup> International Republican Institute (IRI), October 27, 2014, <http://www.iri.org/news-events-press-center> (accessed August 28, 2019).

<sup>23</sup> Mark Green, Hallam Ferguson, *Islam and Democracy*, Fletcher F. World Aff., Winter 2015, at 27, 32.

election was a success that Tunisians celebrated and was lauded by human rights groups around the world.

### **A. History and Exceptionalism**

But this success did not arise in a vacuum. While many casual observers may have assumed that Tunisia entered its democratic phase after the 2011 revolution, the truth is far more complicated. Some scholars have considered Tunisia to be the “birthplace of Arab constitutions.”<sup>24</sup> In fact, the first constitution in the Arab world was drafted in Tunisia in 1861.<sup>25</sup> This history of constitutional rule was probably one of several reasons why Tunisia was able successfully navigate the post-revolutionary transition better than any other country in the wake of the Arab Spring.

Along with this history, scholars and Tunisian leaders have pointed out several distinguishing characteristics when discussing why Tunisia fared better than other countries. What led to this “Tunisian exceptionalism?”<sup>26</sup> Habib Khedher, one of the leaders of the Islamist Nahda party, answered:

Why was Tunisian revolution unique? It was the first country to begin a revolution in the Arab world. Also, its president left quickly, and people didn’t use weapons in the revolution. It was peaceful. Also, there are not as many historical factions in the country (ethnic, religious, etc.). Furthermore, the geographic setting of the Tunisian state in the

---

<sup>24</sup> Nimer Sultany, *Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism*, 28 Emory Int’l L. Rev. 345, 360 (2014).

<sup>25</sup> *Ibid.*

<sup>26</sup> John Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 46 U. Balt. L. Rev. 277, 293 (2017).

world (i.e.- the lack of natural resources? The country being very small, so maybe people don't expect much from it?) was probably a contributing factor.<sup>27</sup>

Imed Daymi, one of the leaders of a centrist party in Tunisia's parliament, echoed these sentiments and also added that the "army is not involved in politics or the economy, unlike in Egypt" and other Arab countries.<sup>28</sup> In Daymi's view, the army did not harbor interests that were separate and apart from the interests of the people; thus, they did not unduly influence the outcome of the revolution. Offering other facts, some scholars have even questioned whether Tunisia's willingness to compromise on some of their "long-held beliefs" regarding Islam and government systems could have played a role in Tunisia's success so far.<sup>29</sup> In other words, there was no single factor that led to this so-called Tunisian exceptionalism. Rather, a host of unique characteristics played a role in precipitating a relatively smooth and democratic transition after Ben Ali fled the country.

## **B. Transition and Success**

In the years following the Tunisian Revolution, Tunisians from all sectors of society began to lay the groundwork for this democratic transition, a process that would hopefully "create a new political order that [was] legitimate, pluralistic, and accountable."<sup>30</sup> A new constitution was drafted that guaranteed the freedom of speech, freedom of religion, and

---

<sup>27</sup> Ahmed Khedher. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>28</sup> Imed Daymi. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>29</sup> Alvaro Hasani, *Compatibility of Democracy and Islam . . . or the Lack Thereof: A Closer Look at Whether the "Arab Spring" Was Ever Capable of Culminating into A Viable Democracy in the Arab World*, 15 Scholar: St. Mary's L. Rev. & Soc. Just. 715, 741 (2013).

<sup>30</sup> Benjamin Flick, *The Next Tunisian Struggle: Enforcing Constitutional Social Rights*, 46 Geo. Wash. Int'l L. Rev. 171, 196 (2013).

women's rights. In 2011, a former human rights activist, Moncef Marzouki, was elected president.<sup>31</sup> Progress was being made relatively quickly, and the free and fair elections in 2014 confirmed this progress. Tunisia was truly taking "concrete steps" toward democracy.<sup>32</sup>

Fast-forward five years, and many Tunisians remain largely hopeful in 2019. Tunisians have instituted reforms that were "unimaginable eight years ago," such as a "true opposition party" in the parliament, said Ahmed Sadeeq, a Front Populaire leader, whose party is in the opposition.<sup>33</sup> Indeed, the democratic process is "going strongly," said Imed Daymi, the leader of Harak, another opposition party.<sup>34</sup> The mere fact that political opposition leaders are able to speak freely and voice their opinion in the public square is a success. Under the Ben Ali regime, such opposition would have been unthinkable in any meaningful way.

No one doubts that the status quo has been "fundamentally changed" and that the "seeds for political participation have been sown," writes Lina Khatib.<sup>35</sup> The only question is how to move forward and build on the progress that Tunisians have already accomplished. Tunisian leaders agree that they must make "constitutional rights concrete and stable" and not "go back to the old regime ways."<sup>36</sup> The new political system must respond to the "needs of the revolution"

---

<sup>31</sup> M. Cherif Bassiouni, *The "Arab Revolution" and Transitions in the Wake of the "Arab Spring"*, 17 *UCLA J. Int'l L. & Foreign Aff.* 133, 143 (2013).

<sup>32</sup> John Liolos, *Erecting New Constitutional Cultures: The Problems and Promise of Constitutionalism Post-Arab Spring*, 36 *B.C. Int'l & Comp. L. Rev.* 219, 236 (2013)

<sup>33</sup> Ahmed Sadeeq. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>34</sup> Imed Daymi. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>35</sup> Lina Khatib, *Political Participation and Democratic Transition in the Arab World*, 34 *U. Pa. J. Int'l L.* 315 (2013).

<sup>36</sup> Ahmed Sadeeq. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

and avoid a “return to dictatorship.”<sup>37</sup> However, this is easier said than done, as Tunisians have already learned.<sup>38</sup>

### C. A Transition Still in Progress

Many scholars, and many Tunisians themselves, remain skeptical of the successes of the transition to democracy in Tunisia. There is much work to be done, and progress has been slower than most Tunisians would like. “Tunisia's emergence as a true democracy is far from complete,” scholars note.<sup>39</sup> The frustration that began in the streets and quickly turned into full-blown revolution was about “regime, and likely systemic, change—a change still in transition.”<sup>40</sup> Tunisia's own Foreign Minister, Khemaies Jhinaoui, admits that his country still has a long way to go in its effort to fully adopt democratic reforms. Jhinaoui argues, “To be honest, we are not yet a democracy.... We are on the path of reaching a democratic system where transparency and the rule of law will be respected [100 percent].”<sup>41</sup> Some scholars do not doubt the “transformative” nature of the Tunisian revolution, but at the same time, they wonder if it

---

<sup>37</sup> Habib Khedher. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>38</sup> “‘We see a different Tunisia,’ Amine Ghali of the Al Kawakibi Democracy Transition Centre told Al Jazeera. ‘We are not in a democratic country. We are in a country that is trying to transform into a democracy and it's not an easy process.’” Al-Jazeera, “Tunisians Mark One Year Since Ben Ali Fled,” January 14, 2012, <http://www.aljazeera.com/news/africa/2012/01/201211414346137290.html> (accessed September 5, 2019).

<sup>39</sup> Green and Ferguson, *Islam and Democracy*, 31.

<sup>40</sup> Kevin Gregg, “Text ‘Revolution’ to Vote”: Social Media's Effect on Popular Consent and Legitimacy of New Regimes, 31 B.U. Int'l L.J. 315, 316 (2013).

<sup>41</sup> Tim Sebastian, “Tunisian FM: ‘We are not yet a democracy,’” <https://www.dw.com/en/tunisian-fm-we-are-not-yet-a-democracy/a-42685662>, February 21, 2018 (accessed August 29, 2019).

nevertheless remains a “movement that might fade away,” along with similar democratic movements from the past.<sup>42</sup>

But democracy never moves along a smooth, straightforward path. One important thing must be remembered: Tunisians *are* moving forward. If you talk to Tunisian politicians, and average Tunisians in the streets of Tunis, they are committed to the process. They are proud of their place in history. “Make no mistake, Tunisia has a long way to go before it is a fully consolidated democracy. But it *is* on its way,” write Mark Green and Hallam Ferguson.<sup>43</sup> After all, it has only been eight years since the beginning of the revolution in Tunisia. The country still has numerous challenges before it. According to Cherif Bassiouni, Tunisia “stands a better chance at positively moving out of this transitional phase, but not for a few years to come, if it can remain stable enough to gain the needed time to overcome [these] economic, social, and political problems.”<sup>44</sup> Tunisians are learning that democracy is “messy and divisive,” Taylor Luck writes, and that progress can be “slow, compromise hard, and social and economic justice a long-term battle rather than a protest slogan. Revolution, they say, was the easy part.”<sup>45</sup>

Perhaps a better question is, are Western scholars imposing their Western understandings on what true democratic transition looks like? What even is a “transition to democracy?” Is the question worth asking? Michal Jan Rozbicki writes,

---

<sup>42</sup> Larry Catá Backer, *The Crisis of Secular Liberalism and the Constitutional State in Comparative Perspective: Religion, Rule of Law, and Democratic Organization of Religion Privileging States*, 48 *Cornell Int'l L.J.* 51, 71–72 (2015).

<sup>43</sup> Green and Ferguson, *Islam and Democracy*, 31.

<sup>44</sup> Bassiouni, *The "Arab Revolution" and Transitions in the Wake of the "Arab Spring"*, 144.

<sup>45</sup> Taylor Luck, “Tunisia's democracy: Freedom is disappointingly messy, but there's hope,” April 17, 2018, <https://www.csmonitor.com/World/Middle-East/2018/0417/Tunisia-s-democracy-Freedom-is-disappointingly-messy-but-there-s-hope> (accessed August 29, 2019).

“Transition to democracy” ... The premise behind this cliché is a manifestly deterministic notion that a universalized, modern, Western-style democracy must be the preordained trajectory of development for all these countries. But democracy is not a cosmic axiom. It is not something that already exists out there and only needs to be unwrapped and put into action by removing obstacles to its flourishing. It is a historically developed, man-made product.<sup>46</sup>

In other words, Western scholars must be careful that we don't impose artificial timelines on Tunisia's transition. It is a process and a timetable that Tunisians must figure out for themselves. And they are.

## **Part II – A Burgeoning Democracy**

Tunisians have succeeded in creating what I call a “burgeoning democracy,” particularly in the areas of free and fair elections, freedom of speech, freedom of religion, and women's rights. By “burgeoning,” I mean that democracy in Tunisia is *beginning* to grow and has made significant gains. It is not yet fully grown or mature, but Tunisia still looks and feels completely different than it did under the Ben Ali regime. There are legitimate opposition parties, without fear of the *Mukhabarat*, or secret police. Human rights are respected and enshrined in a new constitution. Free and fair elections have taken place. By examining several facets of democracy, particularly elections, freedom of speech, freedom of religion, and women's rights, I argue that Tunisia's burgeoning democracy is indeed a true democracy, albeit with significant hurdles still to overcome.

---

<sup>46</sup> Michal Jan Rozbicki, *Constitutions, Culture, and History*, 57 St. Louis U. L.J. 447, 448 (2013).

## A. Elections and Representation

In a *Time* magazine column, Ian Bremmer argues that “the Arab Spring succeeded in producing at least one country that’s building authentically democratic institutions and holding free and fair elections.”<sup>47</sup> That country is Tunisia. In 2014, 3.2 million people showed up to vote in the first parliamentary elections after the 2011 revolution. By all accounts, these elections were free and fair. For the first time, Tunisians were given the opportunity to “choose, freely and democratically, their representatives and to determine their own future.”<sup>48</sup> This moment was all but unthinkable just a few years earlier.

Representative government is the cornerstone of true democracy. Without free and fair elections, and representatives that are accountable to the voice of the people, democracy is impossible. True representation is “hallmarked by competing parties, periodic elections, and extensive participation,” all part of the “foundation of democracy.”<sup>49</sup> Tunisians agree. Opposition leader Ahmed Sadeeq told me, “No one can govern the country without elections, without representatives who are chosen freely by the people.”<sup>50</sup> Ahmed Ouerfelli, an international lawyer based in Tunisia, echoed this sentiment. He said that it is critically important to “build

---

<sup>47</sup> Ian Bremmer, “Tunisia’s Fledgling Democracy Shows Signs of Wear and Tear,” <https://time.com/5511735/tunisia-democracy-ian-bremmer>. February 04, 2019 (accessed August 30, 2019).

<sup>48</sup> Amal Jamal and Anna Kensicki, *A Theory of Critical Junctures for Democratization: A Comparative Examination of Constitution-Making in Egypt and Tunisia*, 10 *Law & Ethics Hum. Rts.* 185, 217 (2016).

<sup>49</sup> Sorensen, *Ideals Without Illusions*, 2.

<sup>50</sup> Ahmed Sadeeq. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

transparent and open elections. This will show whether there is a good system that is being built and working well, or if there are significant reforms still needed.”<sup>51</sup>

If free and fair elections are indeed the cornerstone of democracy, then Tunisians have thus far laid an impressive foundation. In 2011, just months after the start of the revolution, turnout for the constitutional assembly election reached ninety percent in some areas, and the election was “widely considered fair.”<sup>52</sup> This election, and the parliamentary elections that have taken place after it, represent a wide cross-section of the Tunisian people.

Once unthinkable, true opposition parties have developed their own platforms and campaigned for votes. After the fall of former President Ben Ali, more than 110 political parties were registered.<sup>53</sup> One of the leaders of these parties, Fadhel Omran, argues that these parties are crucial to the task of building a true democracy. Omran told me, “The law of democracy is that if [people] want a party, they can form one. That is a good thing in a democracy.”<sup>54</sup> If anything, Tunisia now has the opposite problem. “There are too many parties at this point. It’s too confusing; there are too many issues. Some parties only have one or two members in parliament, which makes it hard to pass legislation. But at least this forces coalition-building,” Omran said.<sup>55</sup> Although the myriad of choices among parties may confuse some voters, at least they now have choices.

---

<sup>51</sup> Ahmed Ouerfelli. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 28, 2019. Tunis, Tunisia.

<sup>52</sup> Gregg, *Text 'Revolution' to Vote: Social Media's Effect on Popular Consent and Legitimacy of New Regimes*, 335.

<sup>53</sup> Khatib, *Political Participation and Democratic Transition in the Arab World*, 320.

<sup>54</sup> Fadhel Omran. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>55</sup> Ibid.

Some still worry that the sheer number of political parties may lead to unintended consequences. Currently, there is only one political party, the Islamist Al Nahda party, that is “stable and strong.”<sup>56</sup> Every other party is “fighting internally, breaking apart and reforming.”<sup>57</sup> With so many splintered opposition parties, Ahmed Ouerfelli worries that one party may dominate and weaken the opposition parties, which could be “very dangerous for democracy.”<sup>58</sup> As Ouerfelli points out, it is quite problematic when only one party is strong enough to fully campaign and convince voters of their platform. A single-party dominated system, even clothed in democratic garb, could lead to a rollback of true democracy just as quickly as a dictatorship could. Furthermore, if one party alone governs, important government positions may be filled solely by party loyalists. Thus, “people who are competent and important to the development of the country may be passed over” for such positions, Ouerfelli argues.<sup>59</sup> As Tunisia continues to transition to a full and robust democracy, these are challenges that the Tunisian political system must inevitably face.

Nevertheless, because Tunisia has held several free and fair elections and plans to hold further elections in late 2019, Tunisia undoubtedly fulfills one of the most important prerequisites for any democracy: voting and representation. Certainly, Tunisia’s political system is not perfect, as any Tunisian would agree. However, progress is being made, and elections are being regularly administered in an open and transparent manner. Thus, Tunisia should be considered a burgeoning democracy.

---

<sup>56</sup> Ahmed Ouerfelli. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 28, 2019. Tunis, Tunisia.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

## **B. Freedom of Speech**

In addition to voting and representation, Tunisia has strengthened its democratic credentials by enshrining freedom of speech in its constitution and actually allowing free speech in practice. Under the Ben Ali regime, citizens lived in fear of criticizing the government. The secret police were ever-present in the minds of average Tunisian citizens. Now, eight years after the revolution, human rights activists regularly protest against the government and call for further democratic reforms. Freedom of speech, a marker of any healthy democracy, appears to be alive and well throughout Tunisia.

The new Tunisian constitution guarantees this freedom of speech, along with other important corollary rights. The “freedom of opinion, thought, expression, information, and publication shall be guaranteed. These freedoms shall not be subject to prior censorship,” Article 31 of the 2014 constitution explicitly says.<sup>60</sup> Other articles guarantee the “right to information,” “the right of access to information and communication networks,” academic freedom, the right to unionize, and the right to strike.<sup>61</sup> This newfound freedom of expression is “the most important development; we can talk about anything we want now. But that also increases responsibility,” Fadhel Omran said.<sup>62</sup> Although some politicians remain skeptical of other parties’ sincerity in

---

<sup>60</sup> Tunisia Constitution of 2014, Article 31, [https://www.constituteproject.org/constitution/Tunisia\\_2014](https://www.constituteproject.org/constitution/Tunisia_2014) (accessed August 30, 2019).

<sup>61</sup> *Ibid.*, Articles 32-36.

<sup>62</sup> Fadhel Omran. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

supporting true freedom of speech,<sup>63</sup> strong protections in the constitution exist to ensure that Tunisian citizens' rights are upheld.

Instilling support for freedom of speech within the general populace does not come without its challenges though, especially in the aftermath of revolutions, when many citizens favor peace and security over individual rights. In the past, many post-revolutionary leaders have attempted to convince their citizens that certain curtailments of personal freedoms are “necessary for the public’s own security, allowing the government to easily identify the enemies of the people and thus keep the loyal, law-abiding population safe,” writes Benjamin Pomerance.<sup>64</sup> Many Tunisian politicians, particularly on the left, fear this type of government crackdown on individual rights of expression. In the wake of the Bardo museum terrorist attack,<sup>65</sup> these fears became heightened. To counteract these fears, supporters of democracy in Tunisia need to convince Tunisians that “freedom of expression is a fundamental component of their lives, not something to shy away from in fear that it will weaken the nation and cause greater instability,” argues Pomerance.<sup>66</sup> So far, the results have been mixed.

Many Tunisians express support for laws that actually hamper freedom of speech and expression.<sup>67</sup> These people often state that these measures “keep their country’s values and

---

<sup>63</sup> “Some parties still don’t want to accept individual freedoms.” Ahmed Sadeeq. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>64</sup> Benjamin Pomerance, *First in, First Out: Promises and Problems of Free Expression in Revolutionary and Post-Revolutionary Governments*, 31 Md. J. Int’l L. 107 (2016).

<sup>65</sup> Chris Stephen, Kareem Shaheen, and Mark Tran, “Tunis museum attack: 20 people killed after hostage drama at tourist site,” <https://www.theguardian.com/world/2015/mar/18/eight-people-killed-in-attack-on-tunisia-bardo-museum>, March 18, 2015 (accessed August 30, 2019).

<sup>66</sup> Pomerance, *First in, First Out: Promises and Problems of Free Expression in Revolutionary and Post-Revolutionary Governments*, 178.

<sup>67</sup> *Ibid*, 168.

identities—including their religious heritage—strong.”<sup>68</sup> Promises of free expression that were made by politicians after the revolution can be broken without political repercussions, as long as the government’s “professed reasons for limiting personal rights focus on improving the betterment of the nation as a whole.”<sup>69</sup> Some Tunisians openly state that “too much freedom of expression” could weaken the nation, arguing that a “Western conception” of free speech may not succeed in a place like Tunisia, with its history of conservative Islam and traditional norms.<sup>70</sup> Indeed, some politicians already seem to be playing up “nationalistic sympathies” in order to draw attention “away from the loss of individual liberties,” argues Pomerance.<sup>71</sup> It remains to be seen whether the majority of Tunisians might be willing to trade individual freedoms in exchange for the promise of peace and stability. For now, what free speech looks like in Tunisia is an “evolving matter.”<sup>72</sup>

Although all Tunisians are not fully convinced of the importance of this freedom of speech, it is beyond doubt that the Tunisian constitution protects it. Furthermore, every political leader with whom I spoke, including Islamist party leaders, praised the protection of free speech that is enshrined in the constitution. It may take time for some in the Tunisian populace to fully exercise and appreciate their newfound freedom of speech, but this freedom, one of the

---

<sup>68</sup> Ibid.

<sup>69</sup> Ibid, 169.

<sup>70</sup> Ibid, 168-169.

<sup>71</sup> Ibid, 169.

<sup>72</sup> Ibid, 157.

hallmarks of democracy, is currently strongly protected by the Tunisian constitution and the country's political leaders.

### **C. Freedom of Religion**

In addition to fair elections and top-down support of freedom of speech, Tunisia has further strengthened its case as a burgeoning democracy by protecting freedom of religion in the constitution and allowing freedom of religion in practice. Toleration of dissent and differing worldviews is a central characteristic of any flourishing democracy, and Tunisia has steadily made progress in upholding the free practice of religion. Although Sunni Islam has traditionally been practiced by the overwhelming majority of Tunisians, there is also a strong history of secularism in the country, along with a minority of Christians and Jews. Nevertheless, even with newly enshrined constitutional protections of freedom of religion, some secularists worry about some of the ambiguous language in the constitution related to the state as the “guardian of religion.”<sup>73</sup> Indeed, these secularists worry that a future government might utilize this broad language to crack down on religious minorities or stifle religious dissent. In spite of these concerns, Tunisia currently protects religious freedom and should thus be considered a burgeoning democracy.

Although Islam is the official religion of Tunisia,<sup>74</sup> no limitations in the constitution are placed on the free exercise of any other religion.<sup>75</sup> Article 6 of the Tunisian Constitution

---

<sup>73</sup> Tunisia Constitution of 2014, Article 6, [https://www.constituteproject.org/constitution/Tunisia\\_2014](https://www.constituteproject.org/constitution/Tunisia_2014) (accessed September 3, 2019).

<sup>74</sup> Tunisia Constitution of 2014, Article 1, [https://www.constituteproject.org/constitution/Tunisia\\_2014](https://www.constituteproject.org/constitution/Tunisia_2014) (accessed September 3, 2019).

<sup>75</sup> Darin E.W. Johnson, *Beyond Constituent Assemblies and Referenda: Assessing the Legitimacy of the Arab Spring Constitutions in Egypt and Tunisia*, 50 Wake Forest L. Rev. 1007, 1043 (2015).

“guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalisation.”<sup>76</sup> The state is forbidden from using places of worship to further political goals. The constitution does give power to the state as the “guardian of religion,” but it also calls for the state to promote “the values of moderation and tolerance.”<sup>77</sup> To that end, the constitution prohibits *takfir*, a process by which one Muslim declares another Muslim to be an apostate or heretic.<sup>78</sup> Thus, at least officially, there is freedom for disagreement within Islam and other religious communities, and there is freedom to be nonreligious and secular-minded, as many Tunisians are.

Throughout the constitution-making process, this issue of the role of religion proved to be divisive.<sup>79</sup> Secularists who wanted official neutrality from the state in regard to religion were opposed by Islamists who wanted the state to play a more active role in religion and be the “protector of the sacred.”<sup>80</sup> One constitutional draft originally supported by Islamists from early 2012 called for “*shari'a* to be the main source for legislation and for freedom of expression to be limited when such expression was disrespectful to the sacred.”<sup>81</sup> Having been persecuted by quasi-secular governments in the past, Islamists understandably wanted more political power and

---

<sup>76</sup> Tunisia Constitution of 2014, Article 6, [https://www.constituteproject.org/constitution/Tunisia\\_2014](https://www.constituteproject.org/constitution/Tunisia_2014) (accessed September 3, 2019).

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> David M. Mednicoff, *A Tale of Three Constitutions: Common Drives and Diverse Outcomes in Post-2010 Arab Legal Politics*, 28 *Temp. Int'l & Comp. L.J.* 215, 221 (2014).

<sup>80</sup> Tunisia Constitution of 2014, Article 6, [https://www.constituteproject.org/constitution/Tunisia\\_2014](https://www.constituteproject.org/constitution/Tunisia_2014) (accessed September 3, 2019).

<sup>81</sup> Mednicoff, *A Tale of Three Constitutions: Common Drives and Diverse Outcomes in Post-2010 Arab Legal Politics*, 224.

a constitutional endorsement of their religious practice. Habib Khedher, a leader in the main Islamist party, told me,

The commonality in the constitutional assembly was that the majority of the members were from the opposition and those who suffered from the dictatorship, even some who were prisoners in the old regime. This led the developers to focus on the issues of freedom. Freedom cannot be divided. This is why we strove to put in the constitution all of the rights and freedoms that humanity has reached up to now. It is normal that religion should be included in that list.<sup>82</sup>

However, Islamists in the Al-Nahda party were still “torn between enhancing religion's role in the public sphere and their fear of state's control of religion given their experience prior to the Arab Spring,” writes Nimer Sultany.<sup>83</sup> Islamists themselves feared that a future dictatorial government could use strong religious language in the constitution as a political weapon. Thus, a compromise was enacted in the constitution, whereby Islam became the official religion of Tunisia with the state as its guardian, but strong constitutional protections for the freedom of religion were also adopted, in an attempt to win over secularist members of the constitutional assembly.

Nevertheless, many secularists remain skeptical of the ambiguous constitutional language regarding the government's role in religion. There is a “strong secular base”<sup>84</sup> that has voiced

---

<sup>82</sup> Habib Khedher. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>83</sup> Nimer Sultany, *Religion and Constitutionalism: Lessons from American and Islamic Constitutionalism*, 28 Emory Int'l L. Rev. 345, 362 (2014).

<sup>84</sup> Nimer Sultany, *Against Conceptualism: Islamic Law, Democracy, and Constitutionalism in the Aftermath of the Arab Spring*, 31 B.U. Int'l L.J. 435, 462 (2013).

concern about language that describes the state as the “guardian of religion” and the “protector of the sacred.” These phrases raise the question as to whether a future Tunisian government may utilize these provisions to “stifle speech and expression that is anti-Islamic, questions or objects to certain precepts of Islam, or is deemed by the government to fly in the face of certain Muslim values,” argues Benjamin Pomerance.<sup>85</sup> Given Tunisia’s history of dictatorial rule, these fears are not unfounded. Previous regimes regularly imprisoned dissenters, often based on what the government perceived as religious threats.

Although Islamists were the ones who previously bore the brunt of these imprisonments, many secularists fear that overly broad religious language in the constitution could now be turned against them. They worry that the necessity of politics and coalition-building in the constitutional assembly may have “created a false sense of secularism” in the country.<sup>86</sup> Political debate surrounding the introduction of a law forbidding “blasphemy of sacred values” lends credence to these secularists’ fears.<sup>87</sup> Pomerance argues, “The continued existence of laws from the Ben Ali regime allowing the government to punish individuals or groups for publishing materials deemed harmful to ‘public morals’ prove that this type of action is far from an impossibility.”<sup>88</sup> For now, ambiguity about what it means for Islam to be the state-established religion has allowed secularists and Islamists to “cling to their diverse interpretations of what it

---

<sup>85</sup> Pomerance, *First in, First Out: Promises and Problems of Free Expression in Revolutionary and Post-Revolutionary Governments*, 153.

<sup>86</sup> Seamus Yarbrough, *Political Islam in Tunisia: The History of Ennahda*. by Anne Wolf. New York, Ny: Oxford University Press, 2017. Pp. Xxv, 179. \$60.00 (Hardcover), 50 N.Y.U. J. Int'l L. & Pol. 1201 (2018).

<sup>87</sup> Pomerance, *First in, First Out: Promises and Problems of Free Expression in Revolutionary and Post-Revolutionary Governments*, 153.

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

mean[s] for the Tunisian state to be Islamic.”<sup>89</sup> In other words, enough linguistic ambiguity exists in the constitution to satisfy secularists that their freedom of and from religion is secure for the time-being.

Although many valid concerns remain as to the long-term viability of freedom of religion in Tunisia, the protection of religious freedom is enshrined in the constitution. In law and in practice, freedom of religion is advancing in Tunisia. A strong secular community exists peacefully alongside devotees of traditional Sunni Islam. Granted, ambiguity exists in the exact wording related to religion in the constitution. But this ambiguity has thus far satisfied most of the various parties. Based on its constitutional protections and practical tolerance of religious freedom, Tunisia stands out in the region as a burgeoning democracy with true protection for religious and nonreligious minorities.

#### **D. Women’s Rights**

Gender equality and women’s rights have been growing throughout Tunisia in the wake of the Jasmine Revolution, contributing to its status as a burgeoning democracy. Equality of all citizens before the law is a pillar of true democracy, and Tunisia has received recognition for its advancement of women’s rights from several prominent international advocacy groups such as Human Rights Watch.<sup>90</sup> In many ways, Tunisia has become the leader and strongest advocate for women’s equality throughout the Arab world. Tunisia has recognized that women’s rights issues are at the “center of the social, economic, and political challenges that confront the Middle East

---

<sup>89</sup> Mednicoff, *A Tale of Three Constitutions: Common Drives and Diverse Outcomes in Post-2010 Arab Legal Politics*, 225.

<sup>90</sup> Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 328.

and North Africa.”<sup>91</sup> Indeed, the progress (or reversal) of women’s rights throughout the region are “intrinsically connected” to the political systems and political stability of countries throughout the region.<sup>92</sup> Tunisia has a hopeful future for gender issues as it continues to transition from authoritarianism to a “new form of democracy.”<sup>93</sup>

Tunisia has a long history of being at the forefront of women’s rights, even before the Arab Spring in 2011. Indeed, it would be wrong, and would betray a narrow-mindedness steeped in orientalism, to view women’s rights issues as “new” to the Middle East and North Africa. Women’s rights movements and women-led activism have existed in the region for many years.<sup>94</sup> However, under the Ben Ali regime, top-down governmental policies of progressive feminism had created the “false narrative” that Tunisian women enjoyed equal rights with men.<sup>95</sup> According to some scholars, these advances in comparison to other parts of the Arab and Muslim world were simply a façade.<sup>96</sup> Thus, the 2011 revolution provided a unique opportunity for women to “replace the old hegemonic framework” with a more equitable and “bottom-up model” for the advancement of women’s rights.<sup>97</sup> Nevertheless, much of Tunisia’s new era of women’s

---

<sup>91</sup> Mounira Maya Charrad, *Progressive Law: How It Came About in Tunisia*, 18 J. Gender Race & Just. 351, 352 (2016).

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, 359.

<sup>94</sup> Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 312.

<sup>95</sup> Rangita de Silva de Alwis et. al., *Women and the Making of the Tunisian Constitution*, 35 Berkeley J. Int'l L. 90, 120 (2017).

<sup>96</sup> *Ibid.*, 120.

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

rights “rides on guarantees under the old regime,”<sup>98</sup> a reality that women in Tunisia are trying to change.

In order to build on Tunisia’s complicated history of women’s rights, drafters of the Tunisian constitution worked to protect women’s rights with concrete constitutional protections. Although many constitutions in the Middle East and North Africa mention some version of gender equity, the statement on women’s rights in the Tunisian constitution is “stronger than in any other country in the region.”<sup>99</sup> Much of the debate surrounding women’s rights in Tunisia had been silenced under the Ben Ali regime, so after the revolution, women inside and outside the political sphere were eager to finally voice their opinions.<sup>100</sup> The extent of women’s political participation in the drafting of the constitution was unprecedented.<sup>101</sup> Women from across the political spectrum demanded constitutional safeguards for “gender equality in all circumstances.”<sup>102</sup> The constituent assembly committee responsible for most issues related to women’s rights, the Committee on Human Rights and Liberties, was headed by a woman.<sup>103</sup> Although not all of the recommendations for the furtherance of women’s rights were adopted, the process set a foundation for “greater rights consciousness” throughout the country.<sup>104</sup> Although much momentum was gained for the advancement of women’s rights in Tunisia during

---

<sup>98</sup> Ibid., 142.

<sup>99</sup> Charrad, *Progressive Law: How It Came About in Tunisia*, 352.

<sup>100</sup> de Alwis et. al., *Women and the Making of the Tunisian Constitution*, 120.

<sup>101</sup> Ibid., 116.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid., 98.

<sup>104</sup> Ibid., 94.

the constitution-making process, women's rights advocates must continue to participate in the political process if these gains are to be "truly transformative."<sup>105</sup>

As part of the constitution-making process and the ongoing struggle in Tunisia for further advancement of women's rights, advocates have been forced to reconcile these rights with perhaps Tunisia's greatest social influence: Islam. But, as Rangita de Silva de Alwis writes, "In the discourse over women's rights and Islam there is no single, uniform perspective."<sup>106</sup> Many Islamic feminists from the Islamist parties have sought to achieve gender equality while "maintaining adherence to Islam." Thus, they have reinterpreted Islamic sources such as the Qur'an and the Sunna and argued that cultural norms and patriarchal customs, rather than the religion of Islam, have distorted the true and original Islamic egalitarianism.<sup>107</sup> Indeed, conservative Islamists argued during the constitution-making process that patriarchal structures were independent of Islam and should not be validated by the country's legal system.<sup>108</sup> However Islamist parties such as Al-Nahda struggled, and still struggle, to promote women's rights within this Islamic framework.<sup>109</sup>

Prior to the 2011 revolution, Muslim women in Tunisia were forbidden from wearing the Islamic *hijab* or headscarves in all state institutions.<sup>110</sup> In an effort to enforce religious neutrality in the public square, the Ben Ali regime removed female agency from the deeply personal choice

---

<sup>105</sup> Ibid., 149.

<sup>106</sup> Ibid., 127.

<sup>107</sup> Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 300-301.

<sup>108</sup> de Alwis et. al., *Women and the Making of the Tunisian Constitution*, 127.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid., 125.

of fashion. Thus, after the revolution, many women reasserted their independence by wearing the *hijab* or the *niqab*.<sup>111</sup> These clothing choices were symbols of a newfound freedom to express an Islamic feminism, rather than adhere to a mandatory, government-imposed secularism.

Tunisia is moving toward a more gender-inclusive society while still maintaining its roots in Islam.<sup>112</sup> Feminism and religious devotion are not separate in the eyes of many Tunisian women, nor is there one “Islam” that speaks for all women in the country. Religious communities are “internally contested, heterogeneous, and constantly evolving through internal debate and interaction,” argues Rangita de Silva de Alwis.<sup>113</sup> Within these religious contexts, Tunisian women are actively seeking greater equality in society by integrating their faith with democratic norms and practices.<sup>114</sup> This “Muslim feminist jurisprudential basis” is complicated and evolving, but Tunisian women have reasserted their own agency and are building a more gender-inclusive future in the country.<sup>115</sup>

In order to more fully advance the cause of women’s rights in Tunisia, advocates are exploring several different avenues. First, Tunisian women are attempting to apply the “constitution's ideological provisions to realities on the ground.”<sup>116</sup> A majority of Tunisian women (69 percent according to a Pew poll) prefer stability to democracy and greater

---

<sup>111</sup> Ibid.

<sup>112</sup> Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 282.

<sup>113</sup> de Alwis et. al., *Women and the Making of the Tunisian Constitution*, 127.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid., 119.

freedoms.<sup>117</sup> Thus, women's rights advocates are attempting to show that stability and democracy are not at odds. Second, women activists in Tunisia argue that several important issues related to women's rights remain a problem: domestic violence against women, equal pay, inequality in inheritance rights, and exploitation of uneducated girls.<sup>118</sup> Third, advocates for women's rights do not want to lose the momentum they felt immediately after the revolution and during the constitution-making process. De Alwis writes, "Women are often mobilized during revolutions and nationalist struggles, but afterwards they are re-marginalized."<sup>119</sup> Women's rights activists are working to ensure that gender equality is maintained both through active participation in civil society and through safeguards in the legal system.<sup>120</sup> Because of these efforts and the ongoing struggle for greater freedoms, Tunisia has already made significant gains for women's rights both in the constitution and in actual practice. Thus, Tunisia truly deserves recognition as a burgeoning democracy.

In the wake of the 2011 revolution, Tunisian citizens finally began to forge their own destiny by initiating truly democratic reforms. In the areas of voting and representation, freedom of speech, freedom of religion, and women's rights, Tunisia can claim its place as one of the world's democracies, and one of the only true democracies in North Africa and the Middle East. Nevertheless, significant challenges remain, hence why I call Tunisia a "burgeoning" democracy. We now turn to address those remaining hurdles.

---

<sup>117</sup> Ibid., 144.

<sup>118</sup> Charrad, *Progressive Law: How It Came About in Tunisia*, 359.

<sup>119</sup> de Alwis et. al., *Women and the Making of the Tunisian Constitution*, 145.

<sup>120</sup> Hursh, *The "Tunisian" Spring: Women's Rights in Tunisia and Broader Implications for Feminism in North Africa and the Middle East*, 281.

### **Part III – Obstacles to a Healthy Democracy**

When you walk the streets of Tunisia and talk to average citizens, or when you speak with politicians at the highest levels of Tunisian government, you will inevitably hear about two problems that pose challenges to Tunisian democracy: systemic corruption and the lack of an independent judiciary. Like a constant refrain, Tunisians regularly mention these challenges as the biggest obstacles standing in the way of true democratic reform in their country. But for a country to function as a flourishing democracy, its citizens must believe that the country is actually democratic. For many Tunisians, the reality of these two problems have led to a pessimistic outlook about their democracy. Because of the widespread corruption and lack of truly independent judiciary, I argue that Tunisia is a “burgeoning” democracy, rather than a complete or flourishing democracy.

#### **A. Corruption**

“We traded a corrupt dictatorship for a corrupt democracy,” one Tunisian told me.<sup>121</sup> These words perfectly summarize the feelings of a vast number of everyday Tunisian citizens. But these words were not spoken by an ordinary citizen; they were said by a former Tunisian president and a current candidate for the presidency in 2019—Moncef Marzouki. And he was not alone in voicing these sentiments.

Political leaders from across the political spectrum in Tunisia voiced their concern over and over again about the same problem: systemic corruption. “The main problem facing Tunisia is corruption,” opposition leader Ahmed Sadeeq said.<sup>122</sup> An Islamist party leader, Ahmed

---

<sup>121</sup> Moncef Marzouki. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>122</sup> Ahmed Sadeeq. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

Khedher, agreed: “We need to find a solution to the problem of corruption.”<sup>123</sup> A centrist party leader concurred: “We need of new generation of judges who resist corruption.”<sup>124</sup> According to this centrist party leader, Gulf countries are “scared of revolutions in their countries, so they provide money for elections in Tunisia that impedes the democratic process.”<sup>125</sup> Of course, foreign-funded elections are ripe for political corruption and bribery. Not only does the average Tunisian citizen understand this problem of corruption, but Tunisian politicians fully grasp it as well.

In the face of such widespread corruption and the popular perception that corruption is rampant, democracy simply cannot flourish in Tunisia. Juliet Sorensen writes, “Inherent in the right to democracy is that representative government be free from corruption.”<sup>126</sup> Although the absence of corruption is not sufficient for a democracy to thrive, healthy democracy “cannot exist” where corruption is widespread.<sup>127</sup> Before the Tunisian revolution in 2011, the legal system functioned as an avenue to protect the interest of the ruling dictatorship and facilitate corruption.<sup>128</sup> Today, many Tunisians believe that the legal system and politics in general are still plagued by corruption, only now the corruption is cloaked in “democracy.” Unless and until the

---

<sup>123</sup> Ahmed Khedher. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>124</sup> Imed Daymi. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>125</sup> Ibid.

<sup>126</sup> Sorensen, *Ideals Without Illusions: Corruption and the Future of A Democratic North Africa*, 2.

<sup>127</sup> Ibid., 5.

<sup>128</sup> Flick, *The Next Tunisian Struggle: Enforcing Constitutional Social Rights*, 172.

Tunisian government makes serious efforts to combat this corruption, Tunisia will not be a full and complete democracy.

### **B. Lack of a Truly Independent Judiciary**

After systemic corruption, the most common criticism of Tunisian democracy from both everyday citizens and politicians alike is the need for a truly independent judiciary. Many citizens see the current judiciary as a holdover of the old regime, reinforcing and sustaining old power dynamics. In order to complete the transition from authoritarianism to a flourishing democracy in Tunisia, an independent judiciary is indispensable. Opposition leader Ahmed Sadeeq agreed: “The most important thing is the judiciary. Our judicial system is still suffering from the old regime. It is not free, independent, or impartial. Without an independent [judicial] system, you cannot have an independent country.”<sup>129</sup>

One of the main reforms that protesters sought in the wake of the 2011 revolution was the creation of a truly independent judicial system. Without this judiciary, Tunisians in the streets knew that justice would never be equally distributed. In fact, unequal access to justice was one of the primary catalysts of the revolution. “One characteristic of the Tunisian transition and its constitution was its orientation toward justice,” argue Amal Jamal and Anna Kensicki<sup>130</sup> Tunisians recognize the importance of the legal profession and the democratic safeguards that lawyers and judges can provide.<sup>131</sup> But the demands for a truly independent judiciary have largely gone unmet.

---

<sup>129</sup> Ahmed Sadeeq. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

<sup>130</sup> Jamal and Kensicki, *A Theory of Critical Junctures for Democratization: A Comparative Examination of Constitution-Making in Egypt and Tunisia*, 218.

<sup>131</sup> Eric Gobe and Lena Salaymeh, *Tunisia's "Revolutionary" Lawyers: From Professional Autonomy to Political Mobilization*, 41 *Law & Soc. Inquiry* 311, 312 (2016).

The main symptom of the lack of an independent judiciary is the absence of the constitutional court that the 2014 constitution called for. “That constitution mandated the creation of a constitutional court in one year,” notes Sharan Grewal<sup>132</sup> Five years later, no constitutional court exists. The Tunisian constitution was meant to create this independent constitutional court in order to advise the other two branches of government regarding the constitutionality of laws and to protect the separation of powers.<sup>133</sup> Overall, the judiciary was designed to be insulated from non-legal interference and meddling from the legislative and executive branches.<sup>134</sup> The constitutional court would theoretically maintain final authority over laws and be an independent, apolitical defender of the constitution.<sup>135</sup> However, the lack of this court has been a “tremendous loss for Tunisia’s democracy.”<sup>136</sup>

Over the next few years, the need for a constitutional court will only grow.<sup>137</sup> When opposite parties control the executive and legislative branches, and a disagreement arises, a constitutional court is needed to step in and resolve power disputes.<sup>138</sup> To create this court, the parliament, the president, and the Supreme Judicial Council (an independent body) must each

---

<sup>132</sup> Sharan Grewal, “Tunisia Needs a Constitutional Court,” November 20, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/11/20/tunisia-needs-a-constitutional-court> (accessed September 5, 2019).

<sup>133</sup> Flick, *The Next Tunisian Struggle: Enforcing Constitutional Social Rights*, 175.

<sup>134</sup> Jamal and Kensicki, *A Theory of Critical Junctures for Democratization: A Comparative Examination of Constitution-Making in Egypt and Tunisia*, 218.

<sup>135</sup> Flick, *The Next Tunisian Struggle: Enforcing Constitutional Social Rights*, 176.

<sup>136</sup> Grewal, “Tunisia Needs a Constitutional Court,” November 20, 2018.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

appoint four of the 12 total judges of the court.<sup>139</sup> As of this writing, only one member of the court has been selected. Parliament has failed seven times to appoint the remaining three, which is required before the president and the independent council can appoint the remaining members.<sup>140</sup> In March 2019, parliamentary blocs submitted the exact same judicial candidates that they had put forward in previous years for the court, and again, none of these nominees received the necessary 145 votes in parliament to be confirmed to the court.<sup>141</sup> This failure is simply the result of partisan entrenchment and an unwillingness to compromise or find common ground. Because of this political deadlock, Tunisians are “worried about the constitutional court,” former president Marzouki said.<sup>142</sup> They are right to be worried. Without this constitutional court and a truly independent judiciary, Tunisia will only ever be a burgeoning democracy, and not a full-fledged and flourishing democracy that is trusted by its people.

## **Conclusion**

Although much of the scholarship about Tunisia in the wake of the 2011 revolution assumes that the country is a democracy, the reality is more complicated. Tunisia is a *burgeoning* democracy with a bright future, but obstacles remain in its way of becoming a true and flourishing democracy. Internationally recognized for its many triumphs in democratic reforms,

---

<sup>139</sup> Ibid.

<sup>140</sup> Hesham bin Ahmed, “Tunisian Ennahda Stresses Need for Constitutional Court,” July 24, 2019, <https://www.aa.com.tr/en/africa/tunisian-annahda-stresses-need-for-constitutional-court/1540468> (accessed September 5, 2019).

<sup>141</sup> IRI Tunisia Team, “Update on the State of Tunisia’s Democracy: Constitutional Court, 2019 State Budget and Electoral Commission,” April 17, 2019, <https://www.democracyspeaks.org/blog/update-state-tunisia%E2%80%99s-democracy-constitutional-court-2019-state-budget-and-electoral> (accessed September 30, 2019).

<sup>142</sup> Moncef Marzouki. Interview with Jacob McGee and the University of Chicago Law School International Immersion Program. March 26, 2019. Tunis, Tunisia.

Tunisia has truly made great strides in burnishing its democratic credentials. Free and fair elections have regularly occurred since 2011 and are planned for late 2019; freedom of speech and freedom of religion are protected; women's rights are enshrined in the constitution and are slowly becoming a reality on the ground. Nevertheless, significant hurdles remain on Tunisia's road to full and complete democracy. Systemic corruption is widely recognized by both politicians and the populace alike, dragging down the Tunisian people's perception of their own democratic successes. And a truly independent judiciary, headed by a constitutional court, still remains largely absent.

In order to complete Tunisia's transition to a full and flourishing democracy, the government must take significant steps to correct these problems. First, to combat the problem of corruption, the government should appoint a permanent independent council that would investigate allegations of corruption and abuse of power. After the 2011 revolution, the interim government established a commission to investigate such corruption.<sup>143</sup> By bringing back this commission on a permanent basis, the government could instill trust in the Tunisian people that corruption is being rooted out and prosecuted under the law. Second, the Tunisian parliament must work quickly to appoint its share of the constitutional court. By law, the president and the independent council cannot select the remaining eight members until parliament first selects four members. Without this constitutional check on abuse of power, an overzealous executive branch or parliament could create policies and laws that run roughshod over the hard-earned rights of the Tunisian people. The creation of this constitutional court, required by the Tunisian constitution of 2014, must be a priority for the new parliament after the 2019 elections. By taking

---

<sup>143</sup> Paul R. Williams & Colleen Popken, *U.S. Foreign Policy and the Arab Spring: Ten Short-Term Lessons Learned*, 41 *Denv. J. Int'l L. & Pol'y* 47, 57 (2012).

these two steps, the Tunisian government can begin to build the trust of its people in democratic principles and move toward becoming a healthy and complete democracy.

Tunisia is the only true success story that emerged from the so-called Arab Spring of 2011. However, Tunisia remains a burgeoning democracy, not quite a true and flourishing democracy. With both presidential and parliamentary elections on the horizon for 2019, Tunisians have a unique opportunity to demand real and lasting reforms—reforms that will finally complete Tunisia’s transition to a full and prosperous democracy.