

Religion, Revolution, and Constitution: The Case of Tunisia

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Introduction

Since the 19th century, at all levels of its existence, the Muslim world has experienced a fundamental dualism between its historical heritage, *turath*, and the social, cultural, and political phenomena coming from the outside which have impinged on this heritage and helped to reshape it. This process is well expressed by the Arab word *hadathi*. *Hadath* refers to an unexpected occurrence, one which breaks the unity and continuity of history. The modern, *hadathi*, is therefore “that which happens” and which disrupts the natural course of history. Accordingly, the Muslim world has been caught up in a dialectical opposition between *turathi* and *hadathi*, the old and the new.

Religion finds itself at the heart of this dialectic, particularly in the domains of politics, culture, and law. The Constitution, too, is deeply implicated in this dialectic, as we will show in the case of Tunisia.

The experience of religion in the recent great political and constitutional debate, as well as in political action, has taken on extremely diverse forms, including confrontation, reappropriation, or acculturation. Depending on the country involved, all these forms have affected, to varying degrees, the relations of religion with the state and with the surrounding political society.

Relations of religion with the state

The first of these forms, direct confrontation between traditional religion system and “modernizator State”, occurred in countries like Turkey and the Iran of the Pahlevis, and to a lesser extent, Tunisia under Bourghiba, and Egypt. In that case, the state initiates and leads a global reformist policy against religion and its educational, judicial or other cultural institutions.

The second form, which we may call “recuperation,” has occurred in almost all the Muslim states.

Here, the state bent on implementing reforms, employs the doctrines, the words, and the symbols of religion to smooth the acceptance of its reformist projects within the society, all the while presenting itself as the sole authority qualified to speak in the name of religion. This can happen in various ways. Depending on the aims of the state in question, Islam and its texts have been employed to promote socialism, nationalism, liberalism, monarchy, republicanism, the parliamentary system, the one-party state, constitutionalism, and so on.

Relations between religion and the surrounding political society

The third form, which can be called “acculturation”, includes the case in which Islam, as an ideology and as a political conviction, relinquishes the most sharply defined formulations of its political ideas, in order to adapt them to the current context and to be able to coexist peacefully with the other competing forces, though generally maintaining an oppositional stance. This is what happened in Tunisia after the hunger strike of October 18, 2005, an event we shall return to.

What is, in Tunisia, the situation today? More particularly, what is the impact of the Tunisian Revolution on the relations between religion and the constitution? Let us begin with a very brief look at the issue during the period of the dictatorship, since that will help us clarify the subsequent developments. After that we will see the relations between the Revolution and religion, then we will describe the transition from the January Revolution to the October elections 2011, and finally we shall analyze the religion issues in the current constitutional debate.

I. Dictatorship and religion

Analysts have offered several hypotheses or models to account for the nature of the relations between the spheres of religion and politics in “modernizing” political regimes like those of Tunisia. The “secular” nature of this kind of regime is one of the key hypotheses.

The State religion

In my opinion, the model which comes closest to grasping the reality of both the “enlightened despotism” of Habib Bourguiba and the police-state despotism of Ben Ali is that of the “state religion,” in which the religious sphere, including its symbols, its norms, its morality, its cultic practices, and, above all, its language, is placed in the service of the regime’s policies, even in cases where the latter are hostile to the religious majority or to the religiously-based political parties. In this situation, it is forbidden to have a national religion different from the one decided on by the head of state and advocated by him.

Repression of the “religious” parties

It is thus in the name of religion, as “properly understood,” in other words, according to the interpretative norms established by the ruling regime, that the State employs its political and security forces. And it does so in essentially two ways. First of all, against “traditional religion” and its private and public institutions; and, secondly, against those opposition political parties that consider themselves to be based on religion, namely the “Islamists.” The repression can be extremely violent and leave a great number of victims in its wake. This is what occurred under the regime of Ben Ali, which, beginning in the 1990s, conducted an unrelenting campaign of systematic repression, including imprisonment, murder, and torture, against the leading “Islamist” party, “Nahdha.” This policy lasted for years, until the fall of the regime in January 2011.

Islamization of the democratic parties and democratization of the “Islamist” parties

The political consequence of these practices turned out to be the growth and consolidation of the Islamist party. The victimization, the resistance to the dictatorship, the disrespect for religious symbolism, the perversion of justice, and the corruption of the dictatorship – all these things provided slogans they could use to mobilize their troops. But they also greatly increased the prestige of these parties among a large sector of public opinion, especially among the “believers,” who are the majority of the population and extremely important in the Islamic context.

On the other side, the politics of repression turned out to have a quite unexpected effect. It pushed the secularist “democratic” parties, regardless of whether they tended toward socialism, communism or nationalism, to form an alliance with the Islamist parties in order to create a common front against the dictatorship. This is precisely what happened during the hunger strike organized on October 18, 2005 by a certain number of the secular, democratic parties and the Nahdha Party. Working together in a situation which was intensely emotional both psychologically and politically, the leaders of these political parties lived through a common experience of opposition to the dominant power in the course of which each side influenced the other, leading ultimately to the Islamization of the democrats and the democratization of political Islam. A number of important resolutions were jointly adopted by the ensemble of these forces – which together formed the “Committee of October 18, 2005” – dealing with such sensitive topics as women’s rights, the constitution, the notion of a State based on the law, “Etat de droit”, democracy, and pluralism. After this brief analysis of religion under dictatorship, let’s see the situation of religion after the Revolution

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II. Revolution and religion

Between December 2010 and January 2011, Tunisia entered into a rapid but profound revolutionary process, one which truly deserves the term “revolutionary” for the following reasons.

The revolutionary event - its meaning and its scope

A revolutionary event is, first of all, constitutive of memory. Through its profundity, symbolic density, and historical intensity, the events of December 2010 – January 2011, symbolized by the suicide by fire of Mohamed Bouazizi, has left its mark on the memory of the Tunisian people. It is among those privileged elements which clearly stand out among countless others and constitute the historical memory of a nation. Unlike a revolt, an insurrection, or a rebellion, a “revolution” is able to establish over a very long term a people’s project of historical becoming. It is a founding event.

This process had to begin by destroying a regime which displayed no sign that it was coming to its end. Against this regime all sorts of alarm bells had sounded, but no undertaking succeeded in overthrowing it. To the contrary, such attacks often served it as an alibi for increasing its exclusionary and repressive policies.

Religion and the message of the Revolution

Without going as far as to say that the revolutionary message was consciously “secular,” one may certainly assert that no religious slogan was heard as the events unfolded. The message was, rather, broadly secularized. It had a “civil” (*madani*), not a religious (*dini*) character. Islamist elements were completely absent from the events, and the slogans that were heard or posted were “temporal” slogans.

Obviously, when we say that the message of the revolution was “civil” in nature, without any

reference to religion, and that there was no physical presence of the religious parties or other religiously inspired groups, we do not mean that these parties had disappeared from the political scene. The Nahdha Party, in fact, made its presence felt immediately after the revolution as a force to be reckoned with, especially after the return of its president, Rached Ghanouchi, from his long exile in London, on January 31, 2011.

The end of a legend: “democracy as a Western import”

The revolution, finally, destroyed the existing practices of political system. This was manifested first of all in a total reorganization of the political system, through the election of a Constituent Assembly. The idea was imposed by the crowds in the street and particularly by the sit-in of Casbah 2, in front of the Government head-quarters. It was likewise seen in the proliferation of the legally authorized political parties and development of pluralism. Lastly, on the institutional level, it was evident in the “revolution” within the constitutional and legal system, initiated by the “High Authority for the Realization of the Revolution’s Objectives, of Political Reform and of the Transition to Democracy.” It was, in fact, this supreme council which, from the start of its first session, on March 17, 2011, prepared the overall juridical framework designed to enable the holding of free elections, transparent and pluralist, with a view to the election of a National Constituent Assembly. It was the “High Authority,” too, which voted “the six laws of the liberation” which we return to soon. As for the Constitution of 1959, it was suspended by the “order”, “décret-loi” n° 14 of March 23, 2011.

The Revolution represents over all a radical change in “mentalities” and in the “civic spirit.” For the first time in the Arab world, the democratic message was internalized. Beginning on January 14, 2011, the democratic idea could no longer be viewed as an export article. This message was articulated around the ideas of liberty and of political pluralism, of the dignity of man and of social justice, and, finally, of integrity in the administration of public affairs.

The propagation of the Tunisian revolution in the Arab world

It was the fire lit in Tunisia which, beginning in February 2011, became the source of a series of popular uprisings against the existing regimes and heads of government in Egypt, in Libya, in Yemen and in Syria. It ended with the departure, imposed or negotiated, or the death of a number of political leaders like the aged president Mubarak, the “guide” Moamar Kadhafi, and the president of Yemen. The political turmoil still continues today in the tragic situation in Syria, a country ruled by a dynastic dictatorship, that of the Assad family. One obviously has to be cautious in analyzing the ensemble of these events. Their social, political, and ideological significance is not the same. It depends directly on the circumstances accompanying each of them, but equally on the depths of their historical roots. In Tunisia, the event is embedded in a long span of intellectual, political, juridical, and social reforms dating back to the 19th century, which did not occur in the same way in Libya, Yemen, or even Egypt – and, above all, not with the same intensity. History tells us that Tunisia really has had a “Revolution,” for the reasons given above. The social structures and the modes of thought and conduct which exist in Libya or in Yemen are not able to yield the same results. With this being said, we can now move to the third part dealing with the January-october 2011 period.

III. From the January Revolution to the elections of October 2011

The sequence of events in the legal sphere during the transitional period may be divided as follows. During the first phase, from January 14 to March 23, 2011, the country lived under the rule of the Constitution of 1959 and the application of its article 57 regarding the definitive vacancy of the presidency of the Republic. This situation having proved materially and politically unworkable, the

country entered a second phase characterized by the suspension of the 1959 Constitution, on the basis of a consensus, and its replacement by a provisional organization of government, promulgated by decree number 14 of March 23, 2011. All of that was carried out on the basis of social consensus and lends further support to the idea that in a revolutionary period the establishment of the new public law begins with the violation of the old law. In other words, we experienced a rupture or discontinuity at the level of the constitutional order. Finally, the third phase began with the elections of October 23, 2011 and may be characterized at the level of the judicial order by the adoption of "constitutive law" number 6, of December 16, 2011, concerning the new provisional organization of the governmental powers, which Tunisians have dubbed "the little constitution."

The impossible presidential election under article 57 of 1959 Constitution

The first transitional period lasted only very briefly. At the time, it was hoped that by applying Article 57 of the old constitution it would be possible to organize new presidential elections in the sixty-day period beginning with the vacancy of the presidency. But, the country was in the throes of a serious disturbance of public order, making it impossible to organize a presidential election. Moreover, pressure from the street obliged the government to give up the idea of holding a presidential election and to undertake the organization of elections for a national constituent assembly that would be charged with adopting a new constitution for Tunisia. The street was supported in this effort by the major opposition political parties, the big national non-governmental organizations, certain professional groups, including the lawyers, and the national union of Tunisian workers, the UGTT. The majority of these groups cooperated in forming the National Council for the Protection of the Revolution, created on February 11, 2011.

The constitutional Order, "*marsoum*", n°14 of March 23 2011, and the governmental provisional organization

This is the context in which the constitution of 1959 was suspended and we entered the second transitional period, beginning on March 23, 2011. It was characterized, on the institutional level, by the following elements.

First of all, the leadership consisted of an executive power, represented by the Prime Minister, and the Republic's Provisional President. The latter acted as chief of state and, simultaneously, exercised the legislative power by issuing "orders", *marsoum*. This structure, as we mentioned earlier, had no electoral legitimacy, but rested instead entirely on consensus. This leadership group took all the initiatives and made all the decisions concerning legislation and regulations that were necessary to assure the proper management of public affairs; beyond this, it took all the steps needed to organize elections in accord with democratic standards.

Next came the establishment of the "High Authority for the Realization of the Revolution's Objectives, of Political Reform, and of the Transition to Democracy". In fact, this authority had been created on the 18th February 2011, even before the promulgation of the text regulating the provisional organization of the governmental powers. It met for the first time on March 17, 2011 and is composed of two parts. The first, a representative body called the "Council," has more than 150 members, including representatives of the political parties, of the regional revolutionary councils, and of the non-governmental organizations opposed to Ben Ali's dictatorship, as well a number of individuals of national stature. The second part is a technical group, the committee of experts," composed of 21 expert jurists. To summarize, the High Authority elaborated and adopted the six laws that gave the country its freedom: the electoral law, the laws concerning an independent electoral authority, political parties, and associations, and, finally, those concerning freedom of the press and of the other media. This legislative work, ratified by presidential "orders," was carried out between April and September of 2011.

During this period numerous crises arose. But, comparing it with the third transitional period, we may observe that debate about religion was virtually non-existent. The sole preoccupations of the governmental bodies in this period were political and administrative, including the management of crises and the placing on a firm footing of a pluralist and democratic legislative framework conforming to the goals of the revolution.

The elections of October 23, 2011. “God is in the ballot boxes”

The electoral activities were supervised, managed, and carried out by the “Supreme Independent Electoral Committee” elected by the High Authority of the Revolution in April 2011. This committee was led by a member of the Tunisian leftist opposition, M. Kemal Jendoubi. It did a remarkable job, in record time, of registering voters, setting up regional electoral committees, putting in place the necessary information technology, setting up the voting centers, recruiting thousands of people to register voters, and, finally, handling the ballots and counting the votes. The election of October 23, 2011 was the first real election held in an independent Tunisia. Even the parties which had expressed reservations about the composition of the electoral committee and about its president were obliged to recognize that it did its work scrupulously and provided honest electoral results that no party could contest.

The results of the election are as follows. The Nahdha Party won the election with 1,500,649 votes out of 4,308,888 votes cast, earning it 89 out of the total of 217 seats in the constituent assembly (41%). The Congress for the Republic, CPR, garnered 341,549 votes, giving it 29 seats (13%). The Popular Petition, *al aridha*, had 252,025 votes, giving it 26 seats (12%). The Democratic Forum for Liberty and Work, *Ettakatol*, gathered 250,686 votes, entitling it to 20 seats (9%). Since the leading party did not win an absolute majority of seats, it was obliged to join with the two runner-up parties to form a coalition, the “troika,” which continues to govern Tunisia today. The figure of God, absent during the revolution, as well as during the first and second transition periods, was found in the ballot boxes. This “divine surprise” was to have an enormous impact on subsequent events.

The election results demonstrated that there was a deep divide between the two popular parties which had been at the origin of the “Arab spring.” There exists, in my opinion, an essential difference between the “people of the revolution” and the “people of the elections”. The revolution was led by a few thousand young people, young unemployed graduates, and young bloggers and internet surfers, who, using modern means of communications, succeeded in mobilizing the street and the revolutionary crowds. They were joined and encouraged by the general union of Tunisian workers, UGTT, the Lawyers’ Bar, the Association of Tunisian judges, the parties of the far left, the Tunisian league of the human rights, and the feminist movement. As mentioned earlier, the Islamist parties were not very active in the course of the first period.

Another people expressed itself on that election day of October 23rd. My personal term for them is “the silent majority of believers” or even “the sleeping majority”. These people trusted the Nahdha Party for several reasons, the two most important of which are the following. As the party which paid the highest price for its principles during the dictatorship, it earned an historical legitimacy, and the voters wanted to express their recognition of that victimization. Second, during the election campaign the average voter had the impression that the political struggle was one between “the defender of religion” and the “denier of religion.” Consequently, there was a quite strong mobilization to defend a religion that many believed was under threat from the “secularists,” *al almâniyun*. And since the majority of the population is firmly attached to the defense of its religion, that explains the results. Now, we’re going to the final part of our lecture.

III. Religion in the current constitutional debate

Words and things

As we mentioned previously, there exists a polarization at the very heart of intellectual, cultural, and political life in Muslim countries like Tunisia, Morocco, Egypt, Lebanon, and Turkey. Amidst the confusion concerning words used to designate things, we are nevertheless able to ascertain that the debate has been shaped by a certain number of semiotically opposed couples, namely those signifying exclusion, opposition, and refusal, on the one hand, and-opposed to them- exchange, influence, and the sharing of common references split between the two camps. In conveying the notions of antagonism exclusion, political language is articulated around the pairs *madani/dini*, or *almani/tiuqrati*, *laiki/usuli*, etc. These are words that the different protagonists and parties employ when engaging in political and ideological combat. But in politics there are not only battles. There also exists space for meetings, exchanges, dialogues, and reciprocal influence. Earlier we evoked the phenomenon of the Islamization of the leftist parties and the democratization of political Islam - *aysaratu l islam* and *aslamatu al yasar*. It is in this sense that words and things overlap creating a domain of understanding and dialogue.

This is how it could come about that in a recent public lecture the head of the Islamist party, Rached al Ghannouchi, employed the notion of "procedural secularism," *'almaniyya 'ijra'iyya*, or the term "partial secularism," *'almaniyya juz'iyya*, adopted from the Egyptian thinker Abdewahab Msiri. For the president of the Nahda Party, this concept is acceptable in the sense that it does not question fundamental religious beliefs; or, more clearly put, it is acceptable to the degree that it rejects atheism. In other words, the concept in question is opposed to *'almaniyya shamilah* or "integral secularism" which would amount to the rejection of religion, of its dogmas, of its God, and of its prophets. In the same range of ideas, and in order to distinguish this "Islam in power," i.e. existing within a context of an electoral majority, from the peripheral Islam called "salafist", including its militant jihadist branches with their violence-prone proselytism, we frequently see put forward the opposing notions of "moderate Islam" and "radical Islam," or *islam mu 'tadill* and *islam mutatarrif*. This theoretical scheme associates Islam in power with moderate Islam and contrasts this moderate Islam in power to the "radical" or "extreme" Islam of the opposition Islamist parties.

The primary locus of the tension conceptualized in this scheme is the mosque. The mosque has become a stake in the power struggles between the Salafists and the Nahdha Party, and the latter, in fact, is extremely ill at ease in this insidious fight which is now occurring in the places of worship.

Actually, this is a reappearance, in the present-day world, of the old theory which opposed, from the very earliest beginnings of Islam, the "people of the Sunna and of consensus," *ahl a sunna wal jama'a*, to the dissidents and those willing to engage in insurrectional sectarianism, that is to say, the "sectarians," *shi'a*, and "those who leave," *alkhawarij*, or the "deniers", *arawafidh*. This proves that it is always the party in power, with all its institutions - cultural, ideological, and religious, along with the police and the army - which defines and determines the meanings of words and of things. Power always enjoys this kind of extraordinary linguistic privilege, although the theoreticians of sovereignty have forgotten to tell us that this linguistic privilege is part of sovereignty. It is a fundamental element in the constitution of orthodoxy.

The focal points of the debate

This immense debate, in fact, revolves around a few focal points: the first is the relationship between sharia and positive law; the second is the question of women's rights and of gender equality; and the third is the issue of freedom of conscience, of thought, and of expression. These are, in a manner of speaking, the three basic axes around which revolve not only everyday politics and

militant political actions but also confrontations within the theoretical, cultural, and ideological sphere.

1. Sharia, the source of law

2.

This question was immediately raised after the first meeting of the ANC in November 2011 by a conservative deputy, Sadok Chourou, former president of the Nahdha Party. He not only insisted that the Constitution should contain an article indicating sharia as essential source of law; he also later reminded the protestors who blocked the roads, that, in his view, they were subject to prosecution according to verse 33 of the "Table" Sura, which provides for punishment by death, crucifixion, or amputation.

Around the month of March 2012, a proposed constitution attributed to the Nahdha Party began to circulate which contained an article 10 making sharia one of the essential sources of legislation. Moreover, this proposed constitution provided for the creation of a "Sharia High Council," *majliss a'la lil 'ifta'*, charged with controlling the laws conformity to the norms of sharia. All of this took place at a time when the media were filled with polemics over polygamy, adoption, and women's rights.

It was in this situation that, on March 20, 2012, more than 25,000 people held a demonstration against all these expressions of militant religiosity. On March 25th, after a meeting of his party's leaders, Rached Ghannouchi officially announced the withdrawal of the plan regarding sharia, adding that the first article of the old 1959 constitution was sufficient to affirm the presence of Islam in the constitution. According to this first article: "Tunisia is a free state, sovereign and independent; its religion is Islam; its language is Arabic; and its form of government is republican." Consensus was reached on the basis of this article, and the dispute about the role of sharia seemed to have ended. In fact, as we will see in a moment, it was to return in other forms.

2. Equality of men and women

After Tunisia gained its independence, one of its major achievements was the establishment of women's rights. From the very beginning, even before the constitution of 1959 was promulgated, President Bourguiba thought that a new family law containing modern and reformist provisions should be adopted. His efforts resulted in a new body of laws known in Tunisia as the "Personal Status Code" which was adopted in August 1956. The code abolished polygamy and established penalties for it, instituted divorce through judicial procedure, prohibited unilateral divorce initiated by the husband, raised the minimum age for marriage, and reformed inheritance laws. A subsequent law established in Tunisia the process of childhood adoption, something which, according to the historical interpretation of the *fuqaha*, is forbidden by the Koran.

Beginning with the elections of October 23, 2011, a number of controversies developed regarding adoption, polygamy, single mothers, and, generally speaking, women's rights. The Nahdha majority party has always prided itself as an unconditional defender of the equality of men and women. When the rule of legal parity of men and women was adopted by the High Authority of the Revolution in April 2011, the members of the party voted it enthusiastically. In their official speeches, party leaders always promoted male-female equality. However, the draft of the new Constitution provided for a very surprising article 28 dealing with the issue of equality between men and women. This article introduced the controversial notion of "complementarity", instead of expressly stating the equality notion. The article may be translated as follows: "The State guarantees the protection of woman's rights and the consolidation of her advances in this regard, considering that she constitutes a genuine partner, along with man, in the construction of the fatherland and through their

complementary roles within the family". Beyond its obvious deficiency at the linguistic level, its content and its formulation unleashed vehement reactions in all sectors of civil society, particularly within the feminist movement. On August 13, 2012, on the occasion of "women's day," a demonstration followed by an assembly of supporters in front of the congress building in Tunis offered further proof of the opposition, on the part of the majority of civil society, to these "returns to the natural order" sought by the party in power. The President of the Republic, Moncef Marzouki, the former president of the Tunisian league for the defense of the Human rights, publicly denounced any move that could be interpreted as calling into question the equality of the sexes. Personally, I think that this affair of article 28 was overblown by the forces traditionally hostile to the religiously-based party, but I recognize that the weakness in the article's wording opened the way for this type of reaction.

3. Freedom of expression and respect for the sacred: Hurmat al Muqaddassat. Attempts to criminalize offences against the sacred

Several events raised a significant debate over the domain of the sacred and freedom of expression. The first event was the showing in Tunis in mid-June 2011 of a film directed by Nadia Fanny titled "Neither Allah nor Master." A group of the "bearded," some of them in Afghani dress, invaded and damaged the theater and assaulted the director. Despite the calls of those showing the film, the police did not intervene. In October 2011, the television network Nessma broadcast a very well known cartoon called "Persepolis," directed by Marjane Satrapi. In this Iranian film, which is extremely critical of the religious party in power in Iran, there is a scene in which a young girl, revolted by human evil and oppression, speaks with a venerable old man with a long beard, symbolizing God. Because the representation of God is forbidden in Islam, radical Islamists held protest demonstrations and attacked the house of the network's director. Also, a number of lawyers initiated a legal case against him. The initial hearing was postponed until January 2012. On that occasion, two demonstrations were organized, one within the court house to support the network's director and the other in front of the court house to demand that he be convicted. These Islamist demonstrators attacked and wounded a university professor, Hamadi Redissi, as well as a very well known journalist, Ziyad Krichen. In response to these acts of aggression, a large demonstration was organized in Tunis on January 25, 2012.

Meanwhile, incidents of physical aggression began to multiply against intellectuals, artists, scholars, lecturers, or people considered to be "indecently" dressed according to the criteria of the militant Islamists. The top of controversy was reached in the middle of June 2012 with the affair of the "*ibdilīya*," an old hafsīde dynasty palace, where an exhibition was held of art works in an anti-conformist vein. The exhibition lasted about 10 days, and on the eve of the closing, Islamist demonstrations were organized; some bearded, athletic men entered the palace, and several works were destroyed. It later turned out that the work that was considered to be the most offensive had not even been displayed and that the whole affair was based on false reports posted on Facebook. The ministers of culture, of religious affairs, and of human rights, along with a representative of the minister of the interior, held a press conference at which they affirmed, in their words, at least, freedom of expression; but, seemingly in order to calm the agitation of the Islamist militants, they also stated that it

was not permitted to offend the sacred values of society and that any such offences should be punished. This notion of "offence against sacred things," *i'tida' ala al muqaddassat*," assumed enormous importance, and we will encounter it in two articles of the proposed constitution elaborated by committees of the national constituent assembly.

Following the "*ibdilīya*" affair, on August 1, 2012, the Nahdha Party submitted a draft of a law to the constituent assembly. Through a modification of article 165 of the penal code, the text sought to criminalize offences against sacred things, fixing a jail sentence of up to two years – four years in the

case of recidivism – and a fine of 2,000 dinars. “Sacred things,” as defined by the draft law, are the following: “God, Allah, may he be glorified, his prophets, his books, the Sunna of the Prophet, his messengers, the mosques, the churches, and the synagogues.” As for “offence,” it is defined as “insult, profanation, derision, and representation of Allah and of Mohammed.” From the formulations employed, it is clear that this proposal is situated directly in the surrounding political context.

The new constitution draft, as elaborated by the six constitutional committees, was very recently published, in August 2012. It contains two references to the above idea of “the sacred”. Article 4 of the first chapter, devoted to “General Principles,” provides: “The State protects religion, guarantees freedom of conscience and of religious practice. It protects sacred things [*muqaddassat*] and guarantees that places of worship **be** protected against partisan propaganda.” We find a second similar article in chapter 2 on “Rights and freedoms.” It reads: “The State guarantees freedom of belief as well as of religious practice, and it punishes any offence against the sacred values of religion.” Thus, the ruling party, which had renounced making sharia the source of law, is now maintaining that position even more forcefully. And one can say that the current wave of violence in Tunisia, should facilitate the way to those who defend the sacred against liberty.

In an important meeting organized on August 22, 2012 by the Tunisian Association of Constitutional Law, this proposed constitution fell under severe critics regarding both its form and its content by all the speakers. In addressing the audience, I stated in the introductory report for this meeting, which received very extensive coverage in the media: “With such laws we will be consecrating a theocratic government. You can say good-bye to the freedom that you have been offered by the revolution. The recourse to criminalization of offences to the sacred is the sign of a counter-revolution.” These remarks made headlines in the newspapers the following day, and I was invited to explain my position on television, on the radio, and in the written press.

Conclusion

I will close these lectures with a general remark. As I mentioned earlier, there is a very wide gap between the revolutionary message and the issues and themes raised since the elections of October 23. And the ruling party has to choose clearly between the one and the other.

If, as it clearly and officially states, the Nahdha Party continues to support the idea that the constitution is not the property of one party and that it should be the object of consensus, both within the Constituent Assembly and outside it, then we may hope that the things will work out for the best, even if not in “the best of all possible worlds.” If, on the contrary, the majority persists in its repeated attempts to inject polemical themes into the heart of public debate, then we may expect the worst. And we can assert, in the current situation characterized by a development of violence in the Islamic world after the “Muslim innocence” diffusion, that we are rather on the way of the worst than on the way of the best.

The prevarications of the majority party, its advances and retreats, should not be attributed, as it often is, to duplicitous language or to bad faith. Like political society as a whole, the Nahdha Party is composed of competing tendencies. In the minds of the militants and leaders who participated in formulating the October 18th platform, the party is obliged to take into account the views of the old guard, who insist on adhering to the letter of the text, and is characterized by a certain thinking rigidity. Beyond this horizontal divide, there also exists a vertical divide between the leadership of the party and its electoral base.

Other divisions have a direct impact on the constitutional debate. First, there is the ideological division within the governing troika itself. Then, above all, there is the presence of non-

governmental civil organizations, of other sorts of associations, of research centers, of unions, and of opposition parties, which have always been there to impede the tendencies which, if left unchecked, might call into question the gains achieved by the secularization of Tunisian society. Finally, we should note the existence of another factor at work within the political and electoral realm. The longer the majority party stays in power, the more its credibility will be weakened and the more its electoral base will shrink. The errors in the State's management of public affairs have been accumulating, and the troika is increasingly contested. It is perhaps in this perspective that one can explain why so many difficulties have arisen in the effort to reach an agreement on the law concerning the independent electoral authority and also why discussions have not even begun on the electoral law concerning the upcoming elections. The troika astonishes the observer by its passivity, its lack of a sense of what a State should be, its lack of internal cohesion, and its contradictory decisions. All these elements harbor substantial risks. To avoid them, we must move as quickly as possible to the adoption of the constitution and the election of a stable regime with permanent and democratic institutions. While democracy, as some brilliant minds have said, is not the best regime, it nevertheless constitutes the best way of resolving not only the problem of freedom but also that of the internal contradictions within a post- revolutionary society which is truly in a state of political turmoil.

Yadh Ben Achour, La Marsa, Wednesday 29 August 2012.

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