The Civil State in Tunisia's Constitutional Trajectories: Between the Explicit and the Implicit

Dr. Kaouthar Debbeche *

ABSTRACT

This article explores the role that the constitutional dimension has played in the construction of the civil state, whose foundations are one of the constitutive elements of the 'DNA' of the Tunisian modernisation project. This requires returning to the historical roots of that construction and examining the country's successive constitutional trajectories. By analysing constitutional texts, the core elements of the relevant legislative framework, and jurisprudential interpretations, the study argues that the constitutional dimension served as a mechanism for consolidating a civil state project that predated Tunisia's constitutional experiences.

On this basis, the article distinguishes between two phases. The first spans the period between the Constitutions of 1 June 1959 and 27 January 2014 respectively, during which the civil state project developed with relative continuity, notwithstanding constitutional limitations. The second phase begins with the constitutional moment of 25 July 2022, which marked a decisive rupture and a departure from the previous trajectory. During this phase, the constitutional text became an obstacle to the civil current —indeed, a moment of interruption in the constitutional momentum of the civil state. The new constitution obscured the civil state and introduced the "*maqasid* of Islam" into the text, which, under a strict interpretation, could obstruct what we have described as the 'vessel' toward the civil state.

Keywords: *Civil state, constitution, modernity/modernisation, religion, sharia, laïcité, secularism, religious state, popular sovereignty, democracy, human rights, equality, citizenship,* maqasid.

* Kaouthar Debbeche (PhD) is a Professor of Public Law at the Faculty of Legal, Political, and Social Sciences of the University of Carthage in Tunis.
This paper was finalised in December 2025.

CONTENTS

INTRODUCTION 184

I. THE CONSTITUTIONAL FOUNDATIONS OF THE CIVIL STATE: BETWEEN THE 1959 AND 2014 CONSTITUTIONS 191

A. The Silent Constitutional 'Endorsement' of the Civil State in the 1959 Constitution 192

B. The 2014 Constitution: the Explicit Constitutionalisation of the Civil State 203

II. THE 2022 CONSTITUTIONAL MOMENT: THE INTERRUPTION OF THE CONSTITUTIONAL MOMENTUM OF THE CIVIL STATE 211

A. The Obscuring of the Civil State 211

B. Maqasid and the 'Vessel' Toward the Civil State 218

BIBLIOGRAPHY 232

Introduction

The philosophical foundations of the civil state —one of the constitutive elements of the 'DNA' of the Tunisian modernisation project—[1] may be traced to the ideas of Jean-Jacques Rousseau, particularly his account of the transition from the state of nature to the civil state. According to Rousseau, this transition occurs through the establishment of the social contract, whereby the individual renounces natural and instinctual liberty in order to attain moral freedom.[2]

Within this contractual framework, the defining features of the civil state —notably equality before the law and citizenship— gradually become articulated as principles embedded in the 'clauses' of the social contract. The contract thus establishes legal equality among citizens and guarantees the equal enjoyment of rights.

Depending on the nature of the contract, "every act of sovereignty —that is, every authentic expression of the general will— binds citizens equally."[3] The civil state, founded upon equality before the law, thus emerges as the bond linking the citizen to the state's "civil authority,"[4] independent of any personalised or religious power.

This conception is rooted in the emergence of the state in its modern European sense.[5] Its formation is commonly understood to have resulted from the progressive severance of political authority from religious domination, particularly from the moment when "Christianity ceased to be a heavenly message once it became the religion of the Roman emperor Constantine, who, from 312 CE onward, turned it into an instrument for controlling the minds of his subjects,"[6] and when it "gradually transformed into a political ideology."[7]

---

1 Regarding the concepts of 'modernity' and 'modernisation,' and the extent to which their core is intrinsically linked to the "attempt to attain autonomy from all constraints imposed by customs and traditions rooted in the past," see: Manuelita Scigliano, « Modernité, » in *Encyclopédie de Science Politique*, edited by Hatem M'rad (Tunis: ATEP, 2025), 702. See also, on the civil state and the "specificity of the Tunisian modernisation process": Slim Laghmani, "Al-Dawla Al-Madaniyya: Manzila Bayna Manzilati Al-Dawla Al-Diniyya Wa Al-Dawla Al-'Ilmaniyya" [The Civil State: Positioned between the Religious State and the Secular State], in *Writings on Politics and the Constitution in the Aftermath of the Revolution*, edited by Slim Laghmani (Tunis: Nirvana Publications, 2020), 20.

2 Jean-Jacques Rousseau, *Du Contrat social* (Tunis: Cérès Éditions, 1994), 21. See in this respect: Salsabil Klibi, « La loi et le caractère civil de l'État, » in *La loi*, coordinated by Mootez Gargouri and Lamia Neji, Proceedings of the conference organised by the Faculty of Law of Sfax, the Tunisian Association of Constitutional Law, and the Association for Research on Democratic Transitions, on 11–12 April 2019 (Tunis: Latrach Éditions, 2022), 33, 46. See regarding the use of this theoretical reference: Kaouthar Debbeche, *Individual Freedoms and Article 55: Is There Another Reading?* (Stockholm: International Institute for Democracy and Electoral Assistance, 2023), 134.

3 Rousseau, *Du contrat social*, 36.

4 Dominique Carreau, Andrea Hamann, and Fabrizio Marrella, *Droit international*, 13th ed. (Paris: Éditions A. Pedone, 2022), 52.

5 Ibid.

6 **Redha Chennoufi,** *Tunis, al-Din aw al-Dawla? Mughallatat wa Hulul* [*Tunisia: Religion or the State? Misconceptions and Solutions]* (Tunis: Saras Publishing, 2012), 17.

7 Ibid., 15.

This process restored the core meaning to the civil state, which, in the Roman context, was associated both civilisationally and terminologically with citizenship.[8] This association is reflected in the Latin term *civitas* and its counterpart *libertas*, "both of which referred to a form of organising power in which the people were presumed to be both the source and the measure."[9]

It is noteworthy that grounding the civil state in citizenship did not entail the exclusion of all religious functions, given religion's "ethical utility […] once its status as truth was removed."[10] This is evident in *The Social Contract*, where Jean-Jacques Rousseau theorises a "civil religion," which he regards as a moral necessity. This civil religion consists in "the existence of a mighty, intelligent and beneficent Divinity, possessed of foresight and providence; the life to come; the happiness of the just; the punishment of the wicked; and the sanctity of the social contract and the laws [...] namely the exclusion of intolerance."[11]

The French Revolution sought to institutionalise this form of civil religion through the consecration of the "Supreme Being," in whose presence, and with whose hoped-for blessing and favour, the Declaration of the Rights of Man and of the Citizen was proclaimed, as stated in its preamble.[12] Maximilien Robespierre even dedicated a "festival" to it, during which a life-sized effigy representing atheism —regarded as hostile to civil religion— was burned.[13]

Thus, in France, "secular morality" emerged only through a historical process that ultimately revealed the failure to establish a "form of civil religion capable of providing a consensual ethical foundation."[14]

It is particularly noteworthy that this conceptual construction was taken up by the pioneers of the nineteenth-century Arab reformist movement in order to lay the foundations of an alternative Islamic project. This project was intended to serve as a substitute for a secularism regarded as politically unattainable, by dismantling the bonds between political authority and religion.[15]

---

8 Lamia Neji, "Madaniyyat al-Dawla" [The Civil Nature of the State] in *Readings in the Constitution of the Second Republic (the 27 January 2014 Constitution): Proceedings of the Conference 'The New Constitution of the Tunisian Republic,'* 8–10 March 2014, Publications of the Doctoral School, Faculty of Law of Sfax, no. 4 (2017), 32.

9 Paul Magnette, *La citoyenneté, une histoire de l'idée de participation civique* (Brussels: Bruylant, 2001), 39. See on this jurisprudential reference: Neji, "The Civil Nature of the State," 32.

10 Jean Bauberot, « Laïcité, » in *Dictionnaire d'éthique et de philosophie morale*, vol. 2, 2nd ed., edited by Monique Canto-Sperber (Paris: Quadrige/PUF, 2014), 1059.

11 Rousseau, *Du contrat social*, 143.

12 Déclaration des droits de l'homme et du citoyen de 1789. See, on this point: Chennoufi, *Tunisia: Religion or the State?*, 23.

13 Ibid.

14 Bauberot, « Laïcité, » 1065.

15 Klibi, « La loi et le caractère civil, » 33–34.

In this regard, it was a strikingly foundational move for Muhammad Abduh to characterise the "overthrow of religious authority" as one of the "principles of Islam."[16] In a dialogue with the "Franks," he further commended the fact that "among the practices of modern civilisation (in their societies) is the separation of religious authority from civil authority […] and they have considered this separation a source of the greatest common good."[17]

The question of religion, and the extent to which the state should be separated from it, is therefore central to the emergence of this concept in the Tunisian context. What may appear as a shift in meaning[18] —wherein the concept also comes to signify opposition to military rule— can be understood in light of the Egyptian experience, particularly the Muslim Brotherhood's confrontation with Gamal Abdel Nasser's regime during the early years of the Free Officers' rule,[19] as well as a broader rejection of the notion that political legitimacy could be founded on violence or military authority.[20]

This expansive conceptual capacity has been examined by some Tunisian scholars who reject a strict opposition between the civil state and the military state, arguing that the issue rests on "a misunderstanding that conflates the civil state with civilian rule, which alone stands in opposition to military rule."[21] Yet this "semantic duality"[22] served a neutralising function, as it was able both to dissipate fears regarding the stance of the army and internal security forces, and to "ward off the spectre of a military coup" that loomed large in the Egyptian experience.[23]

If the concept is synthesised, it ultimately points to the principle that the state in general, and its legal system in particular, should not be grounded in any particular identity or interest. Sectarian, military, tribal, clan-based, party-based, ideological, or region-based states all represent forms of political organisation founded upon a specific and exclusive subjectivity.[24]

Nonetheless, the question of religion, and the manner in which it is neutralised, remains central to the development of the civil state. This concept is often more precise than others, such as secularism, "which is commonly defined as the separation of religion and the state, even though it more precisely refers to the separation of churches from the state."[25]

---

16 **Muhammad Abduh,** *Al-Islam Bayn al-'Ilm wa al-Madaniyya* [Islam Between Science and Civilisation] *(*Cairo: Hindawi Foundation for Education and Culture, 2010), 80–82. See also, by way of example, on the invocation of this juristic reference: Klibi, « La loi et le caractère civil, » 33–34; Jean-Philippe Bras, « Un État 'civil' peut-il être religieux ? Débats tunisiens, » *Pouvoirs*, no. 156 (2016/1): 66.

17 Abduh, *Islam between Science and Civilisation*, 83.

18 Bras, « Un État 'civil' peut-il être religieux?, » 65.

19 Ibid.

20 Ibid.

21 Neji, "The Civil Nature of the State," 34.

22 Bras, « Un État 'civil' peut-il être religieux?, » 66.

23 Ibid., 65.

24 Ghazi Gherairi, « Le caractère civil de l'État tunisien , » in *La Constitution de la Tunisie. Processus, principes et perspectives* (Tunis: PNUD, 2016), 121.

25 Chennoufi, *Tunisia: Religion or the State?*, 11.

In a related vein, Slim Laghmani considers the civil state to occupy an intermediate position "between the religious state and the secular state."[26] He defines the religious state as encompassing "types and degrees ranging from a political system ruled by a religious authority or clergy, which is not applicable in Sunni Islam, to a political system governed by a civil authority whose project is to realize a comprehensive, if not totalising, Islamic order. At the legal level, the religious state is one that adopts religious rules as legislation and therefore does not accept popular sovereignty, and thus democracy, on the grounds that sovereignty belongs to God and that ultimate authority is His."[27]

By contrast, the secular state "is characterised by a radical separation between religion and the state, as in the French model: the state has no official religion, education is religiously neutral, and the state neither recognises any form of worship nor funds religious activities or institutions."[28] Laghmani concludes that the civil state stands "at an equal distance from these two poles."[29]

However, in order to prevent the civil state from becoming a "religious state in disguise,"[30] any "privileges"[31] granted to a particular religion must remain marginal[32] and strictly limited. Even on the assumption that there is "no absolute separation between the civil state and religion,"[33] the connection must be sufficiently attenuated so as not to compromise the normative foundations of the civil state.

From this perspective, the dynamic definition of the civil state advanced by Redha Chennoufi becomes more intelligible. He describes it as "a form of governance based on four principles: the principle of equality among citizens, the principle of freedom of conscience, the principle of separation between the state and theology in all its forms, and the principle of state neutrality." Chennoufi argues that "the first and second principles constitute the ultimate political goals and are non-negotiable," while "the third and fourth principles define the institutional mechanisms for achieving those goals, and their implementation may be adjusted or modified according to the national context in which they are applied."[34]

---

26 Laghmani, "The Civil State," 15–22.
27 Ibid., 17.
28 Ibid., 16–17.
29 Ibid., 17.
30 Ibid., 20.
31 Sana Ben Achour, « L'arbre qui cache la forêt : De l'Islam religion d'État à l'Islam communautaire, » *Dissonances/Nachaz*, 19 June 2022. More generally, on the "privileged status accorded to Islamic legislation in the constitutions of Arab states," see: Bashir al-Takkari, "Makanat al-Shari'a al-Islamiyya fi Dusatir al-Duwal al-'Arabiyya" [The Status of Islamic Sharia in the Constitutions of Arab States], *The Tunisian Legal Journal* (1982): 39.
32 Laghmani, "The Civil State," 20.
33 Ibid., 18.
34 Chennoufi, *Tunisia: Religion or the State?*, 49–51. See also regarding the definition of the civil state: Sami Bostangi, « La guerre de l'article premier n'aura pas lieu, » *Observatoire de la Transition Démocratique*, 3 October 2011, 2.

From this perspective, it may be argued that Tunisia began its journey toward a civil state as early as the *Ahd al-Aman* (Fundamental Pact), the first declaration of rights, issued on 9 September 1857 under Mohammed Bey.[35]

In Article 1, the Fundamental Pact "affirms that all our subjects and residents under our jurisdiction, of different religions, languages, and races, are revered in their person and property, and respected in their honour,"[36] establishing equality between Tunisians and non-Tunisians. This commitment to equality was further reinforced in Article 3, which emphasised the "equal entitlement of Muslims and other inhabitants to justice, as their claim is based on their humanity and not on any other distinction."[37]

Moreover, the king's declaration in the Fundamental Pact that "God and this distinguished assembly witness, in respect for my person and for my successors, that no act shall be carried out except in accordance with this pact,"[38] rendered the inclination toward a civil state "final and irreversible."[39] This principle was subsequently enshrined in the Tunisian Constitution (Law of the Tunisian State) of 26 April 1861.[40]

In continuity with the *Ahd al-Aman*, equality among subjects "regardless of religion"[41] was proclaimed, while the organisation of power was structured in accordance with the historical development of constitutional law. At the same time, this marked a significant shift in Tunisian political life,[42] as it curtailed "absolute" royal power.[43]

Mohammed Bey is credited with "attempting to unify the judiciary"[44] despite the "complexity" of the judicial system in place at the time.[45] At the same time, he issued the Criminal Code and Martial Law,[46] comprising 664 articles that codified the rules to be applied by the courts, drawing on "the Hanafi and Maliki schools of law" as well as comparative legislation,

---

35 Rafaa Ben Achour, *Al-Mu'assasat wa al-Nizam al-Siyasi bi-Tunis. Al-Itar al-Tarikhi: al-Nizam al-Siyasi 1959–2011, al-Nizam al-Siyasi fi Zill Dustur 2014* [Institutions and the Political System in Tunisia: Historical Framework – The Political System 1959 –2011 – The Political System under the 2014 Constitution], 3rd ed. (Latrach Édition, 2019), 49.

36 The text of the Fundamental Pact (*Ahd al-Aman*) in Abdel Fattah Omar and Kais Saied, *Nusus wa Watha'iq Siyasiyya Tunsiyya* [Tunisian Political Texts and Documents] (Tunis: Center for Studies, Research, and Publishing, 1987), 11.

37 Ibid.

38 Ibid., 12.

39 Chennoufi, *Tunisia: Religion or the State?*, 56.

40 Al-Hadi Al-Taymoumi, *Tunis wa al-Tahdith (1831–1877): Awwal Dustur fi al-'Alam al-Islami* [Tunisia and Modernisation (1831–1877): The First Constitution in the Islamic World] (Tunisia: Mohamed Ali Publishing House, 2010), 140.

41 See Articles 86, 89, and 90 of the 1861 Constitution (Law of the Tunisian State), 26 April 1861, in Omar and Saeid, *Tunisian Political Texts and Documents*, 44–45.

42 Al-Taymoumi, *Tunisia and Modernisation, (1831–1877)*, 119.

43 Ibid., 121. On the organisation of authorities see: Ben Achour, *Institutions and the Political System in Tunisia*, 52–27.

44 Ali Mezghani, *Droit international privé: États nouveaux et relations privées internationales* (Tunis: Cérès, 1991), 72.

45 Al-Taymoumi, *Tunisia and Modernisation (1831–1877)*, 121.

46 The Criminal Code, known as the Code of Crimes and Martial Provisions, issued by the High Order dated 24 December 1860, came into force on 26 April 1861. See Bashir al-Manoubi al-Fershishi, "Hatmiyyat Muraja'at Majallat al-Ijra'at al-Jaza'iyya" [The Necessity of Revising the Code of Criminal Procedure], in *Centennial of Criminal Procedure*, edited by Rashida al-Jalassi Belkheiriyah and Bashir al-Manoubi al-Fershishi, Series of Forums of the Research Unit in Criminal Sciences and Criminology (Tunis: Latrach Édition, 2024), 322, note 2. See also, regarding this text: Sana Ben Achour, « Aux sources du droit moderne tunisien : la législation tunisienne en période coloniale, » PhD diss., Faculty of Legal, Political, and Social Sciences of Tunis, 1996, 119.

particularly French law.[47] This occurred within a "historical enrichment movement," embodied in a bold and innovative process of modernisation that, to varying degrees, affected the military, economic, political, legislative and educational spheres.[48]

It may be argued that this movement "created the objective conditions"[49] for the gradual consolidation of the two pillars of the civil state: equality and the "authority of the state" in the production of law[50] based on objective principles. The foundations laid during this period continued under the French Protectorate and were further developed in the early twentieth century.[51] Rooted in its specific historical context and drawing on multiple references, this process produced a "modern Tunisian law that reflects a distinct identity." [52]

Thus, in the Tunisian context, law served as a "vehicle for modernity,"[53] while gradually "neutralising"[54] the religious factor even before independence and the construction of the national state, in such a way that the signification preceded the signifier.[55]

The constitution, in its dual dimension —both as a "political concept," that is, the outcome of the gradual translation of political demands into legal form, or as a snapshot of society at a given historical moment, and as a "legal concept referring to a specific component of the legal order"[56] — cannot be understood in isolation from this historical process and the distinctive legal structure it generated.

Tunisia has experienced three constitutional trajectories, each emerging from different foundational contexts, procedures and historical backgrounds, and each resulting in the adoption of a distinct constitution.

---

47 Al-Taymoumi, *Tunisia and Modernisation (1831–1877)*, 122.

48 Ibid, 13.

49 Chennoufi, *Tunisia: Religion or the State?*, 72.

50 We borrow this phrase from Ali Mezghani, who used it in a related context when discussing the Code of Personal Status, which, upon its enactment, "strengthened the state's hold over the law." (« L'emprise de l'État sur le Droit »). See on this matter: Ali Mezghani, « Religion, mariage et succession : l'hypothèse laïque. À propos d'une (R) évolution récente de la jurisprudence tunisienne, » in *Droits et culture: Mélanges en l'honneur du Doyen Yadh Ben Achour* (Tunis: CPU, 2008), 345. See also: Bostangi , « La guerre de l'article premier n'aura pas lieu, » 2.

51 See also on the "codification movement": Hatem Abdel Hamid al-Rawatibi, "Majallat al-Iltizamat wa al-'Uqud wa al-Islam"
[Code of Obligations and Contracts and Islam], in *Livre du centenaire du Code des obligations et des contrats, 1906–2006*, edited by Mohamed Kamel Charfeddine (Tunis: CPU, 2006), 186.

52 Sa. Ben Achour, « Aux sources du droit moderne tunisien, » 110.

53 Ali Mezghani and Slim Laghmani, "Taqdim" [Introduction], in *Essays on Modernity and Law*, edited by Ali Mezghani and Slim Laghmani (Tunis: Dar Al-Janoub for Publishing, 1994), 8.

54 This concept will be used extensively in this article in relation to the lack of legal effect of the religious element on the law, a notion that is common in Tunisian jurisprudence. See, for example, in discussions of the development of judicial doctrine, the reference to "neutralising the effect of religion on the content of the law" in Mezghani, « Religion, mariage et succession,» 366. See also: Bostangi , « La guerre de l'article premier n'aura pas lieu, » 4.

55 See on the emergence of this "signifier" in relation to the debates of the Tunisian Constituent National Assembly: Mezghani, « Religion, mariage et succession, » 366. See also: Bostangi , « La guerre de l'article premier n'aura pas lieu, » 4.

56 Louis Favoreu et al., *Droit constitutionnel*, 25th ed. (Paris: Dalloz, 2022), 79.

The first was the constitution that established the modern state following independence, adopted on 1 June 1959.[57] It was drafted by an elected National Constituent Assembly which, although initially entrusted with preparing a constitution for a monarchy,[58] proclaimed the Republic on 25 July 1957[59] and subsequently adopted a constitution affirming the principles of popular sovereignty.[60] The second was the Constitution of 27 January 2014,[61] known as the Constitution of the Revolution. Its relationship with the 1959 Constitution was marked by tension between the desire to "break with the past" and the "impossibility of completely severing the legacy of the Tunisian state and its institutions."[62] This was followed by the Constitution of 25 July 2022,[63] described by its drafter as a "course-correcting constitution."[64] It replaced the 2014 Constitution, which had been "designed so that every party could have its share,"[65] and was formulated by a "original, unilateral constituent authority"[66] without permitting genuine deliberation over the "choices" that guided its drafting.[67]

---

57 *Constitution of the Republic of Tunisia*, 1 June 1959 (Tunis: Publications of the Official Printing House of the Republic of Tunisia, 2008).

58 "A 'National Constituent Assembly' was convened to 'adopt a Constitution (for the Kingdom)' pursuant to the royal decree dated 29 December 1955 concerning the establishment of a National Constituent Assembly, in Omar and Saeid, *Tunisian Political Texts and Documents*, 104.

59 Decision of the Constituent National Assembly on the Declaration of the Republic, 25 July 1957, in Omar and Saeid, *Tunisian Political Texts and Documents*, 180. On the transformation of the assembly from a "restricted constituent authority to an original constituent authority," see: Ben Achour, *Institutions and the Political System in Tunisia*, 84. Also see on the assembly's working methods, "organisation," and "outcome," ibid., 55–88.

60 See on the content of the constitution and its "fundamental principles," ibid., 89–99.

61 Constitution of the Republic of Tunisia, 27 January 2014, Official Gazette of the Republic of Tunisia (Special Issue), 10 February 2014. The constitution was drafted by an elected Constituent National Assembly, which was mandated to draft a "new constitution" under Decree No. 14 of 2011, dated 23 March 2011, on the provisional organisation of public authorities, Official Gazette, No. 20, 367. On the "mandate of the assembly" and the "constituent process," including "drafting" and "drafts" leading to the "adoption of the constitution," see: Ben Achour, *Institutions and the Political System in Tunisia*, 215–291. Also see : Slim Laghmani, « Les ambivalences de la Constitution tunisienne du 27 janvier 2014, » in *Écrits politiques et constitutionnels depuis la Révolution*, edited by Slim Laghmani (Tunis: Nirvana, 2020), 101–109.

62 Ben Achour, *Institutions and the Political System in Tunisia*, 244. See on the "general principles of the constitution," ibid., 292–311. See also the collective work: PNUD, *La Constitution de la Tunisie. Processus, principes et perspectives* (Tunis: PNUD, 2016).

63 Constitution of the Republic of Tunisia, 25 July 2022, *Official Gazette*, Special Issue, 18 August 2022, 48 pages. The process began on 25 July 2021, following the application of Article 80 of the 2014 Constitution concerning the constitutional state of exception, and went through various stages, including the electronic "popular consultation" and the advisory body established under Decree No. 30 of 2022, dated 19 May 2022, which created the National Advisory Commission for a New Republic. This commission was tasked under Article 2 of the same decree with "submitting a proposal for drafting a draft constitution for a new republic" (*Official Gazette*, No. 56, 20 May 2022, 1614), but its proposal was not adopted. The process concluded with the draft constitution being submitted to a referendum on 25 July 2022 and subsequently ratified. See Arab Association of Constitutional Law, *Tunisia – The Referendum on the New Constitution: The Process of Drafting and Ratification*, August 2022. See on the process and text: Salsabil Klibi, « La Constitution du 25 juillet 2022, constitution de la dé-démocratisation,» in *Le pouvoir d'un seul*, edited by Hamadi Redissi (Tunis: Diwen Éditions, 2023), 85–102.

64 Explanatory Memorandum of the Authority Calling the Referendum, 3.

65 Ibid., 1.

66 Amine Thabet, "Dustur 25 July 2022: Taqyim al-Masar al-Ta'sisi wa al-Dusturi al-Ri'asi" [Constitution of 25 July 2022: An Assessment of the Presidential Constituent and Constitutional Process], in *The Kaïs Saied Project: Critical Approaches* (collective volume), (Tunis: Centre for Strategic Studies on the Maghreb Publications, 2023).

67 Arab Association of Constitutional Law, *The 2022 Constitutional Referendum in Tunisia*, 2022, 7.

The profound differences among the three constitutional settings —particularly in the manner in which each defines "the relationship between the state and religion,"[68] the varying intensity of that relationship, and the different strategies adopted by key actors in invoking religion explicitly or implicitly— require us to examine the way in which the constitutional framework has addressed the project of a civil state. This project had already begun to take shape prior to the emergence of the modern constitutional experience.

Indeed, on the basis of the view that, in the Tunisian experience, the constitutional framework functioned as a means of consolidating a civil state project that had already begun to develop in practice, rather than establishing it ab initio,[69] it is necessary to adopt a chronological approach alongside a substantive one.

At certain stages, the civil state project progressed relatively smoothly, supported by constitutional provisions despite the presence of specific obstacles. This was the case under the 1959 and 2014 Constitutions (I). At other stages, however, the trajectory proved more disrupted, and the constitutional text itself became an impediment to the civil current. This occurred with the 2022 Constitution, which marked a momentary interruption in the constitutional development[70] of the civil state (II).

I. The Constitutional Foundations of the Civil State: Between the 1959 and 2014 Constitutions

Tracing the "genealogy" of the civil state in Tunisia requires an examination of the 1959 Constitution. This constitution was, at the time, "the first historical constitution,"[71] in the sense defined by the legal scholar Louis Favoreu —that is, "the set of constitutional rules formally emerging from the latest legal revolution."[72] However, it was not the initial building block of the civil state project. In our view, the project had already begun prior to 1959, and the constitution functioned more as a silent "endorsement,"[73] that did not obstruct the process and allowed it to continue (A). Despite the challenges of the second founding path following the January 2011 Revolution, this trajectory ultimately resulted in the explicit constitutional recognition of the state[74] (B).

---

68 Ben Achour, *Institutions and the Political System in Tunisia*, 244.

69 Mezghani states that "independence was a culmination, not a starting point, in the development of a modern legal system." Mezghani, *Droit international privé*, 71.

70 It is interesting to note that the use of the term "expansion" (*al-madd*) in relation to the analysis of the Tunisian experience –although entirely outside the constitutional context– has been associated with "*maqasid*-based reasoning," which has been described as an "expansion of *ijtihad*," particularly regarding "equality" and "personal status" (which will be addressed in the second part of this study): Presidency of the Republic, *Report of the Committee on Individual Freedoms and Equality*, (Tunis, 1 June 2018), 11. See on the committee: Ibid., 35, footnote 414.

71 Favoreu et al., *Droit constitutionnel*, 129.

72 Ibid.

73 In practice, the notion of a "constitutional endorsement" is not infrequently invoked in jurisprudence, even when the contexts and subject matter are entirely different. See Pierre Vandernoot, « Regards du Conseil d'État sur une disposition orpheline : L'article 34 de la Constitution, » in *En hommage à Francis Delpérée, Itinéraires d'un constitutionnaliste* (Brussels: Bruylant/Paris: L.G.D.J., 2007), 1614.

74 See in the same respect: Neji, "The Civil Nature of the State," 44.

A. The Silent Constitutional 'Endorsement' of the Civil State in the 1959 Constitution

Some scholars have sought to "demonstrate that the 1959 Constitution effectively established a civil state,"[75] for the people are strongly present in the constitutional text, in so far as they are the holders of sovereignty under Article 3.[76] This sovereignty provided the foundation for the democracy that was to be established, according to the preamble. Article 6 further reinforced equality, stipulating that "All citizens have the same rights and obligations. All are equal before the law.[77]"

However, how does this align with Article 1,[78] which states that "Tunisia is a free, independent and sovereign state. Its religion is Islam, its language is Arabic and its type of government is the Republic"?

In fact, we argue that these constitutional provisions did not directly or explicitly "establish" a civil state. Beyond the early signs of authoritarianism —reflected in the reference to "public order" as a mechanism to limit liberties,[79] which constrained the full realisation of civil state principles— the foundation of the civil state was largely implicit.

Specifically, regarding Article 1, the preparatory works on the phrase "Its religion is Islam" indicate the founders' intent to preserve the religious reference in a minimal form. Had this not been the case, the first draft of the constitution, presented for discussion on 14 April 1956, which read "Tunisia is an Arab Islamic sovereign state,"[80] might have been adopted. Instead, the final version of Article 1 was formulated as "a reference solely to the cultural dimension of Tunisian reality, without conferring any normative constitutional authority.[81]"

---

75 Chennoufi, *Tunisia: Religion or the State?*, 98. See in the same vein Lamia Neji, despite her emphasis on the "absence of an explicit reference to civility" in the constitution: Neji, "The Civil Nature of the State," 35.

76 Neji, "The Civil Nature of the State," 36.

77 Ibid., 38.

78 See on the concepts of "constitutional design" and "constitutional engineering" employed in this article: Marwa Fekri, "Tasmim al-dasatir wa bina al-thiqa: dirasah fi tajarib al-intiqal al-dimuqrati min manzur muqaran" [Constitutional Design and Trust-Building: A Comparative Study of Democratic Transition Experiences], *Siyasat Arabiya* 9, no. 52 (September 2021): 24, note 2. The concept of "constitutional engineering" is also discussed in Dave Guénette, « L'architecture constitutionnelle – Dimensions artistiques d'une construction juridique, » *Les Cahiers de droit* 58, nos 1–2 (mars–juin 2017): 33–65.

79 Chennoufi, *Tunisia: Religion or the State?*, 98.

80 Neji, "The Civil Nature of the State," 37. See the context of this discussion and the interpretive aspects in relation to Article 1 in: Mohammed al-Shadhili Nifer, "Mas'alat al-Islam wa al-Lugha amam al-Majlis al-Qawmi al-Ta'sisi" [The Issue of Islam and Language before the National Constituent Assembly], in *National Constituent Assembly, Proceedings of the Forum, 29–31 May 1984* (Tunis: Centre for Studies, Research, and Publishing, 1986), 179–184.

81 Sadok Belaid, "Article One: 'Tunisia, a Free, Independent, Sovereign State, Islam as its Religion…'," in: *Les dispositions générales de la Constitution, Actes du colloque de commémoration du cinquantenaire de la promulgation de la Constitution tunisienne du 1er juin 1959 (Tunis, 23–24 janvier 2009)* (Tunis, 2010), 36.

In our view, this cautious formulation allowed, despite its inherent risks, a silent endorsement of the civil state project, particularly since the Constitution did not enshrine sharia as a formal source of legislation[82] and affirmed equality —which, according to Chennoufi, constitutes the core of the civil state and its "ultimate political goal."[83]

This approach facilitated the broader process of legal and institutional "unification"[84] that characterised modern Tunisian history prior to independence,[85] particularly with respect to civil law matters (1), and continued to shape the public sphere, which was intended to be distinctly civil (2).

1. Constitutional support for the process of liberating civil law from religious constraints: the three pillars86 for neutralising the private sphere

With regard to the regulation of private relations, the 1959 Constitution did not impede the process of legal unification, which had in fact commenced in the early twentieth century under the Protectorate. This process continued after independence, deriving its renewed legitimacy from the religiously neutral reference in Article 1 and the constitutional guarantee of equality set out in Article 6. [87]

Thus, the constitution did not constitute a "break"[88] in the process of legal unification, which applied to all Tunisians regardless of their religion.[89] This was particularly significant in relation to the "(three) pillars of civil law: the family (1.1), property (1.2), and contract (1.3)."[90]

---

82 This differs from several other Arab and Islamic countries. See: Al-Takkari, "The Status of Islamic Sharia in the Constitutions of Arab States," 35–37. See also: Jean-François Rycx and Gilles Blanchi, « Références à l'Islam dans le droit public positif en pays arabes, » *Pouvoirs*, no. 12 (1983): 63–64.

83 Chennoufi, *Tunisia: Religion or the State?*, 51.

84 The unification of legislation and the judiciary is a topic extensively discussed by Tunisian legal scholars. See, for example, on "judicial and legislative unification": Mohamed Sherfi, Ali Mezghani, and Malik Ghazouani, *Al-Madkhal li-Dirasat al-Qanun* [Introduction to the Study of Law], 3rd ed. (Tunis: Nirvana, 2023), 293; see in the same direction: Rashida al-Jalassi, "The Code of Personal Status: Accumulation and Foundation," in Ben Achour and Al-Jalassi, *Sixty Years of the Personal Status Code (1956–2016)*, 50.

85 Moreover, some scholars have referred to the dialectic between the constitution and the law in relation to the "founding" of the civil state since independence: Neji, "The Civil Nature of the State," 39.

86 Nicolas Laurent-Bonne, Nicolas Pose, and Victor Simon (eds.), *Les piliers du droit civil. Famille, propriété, contrat* (Paris: Mare and Martin, 2015).

87 Neji, "The Civil Nature of the State," 38.

88 On the terminology of "break with the past," which is central to this study, see: Emérentienne de Lagrange, « Le législateur tunisien et ses interprètes, » *Revue tunisienne de droit* (1968) : 15.

89 See in this respect : Ibid.

90 Laurent-Bonne, Pose, and Simon, *Les piliers du droit civil*, 2015. Along the same lines: Souhayma Ben Achour, *Qanun al-Usra* [The Family Code], 2nd ed. (Tunis: Dar Al-Kitab, 2025), 19. *This is inspired by the trilogy of the French jurist Jean* Carbonnier, which he considers as constituting the "legal system": Jean Carbonnier, *Flexible droit : pour une sociologie du droit sans rigueur*, 10th ed. (Paris: LGDJ, 2001), 255.

A. Family [91]

In a remarkable paradigmatic shift, given the historical context in which it was enacted,[92] and as a proactive step toward establishing the new social contract that would precede the political constitution,[93] the issuance of the Personal Status Code on 13 August 1956[94] marked a decisive moment in the process of "modernisation,"[95] and the development of the civil state, while partially departing from the "traditional solutions of Islamic legislation."[96]

Beyond the fact that it contained no reference to sharia as a source for interpreting its provisions, in a clear distinction from personal status laws in other Arab Islamic countries,[97] the legislator introduced a series of revolutionary measures in family law. These included "the rejection of guardianship over the wife, the prohibition of forced marriage,"[98] the recognition of women's legal capacity in marriage and their freedom to choose a spouse,[99]

91 See also on the distinction between the term "family law" and the term "personal status law": So. Ben Achour, *The Family Code*, 25.

92 In relation to the risks of rolling back this change, Bostangi considered personal status laws to be one of the strongholds of "rationalisation" associated with "modernity," whose resulting "paradigms" are "difficult to tamper with" due to the "complexity of social life." Bostangi , « La guerre de l'article premier n'aura pas lieu, »7.

93 Sa. Ben Achour, *The Family Code*, 31–33. Regarding the concept of the "political constitution," see Maurice Hauriou, who distinguishes it from the "social constitution" in reference to "individual rights": Maurice Hauriou, *Précis de droit constitutionnel*, 2nd ed. (Paris : Librairie de Recueil Sirey, 1929), 611–612.

94 The Personal Status Code was issued by the High Order dated 13 August 1956: *Personal Status Code*, updated version (Tunis: Official Printing Office of the Republic of Tunisia, 2024).

95 So. Ben Achour, *The Family Code*, 20.

96 Souhayma Ben Achour, « L'interprétation du droit tunisien de la famille : entre référence à l'Islam et appel aux droits fondamentaux, » in *L'interprétation de la norme juridique*, edited by Mounir Snoussi et Souhayma Ben Achour, conference organised by the Faculty of Legal, Economic, and Management Sciences of Jendouba, on 5–6 April 2010, with the support of the Hans Seidel Foundation (2011), 17. See on the difference between the "Tunisian Family Code […] in the Arab world" and "the Arab laws that preceded it (Personal Status Journal) … (and those) that were issued decades after the journal," and for a detailed discussion of these texts: So. Ben Achour, *Family Law*, 20–21.

97 So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 18. Ben Achour actually refers to the Algerian and Moroccan systems. In Algeria, Article 222 of Law No. 84-11 dated 9 Ramadan 1404/9 June 1984, containing the Family Code, as amended and supplemented by Order No. 05-02 dated 27 February 2005, provides: "Any matter not explicitly addressed in this law shall be referred to the provisions of Islamic sharia." (*Family Code* (Algeria: Ministry of Justice, Publications of the National Office for Educational Works, 2005, 43)). In Morocco, Article 400 of the Moroccan Family Code provides: "Anything not explicitly addressed in this code shall be referred to the Maliki school and to *ijtihad*, taking into account the realisation of the Islamic values of justice, equality, and proper conduct in interpersonal relations." (*Family Code* (Kingdom of Morocco: Ministry of Justice, updated version, 29 July 2021)). See along the same lines: Al-Jalassi, "The Personal Status Code: Accumulation and Foundation," 48.

98 So. Ben Achour, *The Family Code*, 20.

99 So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 17; Lagrange, « Le législateur tunisien et ses interprètes,» 16. See Articles 3 and 21 of the code. See also: So. Ben Achour, *The Family Code*, 75; Al-Jalassi, "The Personal Status Code: Accumulation and Foundation," 58; Neji, "The Civil Nature of the State," 39.

and the criminalisation of polygamy.[100] The code also reformed divorce, eliminating its symbolic inequality, and established that "it could only be concluded […] before the court" (Article 30) [101].

Before the adoption of the 1959 Constitution, independence-era legislation transformed marriage into a formal legal act[102] and institutionalised adoption,[103] which we will discuss later. After the 1959 Constitution, the process of disentangling civil law from religious references continued. The code was amended to establish custody arrangements based on the child's best interests rather than the Maliki school, which prioritises women over men.[104] Under the authority of the 1959 Constitution, law-makers recognised natural parentage[105] in a humanised approach, considering the welfare of children born out of wedlock.[106] Consequently, "law-makers sought to establish a new family model grounded in gender equality and the protection of women's dignity, by enacting rules that broke with inherited traditions."[107] This, in effect, was "the Tunisians' civil constitution," which "provided them with a distinct national identity."[108]

B. Property

The codification of the real estate sector dates back to the late nineteenth century with the issuance of the Property Law Code in 1885 and the initial establishment of a judicial system for property registration "under the supervision of the Mixed Property Council."[109]

---

[100] So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 17; Lagrange, « Le législateur tunisien et ses interprètes, » 16. See Article 18 of the code. This article was amended by Law No. 70 of 1958, dated 4 July 1958, concerning the amendment of Article 18 of the Personal Status Code (Official Gazette, Nos. 52–53, 1–4 July 1958, 886). Paragraphs 3, 4, and 5 were added by Decree No. 1 of 1964, dated 20 February 1964 (concerning the amendment of certain articles of the Personal Status Code, Official Gazette, No. 9, 21 February 1964, 222), which was ratified by Law No. 1 of 1964, dated 21 April 1964 (concerning the ratification of Decree No. 1 of 1964 dated 20 February 1964, Official Gazette, No. 21, 24–28 April 1964, 570). See on the "historical development of the drafting of Article 18 of the Personal Status Code": So. Ben Achour, *The Family Code*, 94–95. See also: Al-Jalassi, "The Personal Status Code: Accumulation and Foundation," 58–59; Neji, "The Civil Nature of the State," 39.

[101] So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 17; Lagrange, « Le législateur tunisien et ses interprètes, » 16. See also: Al-Jalassi, "The Personal Status Code: Accumulation and Foundation," 39 and Neji, "The Civil Nature of the State," 39.

[102] So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 17; Lagrange, « Le législateur tunisien et ses interprètes, » 16. See Article 31 of Law No. 3 of 1957, dated 1 August 1957, concerning the organisation of civil status, Official Gazette, Nos. 2–3, 30 July and 2 August 1957, 13. See also: Al-Jalassi, "The Personal Status Code: Accumulation and Foundation," 60; Neji, "The Civil Nature of the State," 3.

[103] Under Law No. 27 of 1958, dated 4 March 1958, concerning public guardianship, custody, and adoption, Official Gazette, No. 19, 7 March 1958, 306–307. See: So. Ben Achour, *The Family Code*, 263–264.

[104] So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 17; Lagrange, « Le législateur tunisien et ses interprètes, » 16. The two professors refer to Law No. 49 of 1966, dated 3 June 1966, concerning the amendment of the Personal Status Code (especially Article 67) (Official Gazette, No. 24, 3 June 1966, 1014–1015), as well as Law No. 74 of 1993, dated 12 July 1993, concerning the amendment of certain articles of the Personal Status Code (Official Gazette, No. 53, 20 July 1993, 1004–1005). See also: So. Ben Achour, *The Family Code*, 293–299.

[105] So. Ben Achour, « L'interprétation du droit tunisien de la famille, » 17. Ben Achour refers to Law No. 75 of 1998, dated 28 October 1998, concerning the assignment of a family name to abandoned children or those of unknown parentage, Official Gazette, No. 87, 30 October 1998, 2176. See also: So. Ben Achour, *The Family Code*, 236–262. Also see: Mezghani, « Religion, mariage et succession, » 349.

[106] So. Ben Achour, *The Family Code*, 238.

[107] Ibid., 20.

[108] Mezghani, « Religion, mariage et succession, » 34.

[109] Munir al-Fershishi, *Al-Jami' fi al-Qanun al-'Aqari* [The Compendium of Real Estate Law], 2nd updated ed. (Tunis: Latrach Édition, 2023), 21.

Nevertheless, Tunisian legislation suffered a "fracture in property rights."[110] This was due to the system of exceptional property ownership[111] rooted in religious institutions and subject to "religious rules,"[112] notably the *habs/waqf* (inalienable religious endowment) system, which was partially addressed in the Code of Obligations and Contracts through certain "contractual" formulas,[113] such as *inzal* (rights of transfer of use)[114] and *kirdar* (improvement/compensation rights)[115] aimed at "removing properties from a state of *habs* and subjecting them to legal transaction."[116] Other forms, such as the collective tribal lands, were rooted in tribal structures and justified by "an economic and social philosophy in which land became an external marker of ethnic belonging within a single clan (as an ethnic unit)."[117]

Independence-era legislation, both prior to the adoption of the 1959 Constitution and subsequently under it, sought to implement a public policy aimed at addressing this "fracture" and "removing all obstacles to the generalisation of registered individual property as the main framework of the country's land system."[118]

This effort unfolded on two fronts. First, by "abolishing the *habs* system"[119] prior to the adoption of the 1959 Constitution through several royal decrees,[120] and later, in 1974, that is, under the constitutional framework,

---

110 Al-Asaad Chennoufi, *Ithbat Milkiyat al-'Aqarat Ghayr al-Musajjalah* [Proof of Ownership of Unregistered Properties] (Tunis: Latrach Édition, 2014), 68.

111 Al-Fershishi, *The Compendium of Real Estate Law*, 108.

112 Zina Al-Sayed, *Ahkam al-Sijil al-'Ayni fi Tunis: al-Tasjil – al-Ishhar – Tahyin al-Rusum al-Mujammadah* [Provisions of the Real Estate Registry in Tunisia: Registration – Public Notice – Updating Frozen Fees] (Tunis: Latrach Édition, 2025), 11, margin.

113 Al-Fershishi, *The Compendium of Real Estate Law*, 122.

114 Article 954 of the Code of Obligations and Contracts recognises *inzal* as follows: "A contract whereby the owner or the custodian of the *waqf* assigns possession of the property and the right to dispose of it in perpetuity, on the condition that the lessee undertakes to pay a fixed annual or monthly amount, and retains the right to purchase the *inzal* as provided in the decree dated 22 January 1905. It is also permissible to require the lessee to make certain improvements, such as construction or tree planting, which are considered part of the obligations under the contract." *Code of Obligations and Contracts*, decree of 15 December 1906, revised edition (Tunis: Official Printing Office of the Republic of Tunisia, 2024), 132. See also: Al-Fershishi, *Compendium of Real Estate Law*,123-124, and Al-Sayed, *Provisions of the Real Estate Registry in Tunisia*, 11.

115 Article 980 of the Code of Obligations and Contracts defines *kirdar* as follows: "*Kirdar*, or a variable *inzal*, is a contract whereby the owner of a property permanently transfers the ruins of that property to another person and, after him, to their heirs, retaining only the *raqaba* (bare ownership) for themselves, while the transferee undertakes to pay a fixed, perpetual sum. The *kirdar* holder exercises rights over the transferred property as the owner would over his own, in exchange for the agreed payment." (*Code of Obligations and Contracts*, 136). See also: Al-Fershishi, *Compendium of Real Estate Law*, 124–125.

116 Al-Fershishi, *Compendium of Real Estate Law*, 122.

117 Tarek Shaaban, "Nash'at al-Aradi al-Ishtirakiyya wa Muqaranatuha bi al-Nuzum al-'Aqariyya" [The Emergence of Collective Lands and Their Comparison with Property Systems], in *Higher Institute of Judiciary, Regional Meeting: Legal Status of Collective Lands*, Gafsa, 13 January 1996, 8–9.

118 Al-Sayed, *Provisions of the Real Estate Registry in Tunisia*, 10.

119 Al-Fershishi, *Compendium of Real Estate Law*, 127.

120 The royal decree dated 31 May 1956 provides that the state shall assume the expenses of religious or social endowment associations, transfer the profits of public endowment to the property of foreigners, and liquidate the endowment association. (Official Tunisian Gazette, No. 44, 1 June 1956, 963–964; see also Al-Fershishi, *Compendium of Real Estate Law*, 128). Subsequently, the royal decree dated 18 July 1957 abolished the system of private and joint endowments. (Official Tunisian Gazette, No. 58, 19 July 1957, 1160–1162). This decree was later amended by Law No. 24 of 2000, dated 22 February 2000, concerning the amendment and completion of the 18 July 1957 decree regarding the abolition of the system of private and joint endowments. (Official Tunisian Gazette, No. 16, 25 February 2000, 527–528). See also: Al-Fershishi, *Compendium of Real Estate Law*, 128–129; Neji, "The Civil Nature of the State," 40; Lagrange, « Le législateur tunisien et ses interprètes, » 18.

by regularising the *inzal* and *kirdar* rights applied to agricultural properties,[121] while also "prohibiting the creation of new *inzal* and *kirdar* rights in the future."[122]

This was part of a liberalising public real estate policy that sought to firmly embed property within the private ownership framework of a "modern state."[123]

Second, in order to dismantle personal or tribal claims over land, the state acted to neutralise tribal "control" over the land and subject it to state intervention, seeking to "settle … situations resulting from the system of collective tribal lands, in order to entrench the supremacy of individual ownership as a guarantee of stability and clarity in property transactions."[124]

All of this unfolded under a constitutional framework that made property, under Article 14 of the 1959 Constitution, "a guaranteed right to be exercised within the limits of the law." In practice, this process began before independence and continued between 1956 and 1964[125] with efforts to regularise collective (socialist/tribal) lands[126] through a series of legal measures,[127] not for the sake of regularisation itself, but rather […] to revitalise these lands and integrate them into the agricultural cycle."[128]

C. Contracts

The Tunisian *Code of Obligations and Contracts,* issued on 15 December 1906, marked a key milestone in the modernisation of the law.[129] Unlike similar codes in the Arab world, it did not mention sharia as a secondary source of legislation—[130] a significant omission given the historical context in which the code was issued.

---

[121] Article 1 of Law No. 24 of 1974, dated 18 March 1974, concerning the settlement of *inzal* and *kirdar* rights applied to agricultural properties. (Official Tunisian Gazette, No. 21, 19 March 1974, 630).
See also: Al-Fershishi, *Compendium of Real Estate Law*, 132; Al-Sayed, *Provisions of the Real Estate Registry in Tunisia*, 12–13.

[122] Chennoufi, *Proof of Ownership of Unregistered Properties*, 73. In this context, Article 191 of the Code of Real Estate Rights prohibits the creation of *inzal* or *kirdar* "starting from the date of the entry into force of this code," issued in 1965. *Code of Real Estate Rights*, Law No. 5 of 1965, dated 12 February 1965, revised edition (Tunis: Official Printing Office of the Republic of Tunisia, 2024), 38.

[123] Chennoufi, *Proof of Ownership of Unregistered Properties*, 73.

[124] Shaaban, "The Emergence of Collective Lands and Their Comparison with Property Systems," 11.

[125] See regarding this historical development: Mongi Sghaier, « Étude 5: Région saharienne du Nefzaoua, » in *Dynamique des populations, disponibilités en terres et adaptation des régimes fonciers. Le cas de la Tunisie*, edited by Michel Picouet (Paris: Comité international pour la coopération dans les recherches nationales en démographie, 2006), 248.

[126] Chennoufi, *Proof of Ownership of Unregistered Properties*, 68.

[127] This concerns the royal decrees issued on 14 January 1901, 23 November 1918, and 30 December 1935, as well as Law No. 16 of 1957, dated 28 September 1957, which regulated the system of collective lands and was amended by Law No. 83 of 1959, dated 21 July 1959 (*Official Gazette*, No. 39, 24 July 1959, 1073). These provisions were repealed by Law No. 28 of 1964, which established the basic framework for collective lands (*Official Gazette*, No. 28, 2–5 June 1964, pp. 764–766). This law was subsequently amended by Law No. 69 of 2016, dated 10 August 2016, concerning the amendment and completion of Law No. 28 of 1964 (*Official Gazette*, No. 79, 27 September 2016, 3323–3326). For further reference regarding these texts, see: Chennoufi, *Proof of Ownership of Unregistered Properties*, 69, note 1; and for their "objectives," see: Al-Sayed, *Provisions of the Real Estate Registry in Tunisia*, 13.

[128] A circular issued by the Ministry of Agriculture on 3 June 1988, addressed to the governors, is cited in: Chennoufi, *Proof of Ownership of Unregistered Properties*, 71.

[129] Mezghani, « Religion, mariage et succession, » 346.

[130] Ibid., 345.

Article 535, included under the rules of interpretation, provided the following: "If it is impossible to rule based on an explicit legal provision, analogy shall be applied; if doubt remains, the decision shall be made according to the general rules of law."[131] This provision may be read as establishing a formal separation between civil law and sharia.[132] Although there is no consensus on this interpretation,[133] the code's treatment of "religious affiliation" is clear: "it strips it of any legal effect in assessing the validity of the legal relationship in question."[134] Indeed, Article 4 expressly provided that "difference of religion shall not entail any distinction in contractual capacity, nor in the rights and obligations arising from valid obligations for non-Muslims."[135] The circumstances of the code's enactment,[136]—such as efforts to root this legal provision in Islamic legal tradition, which recognises the legal personality of *dhimmis*[137] living in *dar al-Islam*, and to rely on Islamic jurisprudence to validate obligations between Muslims and non-Muslims[138] —should not obscure the significance of Article 4 and its clear affirmation that religious difference has no effect on civil law matters.[139]

In effect, this represents a "declaration of the code's secular character,"[140] despite residual provisions that still subjected the "validity of obligations to religious considerations."[141] The declaration was further reinforced by permitting gambling[142] and abolishing what was known as the "rule prohibiting *riba* (usury)" among Muslims in 1959.[143] Some scholars attempted to read the code in light of its "*fiqh* traces,"[144] but a significant part of Tunisian

131 See in this respect: Code of Obligations and Contracts, 84; Mezghani, «Religion, mariage et succession, » 345.
132 Ibid., 345. See in this vein: Al-Jalassi, "*The Personal Status Code: Accumulation and Foundation*," 50.
133 Al-Rawatibi, "Code of Obligations and Contracts and Islam," 197–198.
134 Nabil Ben Aicha, « La notion de « neutralité confessionnelle » dans l'article 4 du Code des obligations et des contrats, » in Charfeddine, *Livre du centenaire du Code des obligations et des contrats. 1906–2006*, 141.
135 Code of Obligations and Contracts, 8.
136 Al-Rawatibi, "Code of Obligations and Contracts and Islam," 194–195, 202–204. See also: Mohamed Bouzeghiba, "Al-Usul al-Fiqhiyya li-Majallat al-Iltizamat wa al-'Uqud" [Jurisprudential Foundations of the Code of Obligations and Contracts], in Charfeddine, *Livre du centenaire du Code des obligations et des contrats, 1906–2006*, 42.
137 Ben Aicha, « La notion de « neutralité confessionnelle, » 148.
138 Ibid., 149.
139 Ibid.
140 Al-Rawatibi, "Code of Obligations and Contracts and Islam," 209.
141 Presidency of the Republic, *Report of the Committee on Individual Freedoms and Equality*, 72.
142 Al-Rawatibi, "Code of Obligations and Contracts and Islam," 209. Article 1457 of the code, cited by Al-Rawatibi, provides: "The provisions set forth above do not apply to betting on foot races or horse races, nor to shooting, water races, or similar activities related to physical sports, provided that the amounts wagered are not placed by one competitor against another and that the wager is not between spectators." Code of Obligations and Contracts, 199.
143 Al-Rawatibi, "Code of Obligations and Contracts and Islam," 209. Article 1095 of the Code of Obligations and Contracts originally stated: "A condition for usury in a loan is null and void, invalidating the contract between Muslims, whether the condition is explicit or takes the form of a gift, interest on the loan, or an intermediary benefit." (*Official Gazette*, supplement to No. 100, 15 December 1906, 51). This article was repealed, as noted by al-Rawatibi, by Article 2 of Law No. 148 of 1959, dated 7 November 1959, which amended certain articles of the Code of Obligations and Contracts (*Official Gazette*, No. 57, 17–20 November 1959, 1681). It should be noted that royal decrees addressed the prohibition of usury, or "excessive interest," namely the decree dated 3 February 1937, concerning usury, and the decree dated 3 February 1937, concerning the repression of usury (*Official Gazette*, No. 11, February 5, 1937, 2–4). These were later repealed by the royal decree dated 24 June 1954, regarding the repression of usury practitioners (*Official Gazette*, No. 52, June 29, 1954, 1434). Subsequently, Law No. 64 of 1999, dated July 15, 1999, concerning the maximum interest rate, came into effect and repealed Article 7, which nullified the earlier decrees dated 3 February 1937 and 24 June 1954 concerning the repression of usury (*Official Gazette*, No. 57, 16 July 1999, 1346). See Fakher Ben Salem, "Al-Qard bi Fa'ida Mushatta" [Loans with Usury Interest] *Akhbar Qanuniya*, no. 8/9 (September 2006): 7. See also: Lagrange, « Le législateur tunisien et ses interprètes, » 18.
144 Bouzeghiba, "Jurisprudential Foundations of the Code of Obligations and Contracts," 39.

legal scholarship emphasises that the code, along with subsequent institutional practices and legal disputes, reflects "the weakening of Islamic presence in the code in favour of Western law,"[145] particularly "French civil law,[146] both in legislation and judicial interpretation." Ultimately, the code "laid the foundations for the modern legal system."[147] The 1959 Constitution did not dismantle this code but allowed its consolidation through successive amendments.[148]

In parallel, the constitution enabled the unification of the judiciary[149] in the independent state, breaking from the "multiplicity of judicial systems and their parallelism […] across schools of thought, sects, and religions."[150] This process began with the abolition of sharia courts under the decree of 3 August 1956,[151] and continued steadily[152] until the judiciary was fully unified under Law No. 42 of 1957.[153] The modern judicial system was thus structured according to the "differential principle of two-tier litigation."[154] All of this occurred under the 1959 Constitution, which, despite its "administrative" organization of the judiciary —falling short of establishing a "genuine judicial authority[155]— did not hinder this process and even allowed its consolidation.

2. Constitutional support for an objectively structured public sphere: civic equality as a realisation stronghold

Alongside the implicit endorsement of continuing the civil state project —particularly the effort to neutralise personal and subjective ties in the organisation of private relations — and in line with a public education policy based on the principle of "equal access to knowledge,"[156] (2.1), one may speak of the constitutionalisation of equality in "access"[157] to political competition (2.2).

[145] Al-Rawatibi, "Code of Obligations and Contracts and Islam," 210.
[146] Ibid., 213.
[147] Mezghani, « Religion, mariage et succession, » 346.
[148] For a critical reading of these amendments, see: Sherfi, Mezghani, and Ghazouani, *Introduction to the Study of Law*, 295.
[149] See also : Ibid., 293. Lagrange, « Le législateur tunisien et ses interprètes, » 15.
[150] Sherfi, Mezghani, and Ghazouani, *Introduction to the Study of Law*, 277 and 289.
[151] Ibid., 290. This concerns the royal decree dated 3 August 1956, concerning the reorganisation of the Ministry of Justice (*Official Gazette*, No. 64, 10 August 1956, 1500). See also: Neji, "The Civil Nature of the State," 40; Lagrange, « Le législateur tunisien et ses interprètes, » 15.
[152] This was achieved first through the Tunisian–French Judicial Convention signed on 9 March 1957, which entered into force on 1 July 1957, and which abolished the French courts in Tunisia (royal decree dated 28 May 1957 approving the judicial convention concluded between the Kingdom of Tunisia and the French Republic and authorising its publication in the Official Gazette of the Republic of Tunisia, *Official Gazette*, No. 43, 28 May 1957, 842–846). This was followed by the abolition of the Rabbinical Councils under Law no. 40 of 1957, dated 27 September 1957, concerning the abolition of the Jewish Personal Status Court (Rabbinical Council) (*Official Gazette*, No. 19, 27 September 1957, 208–209). See: Sherfi, Mezghani, and Ghazouani, *Introduction to the Study of Law*, 293. See also: Mezghani, *Droit international privé*, 74–76; « Le législateur tunisien et ses interprètes, » 15.
[153] Law No. 42 of 1957, dated 27 September 1957, concerning the establishment of district courts attached to first instance courts, *Official Gazette*, No. 19, 27 September 1957, 209–210. See: Sherfi, Mezghani, and Ghazouani, *Introduction to the Study of Law*, 293.
[154] Sherfi, Mezghani, and Ghazouani, *Introduction to the Study of Law*, 293.
[155] Mohamed Salah Ben Aïssa, « La compétence exclusive du Conseil supérieur de la magistrature en matière disciplinaire ou … Quand le Conseil constitutionnel brise la jurisprudence du Tribunal administratif, » in *En hommage à Dali Jazi* (Tunis: CPU), 174.
[156] Mohamed Samih Beji Okkez, "Tafrat al-Ta'lim al-Khas fi Tunis: Sakha' al-Dawla Yukarris al-Ta'lim al-Tabaqi" [The Boom in Private Education in Tunisia: State Generosity Reinforces Class-Based Education], *Legal Agenda*, No. 18 (June 2020): 16.
[157] Drawing on the previous reference.

A. Constitutionalising equality in "access" to political competition by neutralising the religious factor: political rights

The 1959 Constitution did not undertake the "distribution of social power among citizens,"[158]—to use Benjamin Constant's formulation in his discussion of the dimensions of "the liberty of the ancients, which consists in active and constant participation in collective power,"[159] —based on religious considerations or other subjective criteria. Tunisian nationality, rather than religion, was established as the condition for voter eligibility. Accordingly, nationality constituted an essential requirement for candidacy to elective office[160] and was also sufficient for parliamentary membership.[161]

However, candidacy for the office of President of the Republic constituted a notable exception. Article 40 reintroduced a religious condition, stipulating in its first paragraph: "Candidacy for the office of President of the Republic is a right of every Tunisian who does not hold another nationality, who is Muslim, and who was born to a Tunisian father and mother, and whose paternal and maternal grandparents are all Tunisian without interruption."[162]

---

[158] Benjamin Constant, « De la liberté des Anciens comparée à celle des Modernes, » *Discours prononcé à l'Athénée royal de Paris*, 1819.

[159] See, with regard to the right to vote and to stand for election as expressions of "participatory freedom: Ibid.; Jinan Limam, « Candidature, » in *Encyclopédie de Science Politique*, edited by Hatem M'rad (Tunis: ATEP, 2025), 144.

[160] For a discussion of voter status and the lack of "discrimination" therein, as well as its legal regulation in Tunisia, see: Omar Abdel Fattah, *Al-Wajiz fi al-Qanun al-Dusturi* [Concise Guide to Constitutional Law] (Tunis: Centre for Studies, Research, and Publishing, Faculty of Law and Political Science, 1987), 369–370, 421; see also: Ben Achour, *Institutions and the Political System in Tunisia*, 123, 138. Voter status was defined in Article 20 of the same constitution, as amended by Constitutional Law No. 65 of 1997, dated 27 October 1997, concerning the amendment and completion of certain constitutional provisions, *Official Gazette*, No. 87, 31 October 1997, 2053, and by Constitutional Law No. 52 of 2008, dated 28 July 2008, concerning the amendment of Article 20 of the constitution and exceptional provisions relating to the third paragraph of Article 40, *Official Gazette*, No. 61, 29 July 2008, 2724. See also Article 2 of the Electoral Code promulgated by Law No. 25 of 1969, dated 8 April 1969, concerning the Electoral Code, as amended by Organic Law No. 19 of 2009, dated 13 April 2009, concerning the amendment and completion of the Electoral Code (*Official Gazette*, No. 30, 14 April 2009, 1452).

[161] With regard to these eligibility requirements, Article 21 of the 1959 Constitution, in paragraphs 1 and 2 (as amended by Constitutional Law No. 65 of 1997, dated 27 October 1997, previously cited, and subsequently by Constitutional Law No. 51 of 2002, dated 1 June 2002, concerning the amendment of certain constitutional provisions, *Official Gazette*, No. 45, 3 June 2002, 1443), provided as follows: "Any voter born of a Tunisian father or mother and who is at least twenty-three years of age on the day he submits his candidacy is eligible for election to the Chamber of Deputies. A candidate for the Chamber of Advisers must be born of a Tunisian father or mother; he must also be at least forty years of age on the day he submits his candidacy, and he must be a voter." See also Article 76 of the Electoral Code, as amended by Organic Law No. 144 of 1988, dated 29 December 1988, concerning the amendment of the Electoral Code (*Official Gazette*, No. 87, 30–31 December 1988, 1768), and subsequently by Organic Law No. 93 of 1998, dated 6 November 1998, concerning the amendment and completion of certain provisions of the Electoral Code (*Official Gazette*, No. 90, 10 November 1998, 2264); as well as Article 113 of the same Code, added pursuant to Article 5 of Organic Law No. 58 of 2003, dated 4 August 2003, concerning the amendment and completion of the Electoral Code (*Official Gazette*, No. 62, 5 August 2003, 2592). See also: Abdel Fattah, *Concise Guide to Constitutional Law*, 369–371; Ben Achour, *Institutions and the Political System in Tunisia*, 123–125, 138–140.

[162] Article 40 was amended by Constitutional Law No. 88 of 1988, dated 25 July 1988, concerning the amendment of the Constitution (*Official Gazette*, No. 50, 26 July 1988, 1062), and by Constitutional Law No. 51 of 2002, dated 1 June 2002, concerning the amendment of certain constitutional provisions (*Official Gazette*, No. 45, 3 June 2002, 1446). See also Article 64 of the Electoral Code, as amended by Organic Law No. 66 of 1976, dated 11 August 1976, concerning the amendment and completion of the Electoral Code (*Official Gazette*, No. 51, 17 August 1976, 2186), then by Organic Law No. 144 of 1988, dated 29 December 1988, concerning the amendment of the Electoral Code (*Official Gazette*, No. 87, 30–31 December 1988, 1767), and by Organic Law No. 58 of 2003, dated 4 August 2003, concerning the amendment and completion of the Electoral Code (*Official Gazette*, No. 62, 5 August 2003, 2589).

Furthermore, Article 38 of the 1959 Constitution provided the following: "The President of the Republic is the Head of State and his religion is Islam."[163] This provision constituted a breach of equality among citizens[164] and raised difficulties "at the level of proof, insofar as it relates to personal and subjective factors, making it difficult to rely on a clear criterion for determining the candidate's religion."[165]

It should be noted that, in line with the neutralisation of subjective affiliations in the exercise of political rights and access to representative positions, the same approach was adopted to the regulation of "intermediate"[166] structures, defined as "social and political organisations that operate between individuals and the state."[167] The central constellation of these structures consists mainly of political parties, trade unions, and associations[168] which play a "key role in shaping civic awareness, pluralism, and the free expression […] of opinions and interests.[169]"

Despite the authoritarian constraints imposed upon it, the 1959 Constitution proclaimed in Article 8 the freedoms of thought, expression, the press, publication, assembly, association, and trade union activity.[170] A series of legislative measures was subsequently adopted that clearly embodied the neutralisation of subjective affiliations, whether in relation to associations[171] or political parties.[172]

[163] See, regarding the provision that "the religion of the Head of State is Islam": Al-Takkari, "The Status of Islamic Sharia in the Constitutions of Arab States," 29–31. See also: Bostangi , « La guerre de l'article premier n'aura pas lieu, »4 .

[164] Ben Achour, *Institutions and the Political System in Tunisia*, 384. For context see: Laghmani, "The Civil State," 20.

[165] Ben Achour, *Institutions and the Political System in Tunisia*, 384.

[166] Abdel Fattah, *Concise Guide to Constitutional Law*, 111.

[167] Raef Jerad, « Corps intermédiaires, » in *Encyclopédie de Science Politique*, edited by Hatem M'rad (Tunis: ATEP, 2025), 264.

[168] Ibid., 266.

[169] Ibid.

[170] See in this respect: Ben Achour, *Institutions and the Political System in Tunisia*, 93.

[171] Article 2, paragraph 1 of Law No. 154 of 1959, dated 7 November 1959, concerning associations, states that: "Under no circumstances may the purpose for which an association is established violate the law or public morality, compromise public security, or undermine the unity of the national territory and the republican system of the state." (*Official Gazette*, No. 63, 22 December 1959, 2020). During the 1992 amendment of the law, a classification of associations was introduced based exclusively on their civil character. A second paragraph was added to Article 1 specifying eight categories of associations. According to the new fourth paragraph of Article 1, these associations cannot refuse membership to anyone who adheres to their principles and decisions, except if the person lacks civil or political rights, or engages in activities that contradict the association's objectives. (Basic Law No. 25 of 1992, dated 2 April 1992, amending Law No. 154 of 1959 on associations, *Official Gazette*, No. 21, 3 and 7 April 1992, 404). For a critical reading of this classification and its implications, see: Hafiza Choucair, *Freedom of Association Between the Constitution and the Decree on Organizing Associations*, *Soyons Actifs/Actives – PCPA*, 6–7.

[172] Article 3 of Basic Law No. 32 of 1988, dated 3 May 1988, concerning the organisation of political parties, states that: "No political party may base its principles, objectives, activities, or programs primarily on religion, language, ethnicity, gender, or region." (*Official Gazette*, No. 31, 6 May 1988, 715) See also: Ben Achour, *Institutions and the Political System in Tunisia*, 93. For a critical discussion of this law in relation to religious issues, see: Sa. Ben Achour, « L'arbre qui cache la forêt. »

B. Promoting "equality of access to knowledge,"[173] in a unified public educational space[174]

Although the right to education was not explicitly enshrined in the 1959 Constitution,[175] the constitution supported the "unification of education" alongside other national unification efforts.[176] Prior to independence, education in Tunisia was fragmented.[177] Islamic education was provided at Ez-Zitouna University, and because a comprehensive reform of this system was not feasible, the Sadiki Institute[178] was established on 13 January 1875 as a "modern institute" exclusively reserved for Muslims.[179]

The Jewish population had access to Torah schools and Israeli schools, which provided "modern" instruction.[180] Additionally, French schools were open to Europeans, Jews, and elite Tunisians. [181]

Education was one of the priorities of independent Tunisia even before the adoption of the 1959 Constitution.[182] Law No. 118 of 1958, dated 4 November 1958, concerning education, stated in Article 1 that "Education and instruction aim to […] nurture the personality and develop the natural talents of children, both boys and girls, without any discrimination based on sex, religion, or social status."[183] Education was organised across its various stages according to the principle of "equal access to knowledge,"[184] and with the goal of "unifying and generalising education,"[185] within the framework of "developing the individual student by nurturing their skills and forming the citizen-student aligned with the choices of modernity, where the Tunisian national identity defines their sense of belonging,"[186] Subsequent educational reforms[187] under the 1959 Constitution confirmed these principles.

The unification of education was not possible while maintaining the structure of "traditional religious education."[188]

---

173 Okkez, "The Boom in Private Education in Tunisia," 16.
174 Regarding "unification," see: Mahdi Elleuch, Educational Reforms in Tunisia: A Distinctly Political History," *Legal Agenda*, No. 18 (June 2020): 4
175 Mahdi Elleuch, "Dastarat al-Haqq fi al-Ta'lim ka Saaha li-Hurub al-Hawiyya: Hikayat Fasl Yakad Yulakhkhis Masar Kitabat al-Dustur" [Constitutionalising the Right to Education Amidst War of Identity], *Legal Agenda*, No. 18 (June 2020): 8.
176 Elleuch, "Educational Reforms in Tunisia," 4.
177 Mohamed Afif Jaidi, "Al-Ta'lim wa al-Tafawut al-Jihawi fi Tajribat al-Dawla al-Wataniya: Adat al-Tasaddi wa Qad Adhat Unwan Azma" [Education and Regional Inequalities in the Nation-State Experience: From a Tool of Confrontation to a Marker of Crisis], *Legal Agenda*, No. 18 (June 2020): 10.
178 Al-Taymoumi, *Tunisia and Modernisation (1831–1877)*, 231.
179 Ibid.
180 Mohamed Afif Jaidi, "Hudur al-Siyasi fi al-Mu'ta al-Tarbawi: al-Ta'lim al-Dini bi-Tunis Namudhajan" [The Politicisation of Religious Education in Tunisia], *Legal Agenda*, No. 18 (June 2020): 7.
181 Ibid.
182 Ibid.
183 *Official Gazette*, No. 89, 7 November 1958, 1365.
184 Okkez, "The Boom in Private Education in Tunisia," 16.
185 Elleuch, "Educational Reforms in Tunisia," 4. The author naturally refers to Article 7 of the previously mentioned law No. 118 of 1958, which states: "Primary education is uniform for all."
186 Jaidi, "The Politicisation of Religious Education in Tunisia," 7.
187 Law No. 65 of 1991, dated 29 July 1991, concerning the educational system, *Official Gazette* No. 55, 6 August 1991, 1150–1151.
188 Jaidi, "The Politicisation of Religious Education in Tunisia," 7.

Consequently, Ez-Zitouna branches were merged into the public secondary education system.[189] Subsequently, Ez-Zitouna College of Sharia and Fundamentals of Religion was established as "a component of the Tunisian university system."[190]

These developments therefore occurred within the framework of the 1959 Constitution, whose Article 1 in particular supported the civil-state project that had been initiated earlier and provided the necessary conditions for its continuation. Consequently, the break with the 1959 Constitution represented a critical moment that nearly undermined the achievements of the national state, had a solution not been found to safeguard the new constitutional text.

B. The 2014 Constitution: the Explicit Constitutionalisation of the Civil State

The 2014 constitutional moment represented a turning point in the process of modernisation that Tunisia had embarked upon even before independence. This milestone had been endorsed, albeit indirectly, by the 1959 Constitution, despite the setbacks along the way (1).[191] However, the entrenchment of this modernisation was, to some extent, made explicit in the constitutional text itself (2).

1. The setbacks

The revolutionary moment of 2011 generated renewed hope for overcoming the remaining obstacles to the consolidation of the civil state. This is evidenced by the manner in which the revolutionary moment[192] was invoked to emancipate Tunisia's "foreign legal policy"[193] from the conservative interpretation of international instruments that had been structured around Article 1 of the 1959 Constitution. During the revolutionary period, reservations to previously ratified international treaties were lifted; these reservations had been formulated in order to ensure that the implementation of such treaties would not be considered incompatible with Article 1.[194]

---

189 See: "Marahil Islah wa Tatwir al-Ta'lim al-Zaytuni al-Asli 'Abr al-Tarikh" [Stages of Reform and Development of Original Ez-Zitouna Education Throughout History], *Al-Islam fi Tunis*, 1 November 2018.

190 Ibid. This was carried out under Order No. 110 of 1961, dated 1 March 1961, concerning the completion of Order No. 98 of 1960, dated 31 March 1960, which established the Tunisian University, *Official Gazette*, No. 9, 3–7 March 1961, 429.

191 It seems that "setbacks" are a characteristic of Tunisia's foundational paths. See the use of the same terminology regarding the 2022 Constitution, although for different reasons: Arab Association of Constitutional Law, *Tunisia – The Referendum on the New Constitution*, 14.

192 Neji, "The Civil Nature of the State," 41.

193 Guy de Lacharrière, *La politique juridique extérieure* (Paris: Economica, 1983).

194 When Tunisia ratified the Convention on the Elimination of All Forms of Discrimination Against Women, dated 18 December 1979, under Law No. 68 of 1985, dated 12 July 1985 (*Official Gazette*, No. 54, 12–16 July 1985, 929), it submitted a declaration regarding paragraph 4 of Article 15 and reservations regarding paragraph 2 of Article 9, paragraphs c, d, e, z, and h of Article 16, and paragraph 1 of Article 29 of the Convention, as well as a general declaration stating that "no administrative or legislative decision shall be taken under the provisions of this convention that would contradict the provisions of Article 1 of the Tunisian Constitution." After the 2011 revolution, the reservations were withdrawn, though the general declaration remained, based on Decree No. 103 of 2011, dated 24 October 2011, concerning authorisation to ratify the withdrawal of the declaration and reservations issued by the Tunisian Government and annexed to Law No. 68 of 1985, dated 12 July 1985, concerning the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (*Official Gazette*, No. 82, 28 October 2011, 2466–2467). The document withdrawing the declaration and reservations was deposited with the Secretary-General of the United Nations on 17 April 2014. See: United Nations, Treaty Collection, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, status as of 19 October 2025. See also: Debbeche, *Individual Freedoms and Article 55*, 169; Slim Laghmani, "Qira'a Dusturiyya li Mubadarat al-Musawat fi al-Irth" [A Constitutional Reading of the Initiative for Equality in Inheritance], in Laghmani, *Writings on Politics and the* Constitution, 131, note 6; Neji, "The Civil Nature of the State," 41; and also: Sa. Ben Achour, « L'arbre qui cache la forêt » ; Bras, Un État 'civil' peut-il être religieux? » 63; Hamadi Redissi, « Raison publique et laïcité islamique : la constitution tunisienne de 2014, » *Leaders*, 4 July 2014.

Nevertheless, the process was neither linear nor uncontested. Article 1 continued to dominate constitutional debate, only later intersecting —sometimes tensely— with the emerging affirmation of the civil state as a constitutional principle.[195]

In practice, the notion of the civil state entered the constitutional debate before it was formally recognised in the constitutional text. It emerged primarily within the sphere of political contestation, as a means of resisting attempts to redirect the objectives of the revolution towards identity-based foundations.[196] Following opposition to the draft constitution that was presented in March 2012 by the Ennahda Movement, which had secured a majority of seats in the National Constituent Assembly and proposed recognising sharia as a source of legislation,[197] attention shifted to the August 2012 draft. Although this draft formally retained Article 1 of the 1959 Constitution, it introduced an interpretative framework that departed from its previously established understanding. In doing so, it elevated sharia to the status of a formal source of legislation. This marked a significant rupture —one that contradicted Tunisia's constitutional particularity and reflected a broader conceptual and legal orientation towards what may be described as the "Islamisation of state."[198]

The third draft of the constitution, issued on 22 April 2013, incorporated the concept of the civil state[199] alongside Article 1. This development alleviated the provision of the "religious overburden," which had the potential to undermine the foundational principles[200] of Tunisia's rule-based political order.

The 2014 Constitution was subsequently promulgated, proclaiming in its preamble the "building a republican, democratic and participatory system, in the framework of a civil state founded on the sovereignty of the people, exercised through the peaceful alternation of power through free elections, and on the principle of the separation and balance of powers." This concept was clearly enshrined in Article 2, which stipulates: "Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of law." Article 2, read together with Article 1 — reproduced from the 1959 Constitution— formed a neutral pair with regard to the religious references contained in the 2014 constitutional text.[201]

---

[195] See also on how the debate began even before the constituent process: Bostangi , « La guerre de l'article premier n'aura pas lieu ».

[196] Klibi, « La loi et le caractère civil, » 35. See also: Neji, "The Civil Nature of the State," 35.

[197] See: Laghmani, "A Constitutional Reading of the Inheritance Equality Initiative," 127. Regarding the role of civil society, see: Neji, "The Civil Nature of the State," 46–47. See also : Asma Nouira, « La religion dans la Constitution de 2022, rupture ou continuité, » in Redissi, *Le pouvoir d'un seul*, 154.

[198] Klibi, « La loi et le caractère civil, » 35. See also in the same vein: Neji, "The Civil Nature of the State," 44.

[199] Laghmani, « Les ambivalences de la Constitution tunisienne, » 119 ; Klibi, « La loi et le caractère civil, » 35.

[200] Laghmani considers that this article is characterised by a "self-contained duality of meaning … Its significance lies in placing it in relation to the other provisions of the constitution." Laghmani, « Les ambivalences de la Constitution tunisienne, » 120–123. Bostangi spoke about the "strategy" of the modernist camp and its use of the concept of the civil state before the start of the constituent process, with the aim of "neutralizing the legal implications of the first article." Bostangi , « La guerre de l'article premier n'aura pas lieu, » 6.

[201] Amna Guellali, « La clause générale de limitations dans la nouvelle Constitution : genèse, portée et défis », in PNUD, *La Constitution de la Tunisie*, 415 ; Klibi, « La Constitution du 25 juillet 2022, » 95.

It is important to recognise the "unifying potential"[202] of a strategic concept capable of creating "consensus,"[203] given that it is "part of the Islamic heritage,"[204] as demonstrated above. For the Ennahda Movement, this did not amount to a shift toward a "secular state in the sense of a complete separation between religion, law, and politics."[205] However, Ennahda accepted a concept that enabled it to present itself as a political party capable of "political competition," while emphasising the "lack of contradiction between Islam and democracy."[206]

Conversely, for the "secular parties," recourse to the concept was perceived as a manoeuvre "against the religious state," while at the same time avoiding the "secularist accusation."[207] Consequently, the concept of the civil state derived its appeal from its "cooperative"[208] character and its broader opposition to notions such as a "military" state or a "religious" state.[209]

The interpretive fate of Article 1 was closely linked to Article 2; together they formed an objective unit,[210] both being shielded from amendment.[211] However, this did not produce a fundamental paradigmatic shift, since the "interaction" between these two provisions and the remainder of the constitutional text allowed for the accommodation of the contentious relationship between Islam and the state. In this respect, the situation recalls the formulation of Article 1 of the 1959 Constitution, which was "not free of ambiguity […] but also displayed ingenuity."[212]

It should be acknowledged that the constitutional consensus embodied in these provisions revolved around a "civil state with an Islamic authority […] excluding a theocratic state without being secular, adopting Islamism while seeking to be democratic."[213] In this sense, it may be argued that this formulation constituted the only viable means of escaping the "deadlock."[214]

---

[202] Bostangi , « La guerre de l'article premier n'aura pas lieu, » 2

[203] Bras, « Un État 'civil' peut-il être religieux?, » 66. See, in the same vein, how this concept was employed as a "shared strategy" by both sides before the start of the constituent process: Bostangi , « La guerre de l'article premier n'aura pas lieu, »6 . See also: Ikbal Ben Moussa, "Al-Fasl al-Awwal min al-Dustur fi Fiqh Qada' al-Hay'a al-Waqtiyya li-Muraqabat Dusturiyyat Mashari' al-Qawanin" [Article 1 of the Constitution in the Jurisprudence of the Provisional Authority to Monitor the Constitutionality of Draft Laws], in *Jurisprudence of the Provisional Authority to Monitor the Constitutionality of Draft Laws, Publications of the Scientific Forum held on 25–26 January 2018 on the occasion of Al-Ayyam Al-Sadisa*, edited by Abdel Fattah Omar (Tunis: Tunisian Association of Constitutional Law, with the support of the United Nations Development Programme in Tunisia, 2022), 94, 99.

[204] Bras, « Un État 'civil' peut-il être religieux?, » 66. See in the same respect: Ben Moussa, "Article 1 of the Constitution in the Jurisprudence of the Provisional Authority," 99.

[205] Bras, « Un État 'civil' peut-il être religieux ?, » 67.

[206] Ibid., 68.

[207] Ibid. See: Ben Moussa, "Article 1 of the Constitution in the Jurisprudence of the Provisional Authority," 99. See also: Bostangi , « La guerre de l'article premier n'aura pas lieu, » 1, 6.

[208] Bras, « Un État 'civil' peut-il être religieux ?, » 63.

[209] Ibid., 64.

[210] Gherairi, « Le caractère civil de l'État tunisien, » 121. See in the same respect: Ben Moussa, "Article 1 of the Constitution in the Jurisprudence of the Provisional Authority," 99.

[211] Redissi, « Raison publique et laïcité islamique. » See in this respect: Neji, "The Civil Nature of the State," 48.

[212] Sa. Ben Achour, « L'arbre qui cache la forêt. »

[213] Redissi, « Raison publique et laïcité islamique. »

[214] Bras, « Un État 'civil' peut-il être religieux ?, » 63.

The matter was thus constitutionally settled, at least temporarily, notwithstanding the coexistence —already evident in the Preamble— of multiple normative references that marked the constitutional text,[215] between "our people's commitment to the teachings of Islam and its aims characterised by openness and moderation," and "the human values and the highest principles of universal human rights."[216] Importantly, this coexistence ultimately operated to reinforce the civil character of the state, particularly when read in light of the constitutional discourse as a whole.

2. Clarity of the explicit text

The 2014 constitutional text articulated citizenship on the basis of a broad entrenchment of human rights, consecrating what are commonly described as the three generations of rights.[217] The first encompasses civil and political rights, including equality before the law, the right to personal security, the right to privacy, the inviolability of the home, the secrecy of correspondence, freedom of movement, freedom of conscience and belief, freedom of opinion and expression, and the right to vote.[218] The second comprises economic, social, and cultural rights, such as trade union rights, the right to strike, the right to health, the right to work, the right to education, and the right to culture.[219] In addition, the constitution recognises solidarity rights, notably the "right to a healthy environment" enshrined in Article 45.[220] This architecture clearly reflects the influence of international human rights standards.[221]

This extensive constitutional declaration of rights and freedoms was accompanied by structuring principles of the civil state, which echo the theoretical proposal of Redha Chennoufi[222] mentioned above, as well as by standards of conduct[223] enabling their practical realisation. These elements were codified in Article 49, which effectively entrenched the civil state in a definitive manner.

---

215 Redissi, « Raison publique et laïcité islamique. » See also : Neji, "The Civil Nature of the State," 60.

216 Laghmani, « Les ambivalences de la Constitution tunisienne, » 117–118; Redissi, « Raison publique et laïcité islamique. »

217 Laghmani, « Les ambivalences de la Constitution tunisienne, » 109. Regarding the classification of rights and freedoms according to the "criterion of the historical order of their emergence" and the "three generations" of rights, see: Michel Levinet, *Théorie générale des droits et libertés*, 2nd revised edition (Brussels: Bruylant, Nemesis, 2008), 73–75.

218 Dimiter Chalev, Mazen Shaquoura, and Abou Abass, « Rôle des Nations Unies dans le processus constitutionnel tunisien et résultat en termes de garanties relatives aux droits de l'homme, » in PNUD, *La Constitution de la Tunisie*, 467.

219 See, for a discussion of the constitutional entrenchment of economic and social rights: Néji Baccouche, « Les droits économiques et sociaux et la Constitution, » in PNUD, *La Constitution de la Tunisie*, 473–481.

220 See, for a discussion of the constitutional entrenchment of environment-related rights: Wahid al-Ferchichi, « L'environnement dans la nouvelle Constitution, » in PNUD, *La Constitution de la Tunisie*, 441–449.

221 Chalev et al., « Rôle des Nations Unies, » 471; Laghmani, « Les ambivalences de la Constitution tunisienne, » 109; Redissi, « Raison publique et laïcité islamique. »

222 Chennoufi, *Tunisia: Religion or the State?*, 49–51.

223 Kaouthar Debbeche, *Article 49 and Individual Freedoms: Is There Another Reading?* (Stockholm: International Institute for Democracy and Electoral Assistance, 2021), 52.

Among the structuring principles, the foremost is the principle of equality.[224] In legal doctrine, equality is described as a "foundational right" and a "primary right" prevailing over other fundamental rights, "since it is a condition for their exercise."[225] Article 21, paragraph 2, of the 2014 Constitution provides: "All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination." It is self-evident that the principles of equality and non-discrimination —equality's "logical consequence"—[226] give citizenship its true meaning and allow for the construction of a "state of citizens based on the absence of any predefined classifications... thus, the actions of the state, the laws it enacts, and the resulting social balances should consider individuals only from the perspective of their civic status, with all the objectivity and significance that this designation entails."[227]

From this perspective, the importance of neutralising the religious factor becomes evident. This does not imply that the civil state ignores religion;[228] rather, the objective is to ensure the state's ability to accommodate all expressions of freedom of conscience and belief on an equal footing.[229] Article 6 sought to reflect this approach to the extent allowed by the ideological tensions that characterised the constitutional debates.[230]

In essence, Article 6 addresses the state and requires it to adopt a specific approach to religion whereby it must guarantee freedom of belief and conscience, including the freedom to practise religious rites.[231] This protection rests on two main pillars. The first pillar is the *internal* dimension of religious freedom, composed of freedom to hold a belief and the freedom to change one's religion. The second pillar relates to the *external* dimension, consisting of the right to express one's beliefs publicly through religious practices.[232] At the same time, Article 6 obliges the state to ensure the neutrality of places of worship and to protect them from all forms of partisan instrumentalisation.

This roadmap for addressing religious matters is further reinforced in the constitution by two limits: on the one hand, the protection of the sacred and the prohibition of any violations thereof; on the other, the prohibition of *takfir* and the incitement of violence and hatred.

---

224 It should be noted that human rights doctrine has long recognised the structuring role of the principle of equality within the human rights system, particularly in relation to European Union law. See: Louis Favoreu et al., *Droit des libertés fondamentales*, 7th ed. (Paris: Dalloz, 2015), 633. Regarding equality in relation to the concept of the civil state, see also: Bostangi , « La guerre de l'article premier n'aura pas lieu, » 2.

225 Favoreu et al., *Droit des libertés fondamentales*, 433.

226 Stéphanie Hennette-Vauchez and Diane Roman, *Droits de l'Homme et libertés fondamentales*, 2nd ed. (Paris: Dalloz, 2015), 679.

227 Gheraïri, « Le caractère civil de l'État tunisien, » 121.

228 Laghmani, "The Civil State," 18.

229 Louise Ferte, « Au miroir de la liberté de conscience : l'utopie laïque et son destin, » *Le Télémaque* 2017/1, no. 51: 153. See also: Chennoufi, *Tunisia: Religion or the State?*, 108.

230 Article 6 reads as follows: "The state is the guardian of religion. It 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. The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of violence and hatred."

231 Redissi, « Raison publique et laïcité islamique. »

232 Levinet, *Théorie générale des droits et libertés*, 72.

This dual framework,[233] which reflects the intensity of ideological and political conflicts evident in the preparatory works,[234] requires, if the coherence of the constitutional text is to be maintained, a conciliatory interpretation. Such an interpretation must establish a boundary that the state may not exceed in its handling of religious affairs, manifesting in an approach that promotes moderation and tolerance.[235] This framework may also justify imposing limitations on the practice of religious rites in order to respect the sacred beliefs of others and the freedom of conscience.

The essential point is that freedom of belief and conscience must not be deprived of its substance, as it encompasses both the right to believe and the right not to believe,[236] and the state's duty to protect this right.[237] Achieving this balance is challenging, yet the duality that characterises the drafting of Article 6 was necessary to reach consensus, as is the case throughout the constitution, in a text in which "each party reads what it wishes to read,"[238] even if it appears to reflect an unresolved contradiction.[239]

Moreover, the 2014 Constitution surrounds the civil state with standards of conduct and constitutional values,[240] foremost among them impartiality. Impartiality is in fact a transversal principle throughout the constitutional text. It is first invoked in the preamble, which recalls the "impartial administration" as one of the foundations of "political competition" within a "civil state." This principle was expressly enshrined in Article 15, within the chapter on general principles, alongside the principles of equality and the continuity of public services. Impartiality thus constitutes a core attribute of the civil state, whose construction depends on the administration maintaining the necessary distance from all particularities and differences in its relations with citizens, thereby ensuring equal access to public services and rationalising public intervention.[241]

---

233 See in this respect : Laghmani, « Les ambivalences de la Constitution tunisienne, » 123–124 ; Redissi, « Raison publique et laïcité islamique. »

234 This formulation originates in the debates within the National Constituent Assembly and the escalation of internal conflict following an attack on Mongi Rahoui, a member of the leftist Democratic Patriots party, by Habib Ellouze, a deputy of the Ennahda Islamist Movement. The incident subjected Rahoui to "death threats," which subsequently led to the inclusion of a prohibition on *takfir* in Article 6. See in this respect: Béchir Lakani, « Mongi Rahoui sous menace de mort, » *L'économiste maghrébin,* 6 janvier 2014; Redissi, « Raison publique et laïcité islamique. »

235 Debbeche, *Article 49 and Individual Freedoms*, 53.

236 Favoreu et al., *Droit des libertés fondamentales*, 524–525. See in the same direction: Chennoufi, *Tunisia: Religion or the State?*, 57–58; Laghmani, "A Constitutional Reading of the Initiative on Equality in Inheritance," 128; Presidency of the Republic, *Report of the Committee on Individual Freedoms and Equality*, 36.

237 Chennoufi, *Tunisia: Religion or the State?*, 69. Hamadi Redissi wondered if the drafters had estimated the consequences thereof: Redissi, « Raison publique et laïcité islamique. »

238 Elleuch, "Constitutionalising the Right to Education Amidst War of Identity," 9.

239 Redissi, « Raison publique et laïcité islamique. »

240 Debbeche, *Article 49 and Individual Freedoms*, 52.

241 See on the dimensions of administrative neutrality and public services: Chennoufi, *Tunisia: Religion or the State?*, 63; see also: Geneviève Koubi, « Le principe de neutralité des services publics : un principe corollaire à la modernisation de l'État ?, » *La Revue administrative*, novembre–décembre 1992, no. 270: 492–499.

In the same spirit, Article 16 "guarantees the impartiality of educational institutions from all partisan instrumentalisation." Article 18 establishes the "complete" impartiality of the national army,[242] drawing on the principles of the civil state, which remove the military from the exercise of political power in order to avert the "spectre" of a military state,[243] one of the antitheses of the civil state. The obligation of impartiality was also extended to the national security forces under Article 19.[244] In this way, the 2014 Constitution enshrined impartiality as a cornerstone of the civil state and a defining standard governing the conduct of all state institutions.

Article 49, which concludes the second chapter of the constitution on rights and freedoms, [245] functions as a comprehensive provision, offering the civil state a clear methodology for limiting freedoms.[246] In practice, this article represents one of the "mechanisms for regulating the limitations of rights and freedoms" introduced by the 2014 Constitution, alongside the specific restrictions set out in other provisions. [247]

Although there is insufficient space here to fully detail the paradigmatic shift effected by this provision in the Tunisian context, it is sufficient to note that it marked a major transformation[248] by establishing a precise framework that entrenches the principle of legislative reservation, assigning exclusively to the legislature, as the representative of the sovereign people, the authority to set limitations on rights and freedoms. In doing so, it surrounds limitations on freedoms with guarantees of legality and procedural safeguards ensured by the legislative process,[249] while subjecting the exercise of this power to constraints —most notably the prohibition on rolling back human rights achievements— in order to protect them from "political bargaining driven by shifting majorities." [250]

---

[242] Article 18 reads as follows: "The national army is a republican army. It is an armed military force based on discipline that is composed and structurally organized in accordance with the law and charged with responsibility to defend the nation, its independence and its territorial integrity. It is required to remain completely impartial. The national army supports the civil authorities in accordance with the provisions set out in law."

[243] Bras, « Un État 'civil' peut-il être religieux?, » 65.

[244] See the discussion on the dimensions of the constitutionalisation of the neutrality of the armed forces in 2014 and the lack of reference to it in 2022: Zohour Ouamara, "Matha Ya'ni Tajahul al-Quwwat al-Amniyya wa al-'Askariyya fi Dustur Sa'id?" [What Does Ignoring the Security and Military Forces in Saied's Constitution Mean?] *Legal Agenda Tunisia, Republic of the Individual or the Non-Republic*, no. 2 (September 2022).

[245] Article 49 reads as follows: "The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought. Judicial authorities ensure that rights and freedoms are protected from all violations.
No amendment may undermine the human rights and freedoms guaranteed in this Constitution."

[246] Slim Laghmani, *The Limitation of Rights and Freedoms in Tunisian Constitutional Law: From Article 49 of the 2014 Constitution to Article 55 of the 2022 Constitution*, 11 (Stockholm: International Institute for Democracy and Electoral Assistance, 2023).

[247] See also, regarding this approach: Khaled Al-Majri, *Regulations of Rights and Freedoms: Commentary on Article 49 of the Tunisian Constitution*, 14 (Stockholm: International Institute for Democracy and Electoral Assistance, 2017). See also: Laghmani, *The Limitation of Rights and Freedoms in Tunisian Constitutional Law*, 14.

[248] See in the same direction: Ben Achour, *Institutions and the Political System in Tunisia*, 298.

[249] Debbeche, *Individual Freedoms and Article 55*, 88–89. See also, regarding the definition of law: Neji Al-Bakkouch, "Al-Qanun fi Dustur 2014" [Law in the 2014 Constitution], in *Law: Proceedings of the Forum Held on 11–12 April 2019 at the Faculty of Law of Sfax, Tunisia*, edited by Moataz al-Qarqouri and Lamia Neji (Tunis: Latrach Édition, 2022), 7–8.

[250] Isabelle Hachez, « L'effet de standstill : le pari des droits économiques, sociaux et culturels ?, » *Administration publique*, vol. 24, no. 1 (2000): 54.

In addition to defining the competent authority, the comprehensive Article 49 also establishes a methodology based on a tripartite test, grounded in the premise that freedom is the rule and restriction the exception.[251] Any exception must therefore be subjected to successive tests, the first of which —relevant to this study— is the requirement of necessity in a democratic civil state. This is known as "external necessity," meaning that no alternative solution exists and that restricting freedom is required in order to protect a competing value. [252]

These values correspond to the legitimate aims exhaustively enumerated in Article 49: "protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals."[253] Coupling the civil state with the democratic state is not redundant, since democracy, in its composite understanding,[254] fosters the "competencies" necessary for the exercise of citizenship,[255] which constitutes the core essence of the civil state.

Necessity, therefore, is not defined in absolute terms but rather as necessity within a "democratic civil state," understood in light of its underlying values. Once this necessity is established, and once the legitimacy of the objective pursued by the legislative measure restricting a right or freedom is verified as a second step, the process proceeds to what may be considered the decisive test: "proportionality between these restrictions and the objective sought." This test unfolds in three stages, formalised as suitability, internal necessity, and proportionality in the strict sense.[256] Throughout this process, it must also be ensured that the legislative measure does not undermine the essential core of the right. [257]

It is thus evident that the constitution articulated the civil state as a constellation of rights for citizens, an obligation incumbent upon the state, and a guiding framework for all state actions. Admittedly, the path toward this constitutional entrenchment was not straightforward; this achievement was made possible through the active mobilisation of civil society.[258] Nevertheless, the civil state did not endure the constitutional moment of 2022.

---

[251] Debbeche, *Article 49 and Individual Freedoms*, 128. Malik Ghazouani, *Guide for the Judicial Judge in the Application of Article 49 of the Constitution: Judicial Oversight of Proportionality Between Rights and Freedoms and Their Obligations*, 98 (Stockholm: International Institute for Democracy and Electoral Assistance, 2021).

[252] Slim Laghmani, "Al-Fasl 49 min Dustur 27 Janfi 2014 fi Thamaniya As'ila" [Article 49 of the Constitution of 27 January 2014 in Eight Questions], in Laghmani, *Writings on Politics and the Constitution*, 118.

[253] Ibid.

[254] Éric Millard, « L'État de droit, idéologie contemporaine de la démocratie, » in Jean-Marc Fevrier and Patrick Cabanel (eds.), *Question de démocratie* (Toulouse: Presses universitaires du Mirail, 2001), 4.

[255] Catherine Audard, « Citoyen, » in *Dictionnaire d'éthique et de philosophie morale*. Vol. 1, 4th revised and expanded ed., edited by Monique Canto-Sperber (Paris: Quadrige/PUF, 2014), 318.

[256] Debbeche, *Article 49 and Individual Freedoms*, 184–280; Al-Majri, *Regulations of Rights and Freedoms*, 95–114.

[257] Debbeche, *Article 49 and Individual Freedoms*, 281–289.

[258] Neji, "The Civil Nature of the State," 46–48. See also: Redissi, « Raison publique et laïcité islamique. »

II. The 2022 Constitutional Moment: The Interruption of the Constitutional Momentum of the Civil State

The Constitution of 25 July 2022, with regard to the aspect relevant to our analysis —namely, the civil state— has effectively stripped this concept of its constitutional foundations. Consequently, the civil state and all its associated elements were entirely excluded,[259] as if they had never existed (A). It is difficult not to perceive this "disappearance"[260] as having consequences that may hinder what we consider the 'vessel' for the civil state, which the Tunisian legal system had already embarked upon even prior to the emergence of the national state, as demonstrated above (B).

A. The Obscuring of the Civil State

The 2022 Constitution caused a genuine shock to the core tenets of Tunisian constitutional authority.[261] The expression "Islam is its religion" disappeared from Article 1, and the constitution's preamble appeared cloaked in an ostensible impartiality, by stating "Tunisia is a free, independent, and sovereign state." This impartiality, however, was undermined by the concentration of identity-based authorities[262] in subsequent provisions, particularly Article 5,[263] which provided that Tunisia is part of the Islamic nation (*ummah*), despite the declaration that the Tunisian people are the holders of sovereignty. In effect, the people were "dissolved" into the collective entity denoted by the *ummah*.[264]

Moreover, the objectives (*maqasid*) of Islam were introduced into Article 5, followed by the stipulation in Article 6 that "Tunisia is part of the Arab nation and that Arabic is the official language."[265] As a result, it may initially seem that the notion of a civil state has disappeared from Article 2, since the rationale for its inclusion in the 2014 Constitution —namely, the neutralisation of religious authority in the absence of Article 1's statement that "Islam is its religion"— no longer applies.

In reality, however, we contend that this new constitutional architecture of authorities pursues a distinct objective. It proceeds from the conviction expressed by the drafter that the state has no religion and that Islam is not the religion of the state, yet that the state alone has the function, "within a democratic system" of acting "alone" to achieve the objectives of the noble Islamic religion, insofar as Tunisia is "part of the Islamic *ummah*," whose religion is Islam.[266]

---

[259] Hamadi Redissi, "On Chapter Five of the 2022 Draft Constitution: The Nation, the State, and the Objectives of Islam," *Le Maghreb*, No. 3320 (16 July 2022): 6.

[260] Ouamara, "What Does Ignoring the Security and Military Forces in Saied's Constitution Mean?," 37.

[261] See in the same respect: Sana Ben Achour, « Trois constitutions, un seul pouvoir, » in Redissi, *Le pouvoir d'un seul*, 83.

[262] Nouira, « La religion dans la Constitution de 2022, » 154.

[263] Article 5 reads as follows: "Tunisia is part of the Islamic nation, and the state alone must, under a democratic system, work to achieve the objectives of Islam in preserving life, honour, money, religion and freedom."

[264] Redissi, "On Article 5 of the Draft 2022 Constitution," 6.

[265] Ibid.

[266] See on the debate on the state and the nation in the new constitution: Sa. Ben Achour, « L'arbre qui cache la forêt » ; Sa. Ben Achour, « Trois constitutions, un seul pouvoir, » 80 ; Nouira, « La religion dans la Constitution de 2022, » 154.

Accordingly, as we noted in a previous study, Islam was removed from the broad interpretive scope of Article 1 and inserted into Article 5 through the introduction of an objectives-based formulation.[267] This constitutes a constitutional entry (1) whose consequences are uncertain, particularly in terms of its restrictive effects on interpretation (2).

1. The constitutional retrieval of the objectives

"Perhaps the theory of the 'objectives of sharia' (*maqasid al-sharia*) represents the most widespread trend in contemporary Islamic legal and political thought. Dozens of books and doctoral dissertations have been written on the theory of *maqasid* and its application across virtually every field, from criminal law to the ethics of genetic engineering."[268] Be that as it may, the difficulty today lies in the fact that the matter has moved beyond the realm of theoretical proposals and entered the constitutional text, and from there into the state itself, imposing upon it a method of "action."[269] This is where the dilemma lies, particularly in light of the exclusion of the civil state from the constitutional text. The constitutional retrieval of the *maqasid* is not new in Tunisia, as it can be traced back to the preamble to the 2014 Constitution, which affirmed the people's "commitment to the teachings of Islam and its aims characterised by openness and moderation." In practice, this formulation appeared balanced[270] and carried a low doctrinal charge, decisively affirming the moderate character of the *maqasid*.[271] We do not believe the situation is the same under the 2022 Constitution, whose Article 5 grounds the *maqasid* in a clear doctrinal reference.[272] By "mentioning the five universals," it conflates the objectives of Islam in their broad contemporary understanding with the objectives of sharia as articulated in the classical juristic corpus.[273] Most importantly, it renders the *maqasid* a constitutional subject that cannot be ignored.

[267] Debbeche, *Individual Freedoms and Article 55*, 143. See on the intersection with the 2014 Constitution: Sa. Ben Achour, « L'arbre qui cache la forêt » ; Sa. Ben Achour, « Trois constitutions, un seul pouvoir, » 80 ; Bras, « Un État 'civil' peut-il être religieux?, » 56–63.

[268] Andrew F. March, "The Maqsad of hifz al-dīn: is liberal religious freedom sufficient for the Sharīʿah?", *Islam and Civilisational Renewal* 2, no. 2 (January 2011): 358.

[269] Redissi, "On Article 5 of the Draft 2022 Constitution," 6. See also: Nouira, « La religion dans la Constitution de 2022, » 150.

[270] Redissi, « Raison publique et laïcité islamique. »

[271] Laghmani, "A Constitutional Reading of the Inheritance Equality Initiative," 129.

[272] Nayla al-Salini, "Al-Fasl 5: "In Hiya Illa Naruhum al-Muqada" [Article 5: 'It is Only Their Kindled Fire], in *Al-Shari' al-Maghribi*, no. 318 (19–25 July 2022): 4–5.

[273] Redissi, "On Article 5 of the Draft 2022 Constitution," 6. See in the same vein: Al-Salini, "Article 5," 4.

These lines, in fact, are insufficient to provide an exhaustive account of the pioneers of *maqasid*-based thought,[274] as the list cited in the juristic tradition is extensive.[275] Most notably, al-Ghazali (d. 505 AH), grounded the *maqasid* in the concept of public interest (*maslaha*).[276] Also, Abu Ishaq al-Shatibi (d. 790 AH) in his work *Al-Muwafaqat fi Usul al-Sharia* (*The Reconciliation of the fundamentals of Islamic Law*),[277] maintained that "the Holy Quran sought to secure the welfare of both this world and the hereafter, while identifying their harms in order to prevent them. It has been established that these interests fall into three categories only: the necessary, the complementary, and the desirable or embellishment objectives, beyond which no further categories exist, as set out in the *Book of Maqasid*."[278]

As for the necessary *maqasid*, they refer to the five universal objectives, namely, the preservation of religion, life, progeny, wealth and intellect.[279] Al-Shatibi further classified the three categories according to a hierarchy, stating that the necessary objectives in the sharia constitute the foundation for the complementary and desirable objectives.[280]

Following in the footsteps of earlier scholars, and after defining the general objectives of legislation as the meanings and rulings recognised by the Lawgiver in all or most legislative contexts,[281] Sheikh al-Taher Ben Achour, one of the sources of inspiration for the constitutional drafter,[282] classified the five universal objectives among the necessary objectives.[283]

---

[274] Debbeche, *Individual Liberties and Article 55*, 143–145.

[275] Jurisprudence particularly mentions Ibrahim al-Nakhai in Iraq (d. 96 AH). See: Mohammed ibn al-Hasan al-Hajawi, *Al-Fikr al-Sami fi Tarikh al-Fiqh al-Islami* [Sublime Thought in the History of Islamic Jurisprudence], vol. 1, 1st ed. (Medina: Al-Maktabah al-Ilmiyyah, 1977), 318; Hamadi al-Ubaidi, *Al-Shatibi wa Maqasid al-Shari'a* [Al-Shatibi and Maqasid al-Shariah], 1st ed. (Damascus–Beirut: Dar Qutaybah for Printing, Publishing, and Distribution, 1992), 135. Similarly, Imam Malik (d. 179 AH) grounded his jurisprudence in the principle of *masalih mursalah* (public interests not explicitly addressed in scripture), which is founded on *maqasid al-sharia*. See regarding the doctrinal reading of *masalih mursalah*: Abd al-Karim Zaidan, *Al-Madkhal li-Dirasat al-Shariah al-Islamiyyah* [Introduction to the Study of Islamic Law], 6th ed. (Beirut: Muassasat al-Risalah, 1982), 202–203. Following this reasoning, Imam Malik is sometimes included among the Maqasidi scholars (Al-Ubaidi, *Al-Shatibi wa Maqasid al-Shariah*, 135). Similarly, Izz al-Din ibn Abd al-Salam (d. 660 AH) (Al-Ubaidi, *Shatibi wa Maqasid al-Shariah*, 135–136) and Abd al-Salam Najm al-Din al-Tufi al-Hanbali (d. 716 AH) (Ibid., 136) are cited as part of this tradition.

[276] **Muhammad Abduh,** *Al-Fikr al-Maqasidi 'Ind al-Imam al-Ghazali* **[The** ***Maqasidi Thought of Imam Al-Ghazali]*** **(**Beirut: Dar al-Kutub al-Ilmiyah, 2009), 39. See on the definition of *maqasid*: Sheikh Imam Hujjat al-Islam Abu Hamid Mohammed ibn Mohammed al-Tusi, *Shifa al-Ghalil fi Bayan al-Shabah wa-l-Mukhayyal wa-Masalik al-Taalil* [Healing of the Thirsty: Clarifying Analogy, Imaginative Reasoning, and Methods of Causal Inference], investigation by Hamad al-Qubaisi (Baghdad: Al-Irshad Press, 1971), 159–161.

[277] Redissi, "On Article 5 of the Draft 2022 Constitution," 6; Al-Ubaidi, *Al-Shatibi wa Maqasid al-Shariah*, 25–26.

[278] Abi Ishaq Ibrahim ibn Musa ibn Mohammed al-Lakhmi al-Shatibi, *Al-Muwafaqat* [The Reconciliation of the Fundamentals of Islamic Law], vol. 4, 1st ed. (Saudi Arabia: Dar Ibn Affan for Publishing and Distribution, 1997), 346.

[279] Abi Ishaq Ibrahim ibn Musa ibn Mohammed al-Lakhmi al-Shatibi, *Al-Muwafaqat* [The Reconciliation of the Fundamentals of Islamic Law], vol. 3, 1st ed. (Saudi Arabia: Dar Ibn Affan for Publishing and Distribution, 1997), 20.

[280] Ibid., 31.

[281] Mohammed al-Taher Ben Achour, *Maqasid al-Sharia al-Islamiyah* [Objectives of Islamic Law], Series on Islamic Renaissance Thought (Alexandria: Bibliotheca Alexandrina, 2011), 82. Regarding Ben Achour's adoption of the same "method" as al-Shatibi, see: Mukhtar al-Ahmar, "Al-Hurriyya fi Siyaq al-Jadal al-Maqasidi: Dirasah fi Daw' Manhajiyyat al-Taqsid al-Shar'i lil-Kulliyyat" [Freedom in the Context of the *Maqasid* Debate: A Study in Light of the Methodology of Sharia Objectives], *Al-Miiyar* 25, no. 58 (2021): 420.

[282] Redissi, "On Article 5 of the Draft 2022 Constitution," 6.

[283] The five universal objectives according to the sheikh include the preservation of religion, life, progeny, wealth and intellect. Ben Achour, *Objectives of Islamic Law*, 136–138.

In practice, we observe an extension of the *maqasidi* (objectives-based) thought among those referred to as the "New Maqasidists,"[284] —a movement that encompasses a wide circle beginning with Khair al-Din al-Tunisi, Muhammad Abduh, and Rashid Rida in Egypt—[285] before *maqasidi* thought was promoted in the 1970s as a conciliatory solution to escape the dilemma of strictly adhering to textual limits without resorting to a secular alternative.[286] Within this framework, the meaning of these objectives was "reinterpreted"[287] beyond traditional applications —"killing the apostate" for the preservation of religion, "stoning the adulterer" for the protection of honour, "carrying out the *hudud* (punishments) on the thief" for safeguarding property, and "*qisas* (retaliation)" for the protection of life.[288] These objectives were further expanded[289] to the extent that some scholars proposed twenty-four objectives.[290] Regardless of the merits of this *maqasidi* approach, it does not eliminate the dangers of interpretation, which can slide into extremism. It suffices here to refer to Mohammed Qutb, classified among the Maqasidists, who developed an entire theory of jihad on the basis of the objective of preserving religion.[291]

The adoption of *maqasid*-oriented discourse by contemporary scholars does not, therefore, fundamentally alter the situation, as "the *maqasid* are employed as a framework to justify legal reform in reformist discourses." Nevertheless, this should not be understood to mean that the function of *maqasid* reasoning is to "liberate" sharia by making it less restrictive in all cases. On the contrary, it is more accurate to say that the duty to "protect and preserve" various overarching interests shifts the jurist's focus from justifying rulings by reference to specific texts to a policy of blocking all avenues that might compromise those interests (*sadd al-dhara'i'*). It is true that the *maqasid* open the door to considering new means of achieving established objectives and interests, yet the fact remains that the jurist now recognises far greater potential harms to reason, religion, and other "essential public interests." Whereas earlier jurists might have strictly adhered to the prohibition of alcohol in a narrow, formal sense based solely on the Quran, the contemporary jurist now sees in it countless potential sources of harm to reason. In other words, sharia, in practice, becomes less restrictive for those seeking to "enjoin good and forbid evil," but not less restrictive for those who might seek to indulge in wrongdoing.[292] Restriction, therefore, remains inevitable, a reality further confirmed by constitutional interpretation.

---

[284] Muhammad al-Marakebi, "Al-Hadatha wa Tahawwulat al-Khitab al-Maqasidi: Nahw Fiqh Sa'il" [Modernity and Transformations of the Maqasidi Discourse: Towards a Fluid Jurisprudence?], *Journal of Islamic Ethics*, Vol. 3 (2019): 14.

[285] Ibid., 10.

[286] Ibid., 14.

[287] Ibid., 19.

[288] Ibid., 19.

[289] Ibid.

[290] Ibid., 20. The researcher refers to: Jamaleddine Atiyah, *Nahw Taf'il Maqasid al-Shari'a* [Towards Activating the Objectives of Sharia], 1st ed. (Jordan; Damascus: International Institute of Islamic Thought / Dar al-Fikr for Printing, Publishing, and Distribution, 2001), 139 ff. See also: Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 425–426.

[291] Al-Marakebi, "Modernity and Transformations of the Maqasidi Discourse," 22. One may also refer here to Sayyid Qutb's interpretation of *Surah al-Anfal* in the Noble Quran: Sayyid Qutb, *Fi Zilal al-Qur'an* [In the Shade of the Qur'an], vol. 3, parts 8–11, 32nd ed. (Cairo: Dar al-Shorouk, 2003), 1435 ff. See also on this jurisprudential reference: Debbeche, *Individual Liberties and Article 55*, 168.

[292] March, "The Maqsad of hifz al-dīn," 362–363.

2. Restrictive constitutional engineering of interpretation

"The state alone must, under a democratic system, work to achieve the objectives of Islam." A close reading of this constitutional provision, as found in Article 5, is sufficient to reveal the legal implications of such wording. According to Sana Ben Achour, its first effect is to grant the state exclusive authority over the preservation of Islam's objectives, which implicitly extends to oversight of religious affairs, thereby excluding "others," including parties or associations that might contest the religious domain, from participation.[293] The constitutional drafter's intention was clearly to marginalise them, a perspective that Hamadi Redissi has criticised as "naïve," arguing that it is impossible for the state alone to monopolise religious matters that carry high symbolic significance.[294] This understanding is confirmed today by the issuance of an official interpretation of Article 5 of the Tunisian Constitution by the Ministry of Religious Affairs in August 2025, which states: "The principle is that the state alone is responsible for realising these objectives, and its institutions oversee the dissemination of true religion in the country. Its various structures monitor the religious discourse presented by specialised individuals."[295]

The matter, therefore, rests with the "state alone,"[296] yet this seemingly reassuring discourse does not negate the legal obligations borne by the state. This stems from the second, more problematic effect of constitutionalising the *maqasid*, which Sana Ben Achour has highlighted as the nature of the obligation imposed on the state to ensure that positive legislation aligns with the objectives of sharia.[297] This entails that the state's various organs are tasked accordingly: the legislator must avoid enacting laws contrary to the *maqasid*; the judge must interpret and apply the law in a manner that preserves them; and the constitutional court, as the "official interpreter of the constitution," must act as the guardian of the *maqasid*.[298] Furthermore, all of these actors are expected to be specialists in sharia sciences to adequately perform this guardianship, a function that is, unavoidably, rooted in a jurisprudential framework.[299]

The new constitutional obligation thus elevates the *maqasid* to the status of general principles upon which the interpretation of positive legislation is to be based,[300] representing an insecure "entry point" through which legislation may long evade the risk of sharia being treated merely as a formal source of law.[301]

---

[293] Sana Ben Achour, "Makanat al-Islam fi Mashru' Dustur al-Jumhuriyya al-Jadida" [The Status of Islam in the Draft Constitution of the New Republic], in *A Reading of the Draft Constitution Submitted to the Referendum of 25 July 2022*, meeting organised by the Tunisian Association of Constitutional Law, Faculty of Legal, Political, and Social Sciences of Tunis, 4 July 2022, unpublished. See also in the same respect: Nouira, « La religion dans la Constitution de 2022, » 156.

[294] Redissi, "On Article 5 of the Draft 2022 Constitution," 6.

[295] Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022: Response to a Question Submitted by MP Fatma Al-Masdi on 1 July 2025 Regarding an Official Explanation of Article 5 of the 2022 Tunisian Constitution*, 15 August 2025, 4.

[296] Redissi, "On Article 5 of the Draft 2022 Constitution," 6.

[297] Ben Achour, "The Status of Islam in the Draft Constitution of the New Republic." See also: Nouira, « La religion dans la Constitution de 2022 », 150.

[298] With regard to "official constitutional interpretation" and its distinction from "scholarly or doctrinal interpretation," see: Pierre Brunet, Francis Hamon, and Michel Troper, *Droit constitutionnel*, 44th édition, Paris: LGDJ, Lextenso, 2023, 74.

[299] See also: Thabet, *The Constitution of 25 July 2022*, 120. See also: Nouira, « La religion dans la Constitution de 2022, » 158.

[300] Ben Achour. "The Status of Islam in the Draft Constitution of the New Republic (unpublished)." See also: Nouira, « La religion dans la Constitution de 2022, » 158.

[301] Klibi, « La Constitution du 25 juillet 2022, » 95–96. Thabet, *The Constitution of 25 July 2022*, 120.

These *maqasid* encompass both a core meaning and a duty of preservation. According to al-Shatibi, the obligations of sharia refer to the preservation of its objectives: "Their preservation takes place in two ways. First: by establishing their pillars and strengthening their foundations; this is an expression for their preservation from the positive aspect (establishing existence). Second: by ensuring the removal of disharmony that affects them or is likely to affect them; this is an expression for their protection from the defensive aspect (defending against negation).[302]

This duty of preservation is further reinforced by the interpretation issued by the Ministry of Religious Affairs, which acknowledged that it "understands […] the expression 'the objectives of noble Islam' in Article 5 of the constitution as referring to the fundamental aims and central objectives that Islam brought forth to be actualized in the lives of Muslims and realised in the reality in which they live."[303] This pursuit of "actualisation" on the ground raises a critical issue, as it imposes a legal obligation, and therefore a duty of interpretation, on the state.

Moreover, the Ministry's interpretation references the ongoing engagement of Tunisian legislation with the *maqasid* approach, stating: "It can be considered that these objectives have direct implications for the legislative sphere or the state's public policies, since some of these objectives are already incorporated into our country's legal regulations. Their legitimacy is derived, for instance, from applying the law to those who violate human life, honour, or reason, in all forms of corruption, destruction, and harm."[304] Thus, it will not be easy to neutralise this *maqasid*-oriented approach.

One might argue that the *maqasid* appear within a complete textual framework and should be interpreted in light of that context. Yet this is precisely the dilemma, as the possible mitigating factors are absent from the constitutional text, most importantly, the principle of the civil state.

In practice, the removal of the civil state from the constitution creates a limited horizon for interpreting the *maqasid*, especially given its simultaneous omission from the general clause in Article 55.[305] A clear link remains between the *maqasid* and Article 5, namely the concept of a "democratic system" mentioned in both.[306] It is worth recalling that the founder replaced the phrase "democratic civil state," which had served as the measure of external necessity in the comprehensive article of the 2014 Constitution —allowing rights to be restricted only when necessary in a democratic civil state— with the more general term "democratic system."[307]

---

[302] Al-Shatibi, *Al-Muwafaqat*, 17–18; Al-Ubaidi, *Shatibi wa Maqasid al-Shariah*, 189–195. See also: Redissi, "On Article 5 of the Draft 2022 Constitution,"6. See also: March, "The Maqsad of hifz al-dīn," 364–368.

[303] Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 1.

[304] Ibid., 3.

[305] Article 55 of the 2022 Constitution reads as follows: "No restrictions shall be placed on the rights and freedoms guaranteed by this constitution except by virtue of a law and for the necessity of a democratic system, national defence, public security, public health, protection of the rights of others, or public morals. These restrictions must not affect the essence of the rights and freedoms guaranteed in this constitution, and they must be justified by their objectives and consistent with their justifications. No rectification may prejudice the gains and freedoms of human rights guaranteed in this constitution. All judicial bodies must protect these rights and freedoms from any infringement."

[306] For a possible interpretation of the relationship between Article 5 and Article 55 see: Klibi, « La Constitution du 25 juillet 2022, » 96.

[307] For a discussion of the dimensions of this change see: Laghmani, *The Limitation of Rights and Freedoms in Tunisian Constitutional Law*, 33–34.

This difference in wording is significant. In the 2014 Constitution, the enshrinement of the democratic civil state as a justification for restrictive measures established a minimum standard of meaning, emphasising a composite understanding of democracy that goes beyond the formal dimension, limited to elections, to include a substantive aspect concerned with the protection of fundamental freedoms.[308]

In reality, it is not easy to equate the democratic civil state with the democratic system, especially if one considers that the term "democratic" in "democratic system" functions merely as a description of the political system, defined as "the method of governance in a state."[309] In this sense, it becomes a type of basic system, according to the traditional classification based on a quantitative criterion,[310] namely, the number of rulers, or those "holding power."[311] If the latter is all or the majority of the people, the system is classified as a democracy.[312]

Thus, from an idealistic standpoint, one could argue that democracy should suffice on its own without the need for a qualifying adjective;[313] otherwise, some constitutions would not have adopted this approach.[314]

This is particularly true because representative democracy carries the spectre of "majoritarian tyranny,"[315] unless its substantive dimension is strengthened by the protection of rights and freedoms. Accordingly, the democratic system in itself cannot be considered a guarantee,[316] and the reference thereto in Article 5 serves merely to define its function, namely, to work toward preserving the *maqasid*.

As a result, the focus shifts from the "democratic civil state" framework to what can be termed "*maqasid*-based necessity,"[317] giving interpreters less flexibility due to the limited jurisprudential basis.[318] Confidence cannot rest solely on the Ministry of Religious Affairs' "interpretation," which claims to "rely on specific jurisprudential references and the *ijtihad* of national institutions," particularly "drawing on Tunisia's engagement with the Tunisian school, rooted in the teachings of the Great University of Ez-Zitouna."[319]

---

308 Millard, « L'État de droit, » 4.

309 Jean-Louis Quermonne, « Régime politique, » in *Dictionnaire constitutionnel*, edited by Olivier Duhamel and Yves Mény (Paris: PUF, 1992), 887.

310 For a discussion of the "numerical function" in Rousseau, see: Alexis Philonenko, « Rousseau Jean-Jacques 1712–1778, Contrat social 1762, » in *Dictionnaire des œuvres politiques*, edited by François Chatelet, Olivier Duhamel, and Evelyne Pisier, 3rd ed. (Paris: PUF, 1995), 1055.

311 Brunet et al., *Droit constitutionnel*, 103.

312 Ibid.

313 See: Manuel Cervera-Marzal, « La démocratie sous tension: Radicalité et utopie, sœurs ennemies de l'aventure démocratique, » *Tumultes*, 2016/2, n°47: *Utopia Nova, La démocratie, radicalement*, 145; Sahbi Khalfoui, « Un bréviaire du populisme, » in Redissi, *Le pouvoir d'un seul*, 31.

314 As an example, Article 10 of the German Basic Law refers to the "free democratic basic order": the Constitution of Germany of 1949 (as amended in 2014). See also: Millard, « L'État de droit, » 7–9.

315 Alexis de Tocqueville, *De la démocratie en Amérique, I, Deuxième partie*, 1835, version numérique produite par Jean-Marie Tremblay, Collection *Les classiques de sciences sociales*, Bibliothèque Émile-Boulet de l'Université du Québec à Chicoutimi, 80.

316 See also in the same vein: Ouamara, "What Does Ignoring the Security and Military Forces in Saied's Constitution Mean?," 37. Likewise: Sa. Ben Achour, « Trois constitutions, un seul pouvoir, » 83 ; Nouira, « La religion dans la Constitution de 2022, » 150.

317 Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 418.

318 Al-Salini, "Article 5," 4.

319 Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 2.

The emphasis on the "moderate, centrist Ez-Zitouni thought,"[320] and the intention to "promote the objectives of Islam in a moderate, centrist spirit that rejects extremism and fanaticism,"[321] are not sufficient on their own to neutralise the religious authority. Indeed, this raises concerns about possible regression from what may be considered the foundational achievements of the "ascent" toward the civil state.

B. Maqasid and the 'Vessel' Toward the Civil State

Despite the deep-rooted presence of the civil state project in the Tunisian framework prior to the 2022 Constitution, legislation still bears remnants of reliance on subjective ties in determining legal obligations and individual privileges.[322] The inclusion of *maqasid* in the new constitution thus further entrenches the duality of authorities[323] already present in the Tunisian legal system and hinders the process of purifying and liberating it from the obstacles to the civil state.

In our view, it is essential to examine the *maqasid*-based concepts related to the constitution's five universal objectives, analysing each with examples from Tunisian legislation. This method highlights two potential effects of the new constitutional provision on the coherence of the Tunisian legal system, drawing on the Ministry of Religious Affairs' interpretation, which is the first of its kind in the absence of a constitutional court.

This *maqasid*-oriented block, if interpreted strictly, may threaten the 'vessel' toward the civil state in areas where the Tunisian legal system has succeeded in transcending religious authority (1), while in other areas, it may reinforce the system's inability to breach what could be considered a glass ceiling[324] of this authority (2).

1. The collapse of the 'vessel' toward the civil state: a warning of regression

Since the 1950s, Tunisian law has been navigating the 'vessel' towards the civil state through significant normative leaps —an achievement that could be threatened by a narrow interpretation of constitutionalised *maqasid*.

Take, for instance, the objective of preserving life (*hifẓ al-nafs*), which is primarily associated with the prohibition of killing. This is confirmed by the Ministry of Religious Affairs' interpretation, which stated that "what is meant by preserving life is protecting it from killing, violence, and physical assault, and respecting human rights while guaranteeing freedoms and dignity."[325]

---

[320] Ibid., 3.
[321] Ibid., 4.
[322] Presidency of the Republic, *Report of the Committee on Individual Freedoms and Equality*, 72.
[323] Sa. Ben Achour, « L'arbre qui cache la forêt. »
[324] The idea of setting a "ceiling" is present in some readings of the *maqasid* scholars. Mohammed Hammam, "Naqd Maqsad al-Hurriyya fi Fikr Muhammad al-Taher Ben Achour" [A Critique of the Objective of Freedom in the Thought of Mohammed al-Taher Ben Achour], in *Sheikh Mohammed al-Taher Ben Achour and Issues of Reform and Renewal in Contemporary Islamic Thought: An Epistemological and Methodological Perspective*, edited by Fathi Hasan Malkawi, 1st ed. (Hashemite Kingdom of Jordan: International Institute of Islamic Thought, 2011), 304, 312.
[325] Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 1.

Although the interpretation remains silent on other matters, it is difficult not to consider the implications for permitting abortion under Tunisian law, especially in light of the *maqasid*-oriented reading of enlightenment-era jurists such as Sheikh al-Taher Ben Achour. He regarded abortion as a corruption of progeny, interpreting the Quranic verse "do not kill your children" (*Surah Aal-Mumtahina*, 12) as referring to two acts: infanticide, practiced by pre-Islamic Arabs against their daughters, and foetal wastage through abortion.[326]

In practice, Tunisian legislation has moved beyond this strict approach. Article 214 of the Tunisian Criminal Code permits abortion during the first three months of pregnancy[327] under specific conditions, establishing two distinct regimes: permissible and prohibited abortions.[328] Here, an inherent tension arises between the mother's right to body autonomy and the foetus's right to life, irrespective of the ongoing debate over the legal status of the foetus —whether it possesses legal personality or is considered merely a thing.[329] A strict *maqasid*-based reading could complicate the rights-based resolution of this issue.

If we consider the constitutional provision mandating the preservation of honour (*hifẓ al-'ird*), we observe that the constitutional drafter placed it immediately after the preservation of life, categorising it among the "necessities" of the five *maqasid*, rather than merely among the "needs."[330]

In practice, this gives rise to two related dimensions. The first pertains to its narrow meaning, connected with the protection of dignity and reputation,[331] which is confirmed by the Ministry of Religious Affairs' interpretation stating that "the preservation of honour refers to everything that ensures the integrity of people's honour and prevents it from being attacked.[332] The second concerns a broader meaning, in relation to the preservation of lineage,[333] which the ministry's interpretation does not address. This broader sense raises the issue of adoption.

---

326 Mohammed al-Taher Ben Achour, *Tafsir al-Tahrir wa al-Tanwir* [Interpretation of Verification and Enlightenment], vol. 28 (Tunis: Dar al-Tunisiya for Publishing, 1984), 166. See also: Abdullah al-Jabari, "Al-Ijhadh, Dirasah Fiqhiyya Muqaranah" [Abortion: A Comparative Jurisprudential Study], *Manar Al-Islam website – Peer-Reviewed Studies and Research*, 2021.

327 *Criminal Code* (issued under the royal decree dated 9 July 1913), updated edition. Tunis: Publications of the Official Press of the Republic of Tunisia, 2024, 58.

328 Redha Khemakhem, *Al-Tifl wa al-Qanun al-Jina'i* [The Child and Criminal Law] (Tunis: Centre for Legal and Judicial Studies Publications, 2009), 59.

329 Mohammed Kamel Charafeddine, *Qanun Madani: al-Nazariyya al-'Amma lil-Qanun – al-Nazariyya al-'Amma lil-Haqq* [Civil Law: General Theory of Law – General Theory of Rights], 4th ed. (Tunis: Latrach Éditions, 2025), 264–265.

330 See for more details on the jurisprudential debate: Radhiya Qusbaya and Abdelrahman Raddad, "Maqsad Hifz al-ʿIrd: Tahrir al-Mafhum wa Tahqiq al-Rutbah," [The Objective of Honour Preservation: Conceptual Clarification and Hierarchical Realisation], *Al-Ihyaa* 20, no. 25 (June 2020): 97–134.

331 Ibid., 113.

332 Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 1.

333 Al-Salini, "Article 5," 4. Regarding the issues related to the dimensions of the preservation of honour (*hifz al-ʿirḍ*), see: Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 422–423.

In practice, the *maqasid* recall the Islamic ruling and divine command[334] prohibiting adoption, based on verses 4 and 5 of *Surah al-Ahzab*.[335] This contrasts with Tunisian legislation, which enshrines adoption through Law No. 27 of 1958, dated 4 March 1958, on Public Guardianship, Sponsorship, and Adoption.[336]

The Tunisian state enacted this law within the context of a process that began during the harsh winter of 1955–1956, when Tunisians witnessed the death of two children by the roadside. Public and private institutions mobilised to provide aid to children without support, followed by governmental and institutional initiatives that established the principle of state's responsibility to provide them with care.[337]

We concur with Tunisian scholar Hatem Kotran, who argued that, based on the context of the 1958 Law,[338] "it was mistaken to include it within the liberal and modernising trend of the 1956 Personal Status Code; rather, the law naturally reflected the state's responsibility for children without family support."[339] However, it is important to recognise that adoption extends beyond religious texts,[340] and the inclusion of the *maqasid* in the constitution could revive debates over the right to adopt.

This is particularly relevant when we recall the efforts of the Ennahda Movement while in power to renounce this institution,[341] and when we consider that there exists a strand of Tunisian jurisprudence addressing an "adoption crisis," characterised by both an "efficiency crisis,"[342] and an "existential crisis."[343] The basis of this crisis lies in the prohibition of adoption and the issues it raises regarding fictive (that is, non-biological) lineage," the fear of violating sacred boundaries, and the potential for disruption in the application of inheritance rules.[344]

---

[334] Ahmad al-Hudhairi, "Al-Tabanni fi 'al-Shari'a al-Islamiyya' [Adoption in 'Islamic Law], in *Adoption in Intersecting Perspectives*, Proceedings of the Study Day at the Faculty of Legal, Political, and Social Sciences in Tunis, 24 May 2012, supported by the Hans Seidel Foundation, 9.

[335] For a discussion on the occasion of the revelation of the verse, see: Ibid., 9–13.

[336] Article 9 of the law reads as follows: "The adopter shall be a legally competent person, male or female, married, enjoying full civil rights, of good character, sound in mind and body, and capable of managing the affairs of the adoptee. The judge may exempt an adoption applicant who has lost their spouse through death or divorce from the marriage requirement if this is in the best interests of the child. In this context, the judge shall hear any person whose testimony may be relevant in assessing the circumstances and reasons that safeguard the aforementioned interests." Law No. 27 of 1958, dated 4 March 1958, concerning public guardianship, custody, and adoption, as amended by Law No. 69 of 1959, dated 19 June 1959, relating to the amendment of certain provisions of the adoption law, *Official Gazette*, no. 34, 23–26 June 1959, 890.

[337] Hatem Kotran, "Al-Tabanni min Manzur Huquq al-Tifl: Qira'a Intilaqan min al-Mulahazat al-Khitamiyya li-Lajnat Huquq al-Tifl" [Adoption from the Perspective of Children's Rights: A Reading Based on the Concluding Observations of the Committee on the Rights of the Child], in *Adoption in Intersecting Perspectives*, 18.

[338] Ibid.

[339] Ibid., 18–19.

[340] So. Ben Achour, *The Family Code*, 262–263.

[341] Souhayma Ben Achour, « L'adoption et la kafala: quelles différences en droit? , » in *Regards croisés sur l'adoption : Actes de la journée d'études organisée à la Faculté des sciences juridiques, politiques et sociales de Tunis, le jeudi 24 mai 2012* (Tunis: Faculty of Legal, Political, and Social Sciences of Tunis, with the support of the Hanns Seidel Foundation), 2013, 22–23.

[342] Sonia El Euch Mallek, "Azmat al-Tabanni: Qira'ah Naqdiyya lil-Qanun al-Mu'akhkhar fi 4 Mars 1958" [The Adoption Crisis: A Critical Reading of the Law Dated 4 March 1958], in *A Collection of Studies in Law Dedicated to Professor Mohammed al-Zein* (Tunis: University Publishing Centre, 2018), 130.

[343] Ibid., 140.

[344] Ibid., 142–143.

This is compounded by judicial applications under the 2014 Constitution that reveal a principled opposition to adoption, so long as it "inevitably affects lineage."[345] Thus, the institution of adoption may not be shielded from a regressive discourse, which could find justification in the constitutional mandate to preserve honour. This is compounded by another, albeit vague, constitutional provision: Article 52 of the 2022 Constitution, which reads, "The State takes charge of abandoned children or those of unknown parents."[346] In practice, this provision undermines any progressive approach to adoption, as the 1958 Law limits the right to adopt to married couples, aiming to create an "alternative family" for the adoptee.[347]

We now turn to the *maqsad* of preserving wealth (*hifẓ al-mal*). In this respect, Imam al-Ghazali, stated that "wealth is intended to be protected in the hands of its rightful owner; this is understood through the prohibition of violating others' rights, the obligation of compensation, and the punishment of theft by cutting off the hand."[348]

Sheikh Ben Achour further elaborated this objective by adding that wealth must be "clear" by shielding it from harm and mitigating disputes as much as possible. This rationale underlies legislation on witnessing contracts, recording debts and pledges, and other preventive measures.[349] Wealth is preserved through safeguarding public funds, regulating foreign exchanges, organising markets and preventing monopolies, collecting zakat and spoils, and managingendowments(*awqaf/ habous*).[350]

One must not forget, in this respect, the prohibition of usury (*riba*) as part of the objective of preserving wealth, which has generated extensive jurisprudential discussion along with the "evidence for banning bank interest."[351]

---

[345] Malik Ghazouani, comment on a judgment issued by the Mareth District Court, Case no. 47, dated 12 February 2014 (unpublished), in Malik Ghazouani, "Min Fiqh al-Qada' Hawl al-Huquq al-Asasiya" [On the Jurisprudence of the Judiciary Concerning Fundamental Rights], in *Collected Works Presented to Dean Muhammad Saleh Ben Issa*, supported by the Hans Seidel Foundation (Germany) (Tunis: CPU, 2020), 214. See also, by contrast, the judicial-theoretical attempts to "ground" adoption within the *maqasid* framework: Ikbal Ben Moussa, « Le droit musulman dans la jurisprudence tunisienne, » PhD diss., Faculty of Legal, Political, and Social Sciences of Tunis, 2021-2022, 353–359. See also : So. Ben Achour, *The Family Code*, 287.

[346] Hatim Kotran, *Huquq al-Tifl fi Tunis wa al-Duwal al-'Arabiyya: I'adat Tasawwur al-Mustaqbal li-Kull Tifl* [Child's Rights in Tunisia and Arab Countries: Reimagining the Future for Every Child] (Tunis: Latrach Éditions, 2024), 16–17, 158. See also: Debbeche, *Individual Liberties and Article 55*, 16.

[347] So. Ben Achour, *The Family Code*, 283–284.

[348] Imam Abi Hamid Mohammed ibn Mohammed Al-Ghazali, *Shifa al-Ghalil fi Bayan al-Shabah wa-l-Mukhayyal wa-Masalik al-Taalil* [Healing of the Thirsty: On the Clarification of Analogy, Imaginative Reasoning, and the Methods of Causal Argument],160. See also: Al-Salini, "Article 5," 5

[349] Ben Achour, *Objectives of Islamic Law*, 315.

[350] Ibid., 316.

[351] Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* [Islamic Jurisprudence and Its Evidence], vol. 4, 31st ed. (Damascus: Dar al-Fikr, 2009), 434–491. See also: Al-Salini, "Article 5," 5. Also consult: Imam Abi Hamid Mohammed ibn Mohammed al-Ghazali, *Ihya' 'Ulum al-Din* [The Revival of the Religious Sciences], and its supplement *Al-Mughni 'an Hamal al-Asfar fi al-Asfar* [The Relief from the Burden of Journeys within the Journeys], edited and explained in *Takhreej Ahadith in the Ihya'* by Zain al-Din Abu al-Fadl al-Iraqi (Beirut: Dar Ibn Hazm for Printing, Publishing, and Distribution, 2005), 511.

However, Tunisian legislation in 1959, with the repeal of Article 1095 of the Code of Obligations and Contracts,[352] as noted above, within the framework of liberalising financial transactions and "Tunisianising" banking policy, removed the psychological barrier that had previously prevented the legalisation of interest, while limiting regulation to usurious interest.[353] Banking governance, overseen by the Central Bank, gradually liberalised interest rates.[354] Later, law-makers intervened with Law No. 64 of 1999 to "pull the brake on the liberalisation of banking policy,"[355] by imposing penalties on usury interest rates.[356] Nevertheless, the use of interest-bearing loans remains a constant feature of Tunisian banking policy, albeit not without criticism, as some view it as reinforcing the "usury philosophy" within positive law.[357]

In any case, the abolition of the ban on interest-bearing loans in 1959 marked a clear break with the past. The former legal prohibition rested on a religiously discriminatory principle, forbidding interest-bearing loans among Muslims while permitting them in transactions between Muslims and non-Muslims, including Christians, Jews, and other non-Muslim Tunisians. From this perspective, the reform may be situated within a broader dynamic of distancing positive law governing wealth from its religious foundations, comparable to the abolition of *awqaf* (endowments) discussed above and motivated by similar economic considerations.

In fact, "lawmakers did not declare the permissibility of dealing with interest (*riba*), nor did they attempt to find a jurisprudential justification or workaround for it, as they did, for example, regarding the prohibition of polygamy; rather, they simply abolished the prohibition of interest-bearing loans among Muslims […] without any notable fanfare."[358] At any rate, the abolition of the prohibition on interest-bearing loans in 1959 marked a turning point, given that the legal rule underpinning the prohibition was based on a discriminatory religious foundation that forbade such loans among Muslims while permitting them between Muslims and Christians or Jews, as well as between Muslims and non-Muslim Tunisians.[359] From this perspective, the reform may be situated within a broader dynamic of "distancing"[360] positive law governing wealth from its religious foundations, comparable to the "abolition of *hubus*"[361] (endowments) discussed above[362] and motivated by similar economic considerations.

---

[352] For a discussion of the commentaries on Article 3 of Title 6 of the Code of Obligations and Contracts, entitled "On Loan for Use," concerning "loans with interest," see: Durra al-Jalidi Bushmawi, *'Uqud al-Maliyya al-Islamiyya wa al-Qanun al-Wad'i* [Islamic Financial Contracts and Positive Law] (Tunis: Latrach Éditions, 2017), 32–33.

[353] Ben Salem, "Loans with Usury Interest," 7. See also: Mahdi Elleuch, "Marsum Nasb al-Fa'ida al-Mushattah: Tahrir li-Sutwat al-Bunuk wa Rudukh li-Sunduq al-Naqd al-Duwali" [Decree on Usury Interest Rates: A Liberation of Banks' Authority and Submission to the International Monetary Fund] *Legal Agenda*, 3 November 2022.

[354] Elleuch, "Decree on Usury Interest Rates." This liberalisation was implemented through several circulars, most notably the Central Bank of Tunisia Circular to Banks No. 8 of 1994, dated 7 June 1994, ibid. See also: "Tahrir al-Shurut al-Masrifiyya" [Liberalisation of Banking Conditions] on the website of the Central Bank.

[355] Elleuch, "Decree on Usury Interest Rates."

[356] Ibid. See Article 4 of this law regarding the "civil liability" and Article 5 regarding the "criminal penalty": Ben Salem, "Loans with Usury Interest," 12–13. The law has undergone subsequent amendments. Law No. 56 of 2008, dated 4 August 2008, amending Law No. 64 of 1999, dated 15 July 1999, concerning the rate of usurious interest, *Official Gazette*, no. 63, 5 August 2008, 2821. Also, Decree No. 67 of 2022, dated 19 October 2022, amending and completing Law No. 64 of 1999, dated 15 July 1999, concerning the rate of usurious interest, *Official Gazette*, no. 114, 21 October 2022, 3119.

[357] Al-Jalidi Bushmawi, *Islamic Financial Contracts and Positive Law*, 33.

[358] Elleuch, "Decree on Usury Interest Rates," 7.

[359] Ibid., 6–7.

[360] Ben Aicha, « La notion de « neutralité confessionnelle » , 160. On the terminology of "distance from tradition," see also: Lagrange, « Le législateur tunisien et ses interprètes, » 12.

[361] Al-Sayed, "Provisions of the Real Estate Register in Tunisia: Registration – Public Notice – Updating Frozen Fees,"10.

[362] Ibid., 9–10. See also: Chennoufi, *Proof of Ownership of Unregistered Real Estate*, 73; Debbeche, *Individual Liberties and Article 55*, 159–160; see also: Al-Salini, "Article 5,", 5.

It is therefore unsurprising to observe a liberal approach in the Ministry of Religious Affairs' interpretation of the *maqasid* concerning the preservation of wealth. This interpretation stated that wealth must be protected "from extravagance and waste, given that wealth is the foundation of actions."[363]

Nevertheless, despite the reassuring tone of the discourse, it cannot be asserted that the *maqasid* will have no impact on legislation, especially since the process of exceeding the *maqasid* "ceiling" in relation to wealth has not yet run its course. Early signs of attempts to "penetrate" the modern system through institutions with a religious authority have already appeared.[364] These efforts predate the constitutionalisation of the *maqasid* and may further deepen this penetration.

Previous attempts, supported by the Ennahda Movement during its time in power, sought to institutionalise *zakat* through a proposed National Zakat Fund and a Zakat Law. These initiatives, however, failed to materialise due to the rejection by the National Constituent Assembly (drafter of the 2014 Constitution) and subsequently the Assembly of the People's Representatives.[365]

It is also worth recalling the reluctance to embrace the concept of a civil state, as reflected in the stance of the Provisional Instance to Review the Constitutionality of Draft Laws under the 2014 Constitution, in its decision dated 2 July 2016, concerning the Draft Law on Banks and Financial Institutions.[366] There is, therefore, a clear risk of regression, with the potential entrenchment of limitations that Tunisian legislation remains unable to surmount.

2. Entrenching the 'glass ceiling'

Despite the significant strides towards the civil state, at the levels of public policy, legislation, and adjudication, Tunisian law continues, in several areas, to collide with a glass ceiling and an inability to transcend religious authority. The constitutionalisation of *maqasid* is unlikely to allow breaking this ceiling, given the minimum threshold of meaning inherently attached to these *maqasid*.

---

[363] Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 2.

[364] Regarding the set of texts and drafts with a religious foundation see: Neji, "The Civil Nature of the State," 50-55. See also: Al-Silini, "Chapter 5," 5.

[365] Mohamed Ashraf Boudia, "Tahaddiyat Mu'assasat al-Zakat al-Mu'asira" [Challenges of the Contemporary Zakat Institution], Tunisian Association for Zakat Sciences, Tunis, Dhu al-Hijjah 1440 (August 2019), 6–7. See also: Al-Salini, "Article 5," 5. Neji, "The Civil Nature of the State," 50–55.

[366] Decision of the Provisional Authority to Monitor the Constitutionality of Draft Laws No. 05/2016, dated 2 July 2016, concerning the draft law on banks and financial institutions, *Official Gazette*, no. 58, 15 July 2016, 2509. Subsequently, Law No. 48 of 2016, dated 11 July 2016, concerning banks and financial institutions, was promulgated: *Official Gazette*, no. 58, 15 July 2016, pp. 2516–2546. For commentary on this decision and other related decisions of the authority concerning this draft law, see: Lamia Neji, "Al-Ta'liq 'ala Hayyat min Qararat al-Hay'a al-Waqtiyya li-Muraqabat Dusturiyyat Mashari' al-Qawanin al-Muta'alliqah bi-Mashru' Qanun al-Bunuk wa al-Mu'assasat al-Maliyya" [Commentary on the Reasoning of Decisions of the Provisional Authority to Monitor the Constitutionality of Draft Laws Concerning the Draft Law on Banks and Financial Institutions], in *The Case Law of the Provisional Authority to Monitor the Constitutionality of Draft Laws*, 152–169.; Ben Moussa, "Article 1 of the Constitution in the Jurisprudence of the Provisional Authority," 96–100. See also: Debbeche, *Individual Liberties and Article 55*, 157–158.

By way of illustration, consider the objective of preserving life (*hifẓ al-nafs*) and its corollary prohibition of killing, and consequently *qisas* (retaliation). The religious ruling in this regard is unequivocal and unambiguous, as stated in verse 178 of *Surah al-Baqarah*: "O believers! 'The law of retaliation is prescribed for you in cases of murder," followed by the subsequent verse: "There is security of life for you in the law of retaliation, O people of reason, so that you may become mindful of Allah."

It is therefore unsurprising that al-Ghazali concluded: "He (the Lawgiver) therefore made killing the legal cause for the obligation of retaliation, on account of an intelligible and appropriate rationale, namely, the preservation of human lives and souls, whose continued existence is intended by the law. This objective's intent is known with certainty."[367]

What is noteworthy, however, is that the Quranic verses explicitly establishing *qisas* do not appear in the Ministry of Religious Affairs' interpretation of the objective of preserving life. Instead, the Ministry confined itself to stating that "the state's structures and affiliated national institutions have enacted laws that prohibit harm to human life and impose deterrent and disciplinary punishment on all those who violate this prohibition. This law is derived from numerous scriptural texts, including the Almighty's saying: 'And do not kill each other or yourselves. Surely Allah is ever Merciful to you' (Qur'an 4:29), and His saying, exalted be He: 'whoever saves a life, it will be as if they saved all of humanity' (Qur'an 5:32). [368]"

Hence, the omission appears to constitute a deliberate avoidance of *qisas* and of the verse directly pertaining to it, most likely in order to remain consistent with the message the Ministry sought to convey, namely moderation.

The Tunisian Constitutions of 2014 and 2022 have, in fact, taken steps towards entrenching the right to life, while nevertheless leaving room for the application of the death penalty. Article 24 of the 2022 Constitution provides that "The right to life is sacred and cannot be prejudiced except in exceptional cases regulated by law." This formulation generates a constitutional dilemma in light of the coexistence of two normative references within the new text: a *maqasid*-based reference and the general comprehensive provision contained in Article 55. The question therefore arises whether the determination of the "exceptional cases" will be guided by sharia-based understandings — potentially informed by the doctrine of *qisas*— or by the general framework of Article 55, which is grounded in proportionality and the regulation of rights and freedoms.

This tension unfolds within a legislative system that provides for the death penalty in numerous instances (reportedly exceeding 170 offences),[369] thereby reflecting what may be described as a 'glass ceiling' of religious authority. Such breadth sits uneasily with the principle of proportionality, which requires that criminal sanctions be strictly necessary and narrowly tailored.

[367] Al-Ghazali, *Shifa al-Ghalil*, 160. See also: Al-Salini, "Article 5," 5.
[368] Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 1.
[369] Wahid al-Ferchichi, Ilaf al-Qassab, and Khaled al-Majri, *Mudhakirat al-(La)Dusturiyya* [Notes on (Un)Constitutionality] (Tunis: Tunisian Association for the Defence of Individual Liberties, 2017), 12.

As we have argued in previous studies, the persistence of this expansive capital punishment regime illustrates the structural limits confronting the full realisation of the civil state paradigm.[370]

Regarding the preservation of honour (*hifẓ al-ʿird*), Tunisian legislation remains likewise constrained by a 'glass ceiling' in relation to homosexual conduct. Mohammed al-Taher Ben Achour classified such conduct among the "impediments" to the preservation of lineage (*hifẓ al-nasl*),[371] based on the Quranic verse in *Surah al-Ankabut* (29), in which the Prophet Lot reproaches his people: "Do you really lust after other men, abuse travellers, and practice immorality openly in your gatherings? […]."

Tunisian law establishes a framework that criminalises homosexual acts,[372] notwithstanding sustained calls for repeal. It is unlikely that reliance on a *maqasid*-based approach, taken in isolation, would facilitate a reconsideration of the development of Tunisian legislation in a manner that appropriately balances the protection of individual freedoms and the "private (intimate) sphere of individuals"[373] with the societal reassurance perceived to be necessary in relation to sexual conduct regarded as socially risky.

In the context of preserving honour, and with regard to the punishment for slander in Islamic law, Sheikh Ben Achour observed that the fourth verse of *Surah an-Nur*,[374] is at "the origin of the legal penalty for slander and false accusation, which first appeared in accusing chaste women of adultery. Any accusation, even with partial evidence, obliges the prescribed punishment according to consensus and analogy."[375]

It may therefore be asked whether emphasising this objective functions to reinforce a punitive framework that intensifies following criminalisation, particularly in relation to the protection of reputation, including that of state institutions. This concern is illustrated, for example, by Articles 67, 125, 126, 128 and 245 of the Criminal Code,[376] which raise serious questions regarding restrictions on freedom of expression.

---

370 Debbeche, *Article 49 and Individual Freedoms*, 136–139, 206, 238, and 259. See also, regarding the breach of the unifying provision and the issue of "extreme cases": Al-Ferchichi, al-Qassab, and al-Majri, *Notes on (Un)constitutionality*,12–14; Presidency of the Republic, *Report of the Committee on Individual Liberties and Equality*, 25–26, 56–58. For a general discussion of the "juxtaposition of the objective of preserving life (*hifz al-nafs*) with the right to life" from a human rights perspective, see: Nur al-Din al-Khadimi, *Huquq al-Insan wa Maqasid al-Shari'a* [Human Rights and the Objectives of Sharia], (Doha: Department of Islamic Research and Studies, 2011), 32.

371 Ben Achour, *Objectives of Islamic Law*, 138. For a discussion of the link between the preservation of lineage and the prohibition of same-sex practices, see: Al-Khadimi, *Human Rights and the Objectives of Sharia*, 152.

372 Article 230 of the Criminal Code: "Sodomy or lesbian acts, if they do not fall within any of the categories provided for in the preceding articles, shall be punishable by imprisonment for a term of three years." *Criminal Code*, 67.

373 See, for example: Al-Ferchichi, al-Qassab, and al-Majri, *Notes on (Un)constitutionality*, 55 ff.

374 God the Exalted states in verse 4 of *Surah an-Nur*: "And those who launch a charge against chaste women, and produce not four witnesses (to support their allegation), flog them eighty stripes, and reject their testimony forever; and they are the transgressors." See Qusbaya and Raddad, "Maqsad Hifz al-ʿIrd," 114.

375 Mohammed Taher Ben Achour, *Tafsir al-Tahrir wa al-Tanwir* [Interpretation of Verification and Enlightenment], vol. 28 (Tunis: Dar al-Tunisiya for Publishing, 1984), 161. See also: Qusbaya and Raddad, "Maqsad Hifz al-ʿIrd," 114.

376 Regarding the list of restrictions on freedom of expression in Tunisian law, see: Ghazouani, *Guide for the Judicial Judge in the Application of Article 49 of the Constitution*, 94–95

This framework is also reflected in the interpretation advanced by the Ministry of Religious Affairs, which stated that "statutory legislation gives effect to this Quranic and Prophetic reference by enacting provisions designed to protect honour and morality. The neglect of this framework leads to division and discord within society."[377]

We now turn to the objective of preserving religion. Tunisian legislation has expressly severed the link with the principle that the legal order is fundamentally grounded in the requirements of such preservation. According to scholars of *maqasid*, the objective of preserving religion is not confined to acts of worship "in terms of existence, such as faith, pronouncing the testimony of faith, prayer, almsgiving, fasting, pilgrimage, and similar practices." According to al-Shatibi,[378] this also extends to legal measures such as "the legitimacy of killing a misguiding non-believer and punishing an innovator who promotes his heresy." Al-Shatibi further observed that "without this, people's religion would be neglected."[379] In addition, it extends to "restraining measures"[380] concerning "renunciation of Islam,"[381] that is, apostasy and heresy committed by those "who outwardly display Islam while secretly practising disbelief."[382]

In practice, there is little room to engage in debate over the existence of a legal ruling on apostasy.[383] Even if some scholars argue that the execution of an apostate —setting aside the ongoing legal, human rights, and doctrinal debates— is no longer central to the understanding of Islam for many contemporary observers,[384] the imposition of legal consequences for apostasy remains a distinctly *maqasid*-oriented measure. From this perspective, the steps taken by the Tunisian system towards a civil state, including the enshrinement of freedom of belief in the Constitution, can be more clearly understood.

The 2014 Constitution went further than its 1959[385] predecessor by explicitly establishing freedom of conscience in Article 6, albeit balanced by the provision for the "protection of the sacred, and the prohibition of all violations thereof." This was subsequently reinforced in the 2022 Constitution: Article 27 provides that "The state guarantees freedom of belief and freedom of conscience," while Article 28 adds that "The state protects the freedom to perform religious rites as long as they do not disturb public security."

---

377 Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 1.
378 Al-Shatibi, *Al-Muwafaqat* ,18–19.
379 Abduh, *The Maqasidi Thought of Imam al-Ghazali*, 57.
380 Ben Achour, *Objectives of Islamic Law*, 357.
381 Abdul Qader Odeh, *Al-Tashri' al-Jinai al-Islami Muqaranan bi-l-Qanun al-Wadi* [Islamic Criminal Legislation Compared to Positive Law], vol. 2, 10th ed. (Beirut: Al-Resalah Foundation, 1989), 707.
382 Ibid., 727.
383 Sadok Belaid, *Al-Quran wa al-Tashri' : Qira'a Jadida fi Ayat al-Ahkam* [The Quran and Legislation: A New Reading of the Verses of Legal Rulings] (Tunis: CPU, 1999), 214.
384 Al-Marakebi, "Modernity and Transformations of the Maqasidi Discourse," 19. For an alternative reading of the issue of "killing the apostate" raised by Article 5: Al-Salini, "Article 5," 4. See also: March, "The Maqsad of hifz al-dīn," 367.
385 Article 5, paragraph 4, of the 1959 Constitution provides: "The Republic of Tunisia shall guarantee the inviolability of the human person and freedom of conscience, and defends the free practice of religious beliefs provided this does not disturb public order." See also, Ben Achour, *Institutions and the Political System in Tunisia*, 296–297.

This constitutional recognition of freedom of conscience —including the right of every individual to believe in anything, or in nothing at all—[386] was preceded by judicial practice that gradually liberated the interpretation of Tunisian law from imposing legal consequences for apostasy and religious dissent.[387] It was also accompanied by administrative practice: after a period in which a Muslim woman was prohibited from marrying a non-Muslim, that prohibition was ultimately lifted.[388]

Thus, Tunisian law —both in its textual provisions and in judicial interpretation— has "embarked on the vessel" towards a civil state. Yet the incorporation of *maqasid* principles into Article 5 of the 2022 Constitution may be viewed as a potential risk, reinforcing the 'glass ceiling' that Tunisian law has struggled to transcend, amid the clear constitutional privileging of Islam.[389] This is evident in requirements such as the adoption of Islam for presidential candidacy, the prescribed forms of oaths,[390] and the administration of Islam by the state.[391]

---

386 Favoreu et al., *Droit des libertés fondamentales*, 524–525. See also: March, "The Maqsad of hifz al-dīn," 362.

387 This concerns the issue of religious impediments to marriage and inheritance under the Personal Status Code, specifically Article 5 ("Each spouse must be free from religious impediments …") and Article 88 ("Intentional killing bars inheritance. The killer shall not inherit, whether as the principal actor, an accomplice, or as a false witness whose testimony resulted in a death sentence and its execution."). Jurisprudence initially adopted a conservative interpretation (So. Ben Achour, *The Family Code*, 97), which was affirmed in the landmark *Huriya* decision of 31 January 1966, in which the Court of Cassation declared that "a Muslim woman's marriage to a non-Muslim is considered a grave sin, and there is no dispute that Islamic law regards such a marriage as null from the outset; nevertheless, it does not constitute apostasy unless it is established that the wife has adopted the religion of her non-Muslim husband," Court of Cassation, Civil Decision No. 3384, 31 January 1966. See also : Emérentienne de Lagrange, "Note sous *Cour de cassation, Ch. Civile*, arrêt no. 3384 du 31 janvier 1966," *Revue tunisienne de droit* (1968): 114–120. See also: So. Ben Achour, *The Family Code*, 57–58. Neji, "The Civil Nature of the State," 42. After the "stage of adherence to tradition" (So. Ben Achour, *The Family Code*), the Tunisian Court of Cassation, in the landmark *Thuraya* decision of 5 February 2009, departed from this interpretation and set out its "groundbreaking reasoning" (Ghazouani, "On the Jurisprudence of the Judiciary Concerning Fundamental Rights," 191) that "Article 88 of the Personal Status Code must be interpreted in light of the fundamental principles on which the Tunisian legal system is based, as set out in the Constitution of 1959 and the international agreements ratified thereafter, Court of Cassation, Civil Decision no. 31115, 5 February 2009, *Revue de Droit et Législation*, no. 3 (2009): 95; commentary by Malik Ghazouani. See also: Ghazouani, "On the Jurisprudence of the Judiciary Concerning Fundamental Rights,"191. See also: Neji, "The Civil Nature of the State," 42–43.

388 "Under the 1959 Constitution, several circulars were issued concerning personal status matters, including Circular no. 23, dated 17 March 1962, from the Secretary of State for the Interior, addressed to civil registry officers regarding the drafting of marriage contracts between Muslim women and non-Muslim men. This circular was later repealed by an unpublished letter from the Prime Minister dated 8 September 2007, as noted by Souhayma Ben Achour." For a list of these circulars, see the appendices in: Wahid al-Ferchichi, ed., *Circulars That Restrict Freedoms: A "Hidden" Law Governing the Rule of Law* (Tunis: Tunisian Association for Individual Liberties; Heinrich Böll Stiftung, 2018), 158–159. See also: So. Ben Achour, *The Family Code*, 97–99.

389 Sa. Ben Achour, « L'arbre qui cache la forêt. » In the same vein, see: Laghmani, "A Constitutional Reading of the Inheritance Equality Initiative," 124. See also: Laghmani, « Les ambivalences de la Constitution tunisienne, » 124.

390 Redissi, « Raison publique et laïcité islamique. » For the President of the Republic, this concerns Article 42 of the 1959 Constitution, Article 76 of the 2014 Constitution, and Article 92 of the 2022 Constitution. For members of the legislative body, it concerns Article 21 of the 1959 Constitution and Article 58 of the 2014 Constitution. See in the same vein: Sa. Ben Achour, « L'arbre qui cache la forêt. » Also see: Al-Takkari, "The Status of Islamic Sharia in the Constitutions of Arab States," 3.

391 Sa. Ben Achour, « L'arbre qui cache la forêt. » In the same vein, see : Bostangi , « La guerre de l'article premier n'aura pas lieu, » 4.

The final element in the list of *maqasid* is the objective of freedom, which replaced the objective of preserving the intellect.[392] It appears that the drafter drew inspiration from Sheikh Mohammed al-Taher Ben Achour,[393] who observes in his work *Maqasid al-Sharia al-Islamiyya* that he does not include freedom among the five universal objectives nor within their hierarchical framework, but rather considers it a "general objective" of the sharia.[394] This serves to provide a "foundation for freedom of belief,"[395] albeit subject to restrictions concerning the "nullification of misguided beliefs that advocates of misguidance compelled their followers to adopt without understanding, guidance, or illuminating scripture."[396] Ben Achour further referred to "freedom of expression (that is, the articulation of one's opinion and belief within the bounds of legal permissibility), encompassing freedom of knowledge, education, authorship,[397] and action. [398]

Ultimately, as Mohammed Hammam observes, this reflects a "concern with codifying freedom and discussing its limits and ceiling."[399]

But what about women's freedom? Ben Achour acknowledges that "a wife's management of her property is not dependent on her husband's consent, although there is disagreement about the extent of this freedom."[400] According to Hammam, this "defence of women's freedom to manage their property like men,"[401] does not negate Ben Achour's narrow conception of equality. The limited historical cultural framework in which the Quranic text operates remained dominant in Ben Achour's thought. Thus, his reading of the verse, "Women have rights similar to those of men equitably, although men have a degree ⌜of responsibility⌝ above them," (Quran 2:228) remained circumscribed within cultural and social barriers, thereby limiting the verse's deeper implications for freedom and equality, even though equality occupies an important place within Ben Achour's intellectual project."[402]

---

[392] Hamadi Redissi criticised the constitution for "the confusion in removing the fifth universal objective from Al-Shatibi's list of intellects and replacing it with freedom," Redissi, "On Article 5 of the 2022 Draft Constitution," 6.

[393] Ibid. See also: Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 413.

[394] Ibid., 227 ff.; also: Redissi, "On Article 5 of the 2022 Draft Constitution," 6; Debbache, *Individual Liberties and Article 55*, 163. In the same vein: Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 428–429; Mohammed Diya al-Haq Halimi and Abdelbasset Qouader, "Maqsad al-Hurriyya 'Ind Ibn Achour wa Tatbiquh fi Huquq al-Insan" [The Objective of Freedom in Ben Ashour and Its Application in Human Rights], *Al-Haqiqa Journal of Social and Human Sciences*, vol. 23, no. 2 (June 2024): 71, 78.

[395] Regarding "freedom of belief" in Ben Ashour, see: Halimi and Qouader, "The Objective of Freedom in Ben Ashour," 74–75. For a general discussion on the "establishment of the objective of freedom," see: Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 428.

[396] Ben Achour, *Objectives of Islamic Law*, 233.

[397] Ibid., 233–234. See also: Halimi and Qouader, "The Objective of Freedom in Ben Ashour," 74–75.

[398] Ben Achour, , *Objectives of Islamic Law*, 234–235. See also: Halimi and Qouader, "The Objective of Freedom in Ben Ashour," 77–78.

[399] Hammam, "A Critique of the Objective of Freedom in the Thought of Mohammed al-Taher Ben Achour," 304.

[400] Ben Achour, *Objectives of Islamic Law*, 235.

[401] Hammam, "A Critique of the Objective of Freedom in the Thought of Mohammed al-Taher Ben Achour," 311.

[402] Ibid., 312.

Ben Achour devoted part of his analysis in *Maqasid al-Sharia* to grounding equality in "*fitra*"[403] (human nature), which, he argues, justifies "obstacles to equality."[404] These obstacles are defined as "circumstances which, if realised, necessitate suspending the rule of equality due to a stronger interest in doing so, or to prevent a harm that would result from applying equality. [405]"

He categorises the "obstacles preventing equality in certain rulings" into four types: natural, legal, social, and political.[406] Under the "natural obstacles,"[407] Ben Achour includes the prevention of equality between women and men in areas where women are naturally limited compared to men, such as military command and the caliphate (according to all scholars), or the judiciary (according to the majority of Islamic jurists). Similarly, he includes the prevention of equality between men and women in the right to custody for minor children, as well as what stems from natural dispositions, such as preventing equality in the obligation of a wife to financially support her husband, based on customary norms recognising the man as the primary earner in the family.[408] These limitations fall under what he terms "permanent natural impediments."[409] The prevention of substantive equality between men and women thus represents a 'ceiling' that the eminent Sheikh al-Taher Ben Achour could not transcend.

A cross-reading of Tunisian legislation reveals the same 'glass ceiling.' Although the 1993 amendment to the Personal Status Code introduced Article 23 regarding financial contribution —which Ben Achour had discussed— stating that "the wife must contribute to family expenses if she has wealth,"[410] the Tunisian Court of Cassation has interpreted this provision in a manner that did not support equality in the obligation to contribute financially.[411]

Despite efforts to advance full equality, the Tunisian legal system has been unable to reform inheritance law, which constitutes "the anomalous part outside the liberatory philosophy of the code,"[412] and has accordingly attracted jurisprudential criticism in Tunisia.[413]

---

[403] Ibid., 311–315.

[404] On *fitra* and *maqasid* in Ben Achour: Ibid., 301–302. See also: Halimi and Qouader, "The Objective of Freedom in Ben Ashour," 69–70.

[405] Ben Achour, *Objectives of Islamic Law*, 165–166.

[406] Ibid., 168.

[407] They are like "legal and social constraints" that relate to morality, respect for the rights of others, and the proper functioning of society." Ibid.

[408] Ibid.

[409] Ibid.

[410] Law No. 74 of 1993, dated 12 July 1993, concerning the amendment of certain articles of the Personal Status Code, 1004. See also: So. Ben Achour, *The Family Code*, 37, 144.

[411] The Court of Cassation states "The wife's contribution to family expenses entails covering part of her own expenses, the children's expenses, and assisting the husband in meeting financial obligations when necessary." However, this "duty falls within the framework of mutual support and cooperation to provide the necessities for a happy family life and does not replace the primary and original duty of maintenance incumbent upon the husband." Court of Cassation, Civil Decision No. 23282, 19 February 2009. See also: So. Ben Achour, *The Family Code*, 145; Presidency of the Republic, *Report of the Committee on Individual Liberties and Equality*, 169–170.

[412] See, for example: Mahmoud Yacoub, "Min Ajl Tajdid Ahkam al-Mawarith" [Toward the Renewal of Inheritance Rules] in Ben Achour and Al-Jalassi, *Sixty Years of the Personal Status Code (1956–2016)*, 399.

[413] Ibid., 393–479.

The report of the Individual Freedoms and Equality Committee[414] noted that the sixty-seven articles comprising Book Nine of the Personal Status Code, which govern inheritance, were not substantively amended by the code's revisions,[415] on the pretext that they are based on "religious rules" derived from the Quran, Sunnah, and Islamic jurisprudence.[416] This raises a critical question: where does this leave the civil character of the state, which is supposed to ground legal authority in the will of the people independently of any "supreme religious authority?"[417]

This report is insufficient to detail the rules of inheritance,[418] but it appears to reveal a dilemma that the constitutionalisation of objectives in Article 5 of the 2022 Constitution cannot resolve, as demonstrated, for example, in Ben Achour's analysis.

Notably, the 'interpretation' advanced by the Ministry of Religious Affairs sought to "anchor" the Personal Status Code in Islamic jurisprudence. This recalls the efforts of Tunisia's political elite after independence to "market" the code upon its enactment and to absorb criticism[419] by asserting that "most provisions of the Personal Status Code are derived from Islamic jurisprudence."[420] This justificatory argument, which seeks to legitimise positive law through a jurisprudential foundation, also resonates with the debate prompted by the report of the Individual Freedoms and Equality Committee[421] —a debate that is inevitably intensified by the constitutionalisation of the objectives.

This constitutionalisation is nothing but a subordination of interpretation to the will of the interpreter which is necessarily [422] "relative" rather than grounding it in the Quranic text, which is "fixed."[423]

This renews concerns about widening the gap between a civil state and a secular state, moving Tunisia closer to a religious state[424] —a space that is not necessarily conducive to freedom of conscience, whether for nonbelievers or for believers seeking to live in accordance with their faith.

---

414 This committee was established by the late President Beji Kaid Essebsi on 13 August 2017 "to prepare a report on reforms related to individual freedoms and equality, based on the provisions of the Constitution of 27 January 2014, international human rights standards, and contemporary trends in the field of freedoms and equality." Presidential Decree No. 111 of 2017, dated 13 August 2017, *Official Gazette*, no. 65, 15 August 2017, 2594.

415 Presidency of the Republic, *Report of the Committee on Individual Freedoms and Equality*, 173.

416 Ibid., 176

417 Ibid. On the same question in a related context: Yacoub, "Toward the Renewal of Inheritance Rules," 473.

418 "The report of the Committee on Individual Freedoms and Equality interprets discrimination in inheritance rules as based on the asaba system (the system of residuary male heirs). This refers to a group of male relatives who inherit only if their line of relationship to the deceased is not interrupted by a female relative (Ibid., 173). Accordingly, a female heir can never hold the status of an asib in her own right, regardless of how closely she is related to the deceased. The law assigns the status of asib in one's own right exclusively to male heirs." (Ibid.,174; Article 114 of the Personal Status Code). See also in the same direction: Yacoub, "Toward the Renewal of Inheritance Rules," 443–446.

419 So. Ben Achour, *The Family Code*, 31.

420 Ministry of Religious Affairs, *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022*, 3.

421 So. Ben Achour, *The Family Code*, 39–40.

422 On the objectives between "relativity" and "stability", see: Al-Marakebi, "Modernity and Transformations of the Maqasidi Discourse," 21; Al-Ahmar, "Freedom in the Context of the *Maqasid* Debate," 423–424.

423 For further discussion on the possibility of *ijtihad* in the presence of a Quranic text with a "definitive meaning," see: Yacoub, "Toward the Renewal of Inheritance Rules," 471.

424 Laghmani, "The Civil State," 17.

According to Yadh Ben Achour, this balance was previously ensured by defining "Islam as the religion of the state," whereby the believer preserves a free internal space to practise their faith as they choose, while the state manages religious affairs within the political sphere.[425]

Before 2022, despite its challenges, the Tunisian legal system operated under an implicit constitutional principle behind the declaration of "Islam as the religion of the state." As Yadh Ben Achour explains, this principle can be summed up as: "One must not be more Islamic than one's ruler."[426]

The question now is whether the 2022 Constitution —by removing this declaration from Article 1 and introducing the *maqasid* (objectives of sharia) in Article 5— reverses this logic, implying instead that "one must not be less Islamic than one's ruler."

[425] Yadh Ben Achour, *Normes, foi et loi. En particulier dans l'Islam* (Tunis: Cérès Éditions, 1993), 259.
[426] « Il est interdit d'être plus musulman que son Prince, » Ibid.

Bibliography

- "Marahil Islah wa Tatwir al-Ta'lim al-Zaytuni al-Asli 'Abr al-Tarikh" [Stages of Reform and Development of Original Ez-Zitouna Education Throughout History]. *Al-Islam fi Tunis*, 1 November 2018.
- "Tahrir al-Shurut al-Masrifiyya" [Liberalisation of Banking Conditions]. Website of the Central Bank.
- Abduh, Muhammad. *Al-Islam Bayn al-'Ilm wa al-Madaniyya* [Islam Between Science and Civilisation] (Cairo: Hindawi Foundation for Education and Culture, 2010).
- ———. *Al-Fikr al-Maqasidi 'Ind al-Imam al-Ghazali* [The Maqasidi Thought of Imam Al-Ghazali] (Beirut: Dar al-Kutub al-Ilmiyah, 2009).
- Al-Ahmar, Mukhtar. "Al-Hurriyya fi Siyaq al-Jadal al-Maqasidi: Dirasah fi Daw' Manhajiyyat al-Taqsid al-Shar'i lil-Kulliyyat" [Freedom in the Context of the Maqasid Debate: A Study in Light of the Methodology of Sharia Objectives]. *Al-Miiyar* 25, no. 58 (2021): 409–432.
- Al-Bakkouch, Neji. "Al-Qanun fi Dustur 2014" [Law in the 2014 Constitution]. In *Law: Proceedings of the Forum Held on 11–12 April 2019 at the Faculty of Law of Sfax, Tunisia*, edited by Moataz al-Qarqouri and Lamia Neji. Tunis: Latrach Édition, 2022.
- Al-Fershishi, Bashir al-Manoubi. "Hatmiyyat Muraja'at Majallat al-Ijra'at al-Jaza'iyya" [The Necessity of Revising the Code of Criminal Procedure]. In *Centennial of Criminal Procedure*, edited by Rashida al-Jalassi Belkheiriyah and Bashir al-Manoubi al-Fershishi, Series of Forums of the Research Unit in Criminal Sciences and Criminology. Tunis: Latrach Édition, 2024.
- Al-Fershishi, Munir. *Al-Jami' fi al-Qanun al-'Aqari* [The Compendium of Real Estate Law]. 2nd updated ed. Tunis: Latrach Édition, 2023.
- Al-Ferchichi, Wahid. « L'environnement dans la nouvelle Constitution. » In PNUD. *La Constitution de la Tunisie. Processus, principes et perspectives*, 441–450. Tunis: PNUD, 2016.
- Al-Ferchichi, Wahid, Ilaf al-Qassab, and Khaled al-Majri. *Mudhakirat al-(La)Dusturiyya* [Notes on (Un) Constitutionality]. Tunis: Tunisian Association for the Defence of Individual Liberties, 2017.
- Al-Ghazali, Imam Abi Hamid Mohammed ibn Mohammed. *Shifa al-Ghalil fi Bayan al-Shabah wa-l-Mukhayyal wa-Masalik al-Taalil* [Healing of the Thirsty: On the Clarification of Analogy, Imaginative Reasoning, and the Methods of Causal Argument].
- Al-Ghazali, Imam Abi Hamid Mohammed ibn Mohammed. *Ihya' 'Ulum al-Din* [The Revival of the Religious Sciences], and its supplement *Al-Mughni 'an Hamal al-Asfar fi al-Asfar* [The Relief from the Burden of Journeys within the Journeys], edited and explained in *Takhreej Ahadith in the Ihya'* by Zain al-Din Abu al-Fadl al-Iraqi. Beirut: Dar Ibn Hazm for Printing, Publishing, and Distribution, 2005.

- Al-Hajawi, Mohammed ibn al-Hasan. *Al-Fikr al-Sami fi Tarikh al-Fiqh al-Islami* [Sublime Thought in the History of Islamic Jurisprudence]. Vol. 1, 1st ed. Medina: Al-Maktabah al-Ilmiyyah, 1977.
- Al-Hudhairi, Ahmad. "Al-Tabanni fi 'al-Shari'a al-Islamiyya"' [Adoption in Islamic Law]. In *Adoption in Intersecting Perspectives*, Proceedings of the Study Day at the Faculty of Legal, Political, and Social Sciences in Tunis, 24 May 2012, supported by the Hans Seidel Foundation.
- Al-Jabari, Abdullah. "Al-Ijhadh, Dirasah Fiqhiyya Muqaranah" [Abortion: A Comparative Jurisprudential Study]. *Manar Al-Islam* website – Peer-Reviewed Studies and Research, 2021.
- Al-Jalassi, Rashida. "Majallat al-Ahwal al-Shakhsiyya: Murakama wa Ta'sis" [The Code of Personal Status: Accumulation and Foundation]. In *Sixty Years of the Personal Status Code (1956–2016)*, edited by Souhayma Ben Achour and Rashida al-Jalassi. Tunis: CPU, 2019.
- Al-Jalidi Bushmawi, Durra. *'Uqud al-Maliyya al-Islamiyya wa al-Qanun al-Wad'i* [Islamic Financial Contracts and Positive Law]. Tunis: Latrach Éditions, 2017.
- Al-Khadimi, Nur al-Din. *Huquq al-Insan wa Maqasid al-Shari'a* [Human Rights and the Objectives of Sharia]. Doha: Department of Islamic Research and Studies, 2011.
- Al-Majri, Khaled. *Regulations of Rights and Freedoms: Commentary on Article 49 of the Tunisian Constitution*. Stockholm: International Institute for Democracy and Electoral Assistance, 2017.
- Al-Marakebi, Muhammad. "Al-Hadatha wa Tahawwulat al-Khitab al-Maqasidi: Nahw Fiqh Sa'il" [Modernity and Transformations of the Maqasidi Discourse: Towards a Fluid Jurisprudence?]. *Journal of Islamic Ethics* 3 (2019): 9–29.
- Al-Rawatibi, Hatem Abdel Hamid. "Majallat al-Iltizamat wa al-'Uqud wa al-Islam" [Code of Obligations and Contracts and Islam]. In *Livre du centenaire du Code des obligations et des contrats, 1906–2006*, edited by Mohamed Kamel Charfeddine. Tunis: CPU, 2006.
- Al-Salini, Nayla. "Al-Fasl 5: 'In Hiya Illa Naruhum al-Muqada' [Article 5: 'It is Only Their Kindled Fire'], in *Al-Shari' al-Maghribi*, no. 318 (19–25 July 2022): 4–5.
- Al-Sayed, Zina. *Ahkam al-Sijil al-'Ayni fi Tunis: al-Tasjil – al-Ishhar – Tahyin al-Rusum al-Mujammadah* [Provisions of the Real Estate Registry in Tunisia: Registration – Public Notice – Updating Frozen Fees]. Tunis: Latrach Édition, 2025.
- Al-Shadhili Nifer, Mohammed. "Mas'alat al-Islam wa al-Lugha amam al-Majlis al-Qawmi al-Ta'sisi" [The Issue of Islam and Language before the National Constituent Assembly]. In *National Constituent Assembly, Proceedings of the Forum, 29–31 May 1984*, 29–31. Tunis: Centre for Studies, Research, and Publishing, 1986.
- Al-Shatibi, Abi Ishaq Ibrahim ibn Musa ibn Mohammed al-Lakhmi. *Al-Muwafaqat* [The Reconciliation of the Fundamentals of Islamic Law]. Vol. 4, 1st ed. Saudi Arabia: Dar Ibn 'Affan for Publishing and Distribution, 1997.

- Al-Shatibi, Abi Ishaq Ibrahim ibn Musa ibn Mohammed al-Lakhmi. *Al-Muwafaqat* [The Reconciliation of the Fundamentals of Islamic Law]. Vol. 2, 1st ed. Saudi Arabia: Dar Ibn ʿAffan for Publishing and Distribution, 1997.
- Al-Takkari, Bashir. "Makanat al-Shari'a al-Islamiyya fi Dusatir al-Duwal al-'Arabiyya" [The Status of Islamic Sharia in the Constitutions of Arab States]. *The Tunisian Legal Journal*, 1982: 20–40.
- Al-Taymoumi, Al-Hadi. *Tunis wa al-Tahdith (1831–1877): Awwal Dustur fi al-'Alam al-Islami* [Tunisia and Modernisation (1831–1877): The First Constitution in the Islamic World]. Tunisia: Mohamed Ali Publishing House, 2010.
- Al-Ubaidi, Hamadi. *Al-Shatibi wa Maqasid al-Shari'a* [Al-Shatibi and Maqasid al-Shariah]. 1st ed. Damascus–Beirut: Dar Qutaybah for Printing, Publishing, and Distribution, 1992.
- Al-Zuhayli, Wahbah. *Al-Fiqh al-Islami wa Adillatuhu* [Islamic Jurisprudence and Its Evidence]. Vol. 4, 31st ed. Damascus: Dar al-Fikr, 2009.
- Atiyah, Jamaleddine. *Nahw Taf'il Maqasid al-Shari'a* [Towards Activating the Objectives of Sharia]. 1st ed. Jordan; Damascus: International Institute of Islamic Thought / Dar al-Fikr for Printing, Publishing, and Distribution, 2001.
- Arab Association of Constitutional Law. *Tunisia – The Referendum on the New Constitution: The Process of Drafting and Ratification*. August 2022.
- ———. *The 2022 Constitutional Referendum in Tunisia*. 2022
- Audard, Catherine. « Citoyen. » In *Dictionnaire d'éthique et de philosophie morale*. Vol. 1, 4th revised and expanded ed., edited by Monique Canto-Sperber, 314–319. Paris: Quadrige/PUF, 2014.
- Baccouche, Néji. « Les droits économiques et sociaux et la Constitution. » In PNUD. *La Constitution de la Tunisie. Processus, principes et perspectives*, 473–481. Tunis: PNUD, 2016.
- Bauberot, Jean. « Laïcité. » In *Dictionnaire d'éthique et de philosophie morale*, Vol. 2, 2nd ed., edited by Monique Canto-Sperber, 1059–1066. Paris: Quadrige/PUF, 2014.
- Belaid, Sadok. *Al-Quran wa al-Tashri': Qira'a Jadida fi Ayat al-Ahkam* [The Quran and Legislation: A New Reading of the Verses of Legal Rulings]. Tunis: CPU, 1999.
- ———. "Article One: 'Tunisia, a Free, Independent, Sovereign State, Islam as its Religion…'." In *Les dispositions générales de la Constitution, Actes du colloque de commémoration du cinquantenaire de la promulgation de la Constitution tunisienne du 1er juin 1959 (Tunis, 23–24 janvier 2009)*. Tunis: 2010.
- Ben Achour, Mohammed al-Taher. *Maqasid al-Sharia al-Islamiyah* [Objectives of Islamic Law]. Series on Islamic Renaissance Thought. Alexandria: Bibliotheca Alexandrina, 2011.

- ———. *Tafsir al-Tahrir wa al-Tanwir* [Interpretation of Verification and Enlightenment]. Vol. 18. Tunis: Dar al-Tunisiya for Publishing, 1984.
- ———. *Tafsir al-Tahrir wa al-Tanwir* [Interpretation of Verification and Enlightenment]. Vol. 28. Tunis: Dar al-Tunisiya for Publishing, 1984.
- Ben Achour, Rafaa. *Al-Mu'assasat wa al-Nizam al-Siyasi bi-Tunis. Al-Itar al-Tarikhi: al-Nizam al-Siyasi 1959–2011, al-Nizam al-Siyasi fi Zill Dustur 2014* [Institutions and the Political System in Tunisia: Historical Framework – The Political System 1959–2011 – The Political System under the 2014 Constitution]. 3rd ed. Latrach Édition, 2019.
- Ben Achour, Sana. "Makanat al-Islam fi Mashru' Dustur al-Jumhuriyya al-Jadida" ["The Status of Islam in the Draft Constitution of the New Republic"]. In *A Reading of the Draft Constitution Submitted to the Referendum of 25 July 2022*. Meeting organised by the Tunisian Association of Constitutional Law, Faculty of Legal, Political, and Social Sciences of Tunis, 4 July 2022. Unpublished.
- ———. « Aux sources du droit moderne tunisien : la législation tunisienne en période coloniale. » PhD diss., Faculty of Legal, Political, and Social Sciences of Tunis, 1996.
- ———. « Trois constitutions, un seul pouvoir. » In *Le pouvoir d'un seul*, edited by Hamadi Redissi, 65–84. Tunis: Diwen, 2023.
- ———. « L'arbre qui cache la forêt : De l'Islam religion d'État à l'Islam communautaire. » *Dissonances/Nachaz*, 19 June 2022.
- Ben Achour, Souhayma. « L'adoption et la kafala: quelles différences en droit? » In *Regards croisés sur l'adoption : Actes de la journée d'études organisée à la Faculté des sciences juridiques, politiques et sociales de Tunis, le jeudi 24 mai 2012*, 19–33. Tunis: Faculty of Legal, Political, and Social Sciences of Tunis, with the support of the Hanns Seidel Foundation, 2013.
- ———. *Qanun al-Usra* [The Family Code]. 2nd ed. Tunis: Dar Al-Kitab, 2025.
- ———. « L'interprétation du droit tunisien de la famille : entre référence à l'Islam et appel aux droits fondamentaux. » In Mounir Snoussi et Souhayma Ben Achour, eds., *L'interprétation de la norme juridique*, 17–37. Conference organised by the Faculty of Legal, Economic, and Management Sciences of Jendouba, on 5–6 April 2010, with the support of the Hans Seidel Foundation, 2011.
- Ben Achour, Yadh. *Normes, foi et loi. En particulier dans l'Islam*. Tunis: Cérès Éditions, 1993.
- Ben Aicha, Nabil. « La notion de « neutralité confessionnelle » dans l'article 4 du Code des obligations et des contrats. » In *Livre du centenaire du Code des obligations et des contrats. 1906–2006*, edited by Mohamed Kamel Charfeddine, 141–161. Tunis: CPU, 2006.

- Ben Aïssa, Mohamed Salah. « La compétence exclusive du Conseil supérieur de la magistrature en matière disciplinaire ou … Quand le Conseil constitutionnel brise la jurisprudence du Tribunal administratif. » In *En hommage à Dali Jazi*, 151–181. Tunis: CPU, 2010.
- Ben Moussa, Ikbal. « Le droit musulman dans la jurisprudence tunisienne. » PhD diss., Faculty of Legal, Political, and Social Sciences of Tunis, 2021-2022.
- ———. "Al-Fasl al-Awwal min al-Dustur fi Fiqh Qada' al-Hay'a al-Waqtiyya li-Muraqabat Dusturiyyat Mashari' al-Qawanin" [Article 1 of the Constitution in the Jurisprudence of the Provisional Authority to Monitor the Constitutionality of Draft Laws], in *Jurisprudence of the Provisional Authority to Monitor the Constitutionality of Draft Laws*, Publications of the Scientific Forum held on 25–26 January 2018 on the occasion of Al-Ayyam Al-Sadisa, edited by Abdel Fattah Omar (Tunis: Tunisian Association of Constitutional Law, with the support of the United Nations Development Programme in Tunisia, 2022).
- Ben Salem, Fakher. "Al-Qard bi Fa'ida Mushatta" [Loans with Usury Interest]. *Akhbar Qanuniya*, no. 8/9 (September 2006).
- Bostangi, Sami. « La guerre de l'article premier n'aura pas lieu. » *Observatoire de la Transition Démocratique*, 3 October 2011.
- Boudia, Mohamed Ashraf. "Tahaddiyat Mu'assasat al-Zakat al-Mu'asira" [Challenges of the Contemporary Zakat Institution]. Tunis: Tunisian Association for Zakat Sciences, Dhu al-Hijjah 1440 (August 2019), 1–12.
- Bouzeghiba, Mohamed. "Al-Usul al-Fiqhiyya li-Majallat al-Iltizamat wa al-'Uqud" [Jurisprudential Foundations of the Code of Obligations and Contracts]. In *Livre du centenaire du Code des obligations et des contrats, 1906–2006*, edited by Mohamed Kamel Charfeddine.
- Bras, Jean-Philippe. « Un État 'civil' peut-il être religieux ? Débats tunisiens. » *Pouvoirs*, no. 156 (2016/1) : 55–70.
- Brunet, Pierre, Francis Hamon, and Michel Troper. *Droit constitutionnel*. 44th ed. Paris: LGDJ, Lextenso, 2023.
- Carbonnier, Jean. *Flexible droit : pour une sociologie du droit sans rigueur*. 10th ed. Paris: LGDJ, 2001.
- Carreau, Dominique, Andrea Hamann, and Fabrizio Marrella. *Droit international*. 13th ed. Paris: Éditions A. Pedone, 2022.
- Cervera-Marzal, Manuel. « La démocratie sous tension: Radicalité et utopie, sœurs ennemies de l'aventure démocratique. » *Tumultes*, 2016/2, n°47: *Utopia Nova, La démocratie, radicalement* :145–156.
- Chalev, Dimiter, Mazen Shaquoura, and Abou Abass. « Rôle des Nations Unies dans le processus constitutionnel tunisien et résultat en termes de garanties relatives aux droits de l'homme. » In PNUD. *La Constitution de la Tunisie. Processus, principes et perspectives*, 463–472. Tunis: PNUD, 2016.

- Charfeddine, Mohammed Kamel, *Qanun Madani: al-Nazariyya al-'Amma lil-Qanun – al-Nazariyya al-'Amma lil-Haqq* [Civil Law: General Theory of Law – General Theory of Rights], 4th ed. (Tunis: Latrach Éditions, 2025).
- Chennoufi Al-Asaad, *Ithbat Milkiyat al-'Aqarat Ghayr al-Musajjalah* [Proof of Ownership of Unregistered Properties] (Tunis: Latrach Édition, 2014).al-sayal
- Chennoufi, Redha. *Tunis, al-Din aw al-Dawla? Mughallatat wa Hulul* [Tunisia: Religion or the State? Misconceptions and Solutions]. Tunis: Saras Publishing, 2012.
- Choucair, Hafiza. *Freedom of Association Between the Constitution and the Decree on Organizing Associations*. Soyons Actifs/Actives – PCPA.
- Constant, Benjamin. « De la liberté des Anciens comparée à celle des Modernes. » *Discours prononcé à l'Athénée royal de Paris*, 1819.
- Debbeche, Kaouthar. *Individual Freedoms and Article 55: Is There Another Reading?* Stockholm: International Institute for Democracy and Electoral Assistance, 2023.
- ———. *Article 49 and Individual Freedoms: Is There Another Reading?* Stockholm: International Institute for Democracy and Electoral Assistance, 2021.
- Déclaration des droits de l'homme et du citoyen de 1789.
- Elleuch, Mahdi. "Dastarat al-Haqq fi al-Ta'lim ka Saaha li-Hurub al-Hawiyya: Hikayat Fasl Yakad Yulakhkhis Masar Kitabat al-Dustur" [Constitutionalising the Right to Education Amidst War of Identity]. *Legal Agenda*, No. 18 (June 2020) : 8–9.
- ———. "Marsum Nasb al-Fa'ida al-Mushattah: Tahrir li-Sutwat al-Bunuk wa Rudukh li-Sunduq al-Naqd al-Duwali" [Decree on Usury Interest Rates: A Liberation of Banks' Authority and Submission to the International Monetary Fund]. *Legal Agenda*, 3 November 2022.
- Explanatory Memorandum of the Authority Calling the Referendum.
- Favoreu, Louis, et al. *Droit constitutionnel*. 25th ed. Paris: Dalloz, 2022.
- ———, et al. *Droit des libertés fondamentales*. 7th ed. Paris: Dalloz, 2015.
- Fekri, Marwa. "Tasmim al-dasatir wa bina al-thiqa: dirasah fi tajarib al-intiqal al-dimuqrati min manzur muqaran" [Constitutional Design and Trust-Building: A Comparative Study of Democratic Transition Experiences]. *Siyasat Arabiya* 9, no. 52 : 23–40.
- Ferte, Louise. « Au miroir de la liberté de conscience : l'utopie laïque et son destin. » *Le Télémaque* 2017/1, no. 51: 153–164.

- Ghazouani, Malik. *Guide for the Judicial Judge in the Application of Article 49 of the Constitution: Judicial Oversight of Proportionality Between Rights and Freedoms and Their Obligations*. Stockholm: International Institute for Democracy and Electoral Assistance, 2021.
- ———. "Min Fiqh al-Qada' Hawl al-Huquq al-Asasiya" [On the Jurisprudence of the Judiciary Concerning Fundamental Rights]. In *Collected Works Presented to Dean Muhammad Saleh Ben Issa*, supported by the Hans Seidel Foundation (Germany). Tunis: CPU, 2020.
- ———. "Renewing the Reading of the Provisions of the Personal Status Code: Commentary on Decision No. 31115 dated 5 February 2009 issued under the Chairmanship of Ms. Fatma Al-Zahra Ben Mahmoud." *Revue de Droit et Législation*, no. 3 (2009): 91–129.
- Gherairi, Ghazi. « Le caractère civil de l'État tunisien. » In PNUD. *La Constitution de la Tunisie. Processus, principes et perspectives*, 119–126. Tunis: PNUD, 2016.
- Guellali, Amna. « La clause générale de limitations dans la nouvelle Constitution : genèse, portée et défis. » In PNUD. *La Constitution de la Tunisie. Processus, principes et perspectives*, 411–418. Tunis: PNUD, 2016.
- Guénette, Dave. « L'architecture constitutionnelle – Dimensions artistiques d'une construction juridique. » *Les Cahiers de droit* 58, nos 1-2 (mars-juin 2017): 33–65.
- Hachez, Isabelle. « L'effet de standstill : le pari des droits économiques, sociaux et culturels ? » *Administration publique* 24, no. 1 (2000): 30–57.
- Halimi, Mohammed Diya al-, and Abdelbasset Qouader. "Maqsad al-Hurriyya 'Ind Ibn Achour wa Tatbiquh fi Huquq al-Insan" [The Objective of Freedom in Ben Achour and Its Application in Human Rights]. *Al-Haqiqa Journal of Social and Human Sciences* 23, no. 2 (June 2024): 57–81.
- Hammam, Mohammed. "Naqd Maqsad al-Hurriyya fi Fikr Muhammad al-Taher Ben Achour" [A Critique of the Objective of Freedom in the Thought of Mohammed al-Taher Ben Achour]. In *Sheikh Mohammed al-Taher Ben Achour and Issues of Reform and Renewal in Contemporary Islamic Thought: An Epistemological and Methodological Perspective*, edited by Fathi Hasan Malkawi, 1st ed. Hashemite Kingdom of Jordan: International Institute of Islamic Thought, 2011.
- Hauriou, Maurice. *Précis de droit constitutionnel*. 2nd ed. Paris : Sirey, 1929.
- Hennette-Vauchez, Stéphanie, and Diane Roman. *Droits de l'Homme et libertés fondamentales*. 2nd ed. Paris: Dalloz, 2015.
- Jaidi, Mohamed Afif. "Hudur al-Siyasi fi al-Mu'ta al-Tarbawi: al-Ta'lim al-Dini bi-Tunis Namudhajan" [The Politicisation of Religious Education in Tunisia]. *Legal Agenda*, no. 18 (June 2020): 6–7.

- ———. "Al-Ta'lim wa al-Tafawut al-Jihawi fi Tajribat al-Dawla al-Wataniya: Adat al-Tasaddi wa Qad Adhat Unwan Azma" [Education and Regional Inequalities in the Nation-State Experience: From a Tool of Confrontation to a Marker of Crisis]. Legal Agenda, No. 18 (June 2020): 10–11.
- Jerad, Raef. « Corps intermédiaires. » In *Encyclopédie de Science Politique*, edited by Hatem M'rad, 263–268. Tunis: ATEP, 2025.
- Khalfoui, Sahbi. « Un bréviaire du populisme. » In *Le pouvoir d'un seul*, edited by Hamadi Redissi, 17–32. Tunis: Diwen Éditions, 2023.
- Khemakhem, Redha. *Al-Tifl wa al-Qanun al-Jina'i* [The Child and Criminal Law]. Tunis: Centre for Legal and Judicial Studies Publications, 2009.
- Klibi, Salsabil. « La Constitution du 25 juillet 2022, constitution de la dé-démocratisation. » In *Le pouvoir d'un seul*, edited by Hamadi Redissi, 88–102. Tunis: Diwen Éditions, 2023.
- ———. « La loi et le caractère civil de l'État. » In *La loi*, coordinated by Mootez Gargouri and Lamia Neji, 33–48. Proceedings of the conference organised by the Faculty of Law of Sfax, the Tunisian Association of Constitutional Law, and the Association for Research on Democratic Transitions, on 11–12 April 2019. Tunis: Latrach Éditions, 2022.
- Kotran, Hatem. "Al-Tabanni min Manzur Huquq al-Tifl: Qira'a Intilaqan min al-Mulahazat al-Khitamiyya li-Lajnat Huquq al-Tifl" [Adoption from the Perspective of Children's Rights: A Reading Based on the Concluding Observations of the Committee on the Rights of the Child]. In *Adoption in Intersecting Perspectives*, 15–25.
- ———. *Huquq al-Tifl fi Tunis wa al-Duwal al-'Arabiyya: I'adat Tasawwur al-Mustaqbal li-Kull Tifl* [Children's Rights in Tunisia and Arab Countries: Reimagining the Future for Every Child]. Tunis: Latrach Éditions, 2024.
- Koubi, Geneviève. « Le principe de neutralité des services publics : un principe corollaire à la modernisation de l'État ? » *La Revue administrative*, novembre-décembre 1992, no. 270 : 492–499.
- Lacharrière, Guy de. *La politique juridique extérieure.* Paris: Economica, 1983.
- Laghmani, Slim. « Les ambivalences de la Constitution tunisienne du 27 janvier 2014. » In *Écrits politiques et constitutionnels depuis la Révolution*, edited by Slim Laghmani, 101–140. Tunis: Nirvana, 2020.
- ———. *The Limitation of Rights and Freedoms in Tunisian Constitutional Law: From Article 49 of the 2014 Constitution to Article 55 of the 2022 Constitution*. Stockholm: International Institute for Democracy and Electoral Assistance, 2023.
- ———. "Al-Dawla Al-Madaniyya: Manzila bayna Manzilati Al-Dawla Al-Diniyya wa Al-Dawla Al-'Ilmaniyya" [The Civil State: Positioned between the Religious State and the Secular State]. In *Writings on Politics and the Constitution in the Aftermath of the Revolution*, edited by Slim Laghmani, 20. Tunis: Nirvana Publications, 2020.

- ———. "Tahyin bi tarikh 13 Oktober 2020: 'Al-Dawla Al-Madaniya fi Dustur 27 Janfi 2014"' [Updated on 13 October 2020: 'The Civil State in the Constitution of 27 January 2014']. In *Writings on Politics and the Constitution*, edited by Slim Laghmani, 21. Tunis: Nirvana Publications, 2020.
- ———. "Al-Fasl 49 min Dustur 27 Janfi 2014 fi Thamaniya As'ila" [Article 49 of the Constitution of 27 January 2014 in Eight Questions]. In *Writings on Politics and the Constitution in the Aftermath of the Revolution*, edited by Slim Laghmani. Tunis: Nirvana Publications, 2020.
- ———. "Qira'a Dusturiyya li Mubadarat al-Musawat fi al-Irth" [A Constitutional Reading of the Initiative for Equality in Inheritance]. In *Writings on Politics and the Constitution in the Aftermath of the Revolution*, edited by Slim Laghmani. Tunis: Nirvana Publications, 2020.
- Lagrange, Emérentienne de. « Le législateur tunisien et ses interprètes. » *Revue tunisienne de droit*, 1968 :11–24.
- ———. Note sous Cour de cassation, Ch. Civile, arrêt N°3384 du 31 janvier 1966, *Revue tunisienne de droit,* 1968 : 114–120.
- Lakani, Béchir. « Mongi Rahoui sous menace de mort. » *L'économiste maghrébin,* 6 January 2014.
- Laurent-Bonne, Nicolas, Nicolas Pose, and Victor Simon, eds. *Les piliers du droit civil. Famille, propriété, contrat*. Paris: Mare et Martin, 2015.
- Levinet, Michel. *Théorie générale des droits et libertés*. 2nd revised ed. Brussels: Bruylant, Nemesis, 2008.
- Limam, Jinan. « Candidature. » In *Encyclopédie de Science Politique*, edited by Hatem M'rad, 143–146. Tunis: ATEP, 2025.
- Magnette, Paul. *La citoyenneté, une histoire de l'idée de participation civique*. Brussels: Bruylant, 2001.
- Mallek, Sonia El Euch. "Azmat al-Tabanni: Qira'ah Naqdiyya lil-Qanun al-Mu'akhkhar fi 4 Mars 1958" [The Adoption Crisis: A Critical Reading of the Law Dated 4 March 1958], in *A Collection of Studies in Law Dedicated to Professor Mohammed al-Zein* (Tunis: University Publishing Centre, 2018).
- March, Andrew F. «The Maqsad of hifz al-dīn: is liberal religious freedom sufficient for the Sharī ah?. » *Islam and Civilisational Renewal* 2, no. 2 (January 2011): 358–378.
- Mezghani, Ali. *Droit international privé: États nouveaux et relations privées internationales*. Tunis: Cérès, 1991.
- ———. « Religion, mariage et succession : l'hypothèse laïque. À propos d'une (R) évolution récente de la jurisprudence tunisienne. » In *Droits et culture: Mélanges en l'honneur du Doyen Yadh Ben Achour*, 345–366. Tunis: CPU, 2008.
- Mezghani, Ali, and Slim Laghmani. "Taqdim" [Introduction]. In *Essays on Modernity and Law*, edited by Ali Mezghani and Slim Laghmani. Tunis: Dar Al-Janoub for Publishing, 1994.

- Millard, Éric. « L'État de droit, idéologie contemporaine de la démocratie ». In *Question de démocratie*, edited by Jean-Marc Fevrier and Patrick Cabanel, 1–24. Toulouse: Presses universitaires du Mirail, 2001.
- Ministry of Religious Affairs. *Interpretation of the Content of Article 5 of the Constitution of the Tunisian Republic of 2022: Response to a Question Submitted by MP Fatma Al-Masdi on 1 July 2025 Regarding an Official Explanation of Article 5 of the 2022 Tunisian Constitution*. 15 August 2025, 4.
- Neji, Lamia. "Al-Ta'liq 'ala Hayyat min Qararat al-Hay'a al-Waqtiyya li-Muraqabat Dusturiyyat Mashari' al-Qawanin al-Muta'alliqah bi-Mashru' Qanun al-Bunuk wa al-Mu'assasat al-Maliyya" [Commentary on the Reasoning of Decisions of the Provisional Authority to Monitor the Constitutionality of Draft Laws Concerning the Draft Law on Banks and Financial Institutions]. In *The Case Law of the Provisional Authority to Monitor the Constitutionality of Draft Laws*, 152–169.
- ———. "Madaniyyat al-Dawla" [The Civil Nature of the State]. In *Readings in the Constitution of the Second Republic (the 27 January 2014 Constitution): Proceedings of the Conference 'The New Constitution of the Tunisian Republic,' 8–10 March 2014*, Publications of the Doctoral School, Faculty of Law of Sfax, no. 4 (2017)
- Nouira, Asma. « La religion dans la Constitution de 2022, rupture ou continuité. » In *Le pouvoir d'un seul*, edited by Hamadi Redissi, 149–159. Tunis: Diwen, 2023.
- Okkez, Beji and Mohamed Samih. "Tafrat al-Ta'lim al-Khas fi Tunis: Sakha' al-Dawla Yukarris al-Ta'lim al-Tabaqi" [The Boom in Private Education in Tunisia: State Generosity Reinforces Class-Based Education]. *Legal Agenda*, no. 18 (June 2020): 16–17.
- Omar, Abdel Fattah, and Kais Saied. *Nusus wa Watha'iq Siyasiyya Tunsiyya* [Tunisian Political Texts and Documents]. Tunis: Center for Studies, Research, and Publishing, 1987.
- ———. *Al-Wajiz fi al-Qanun al-Dusturi* [Concise Guide to Constitutional Law]. Tunis: Centre for Studies, Research, and Publishing, Faculty of Law and Political Science, 1987.
- Odeh, Abdul Qader. *Al-Tashri' al-Jinai al-Islami Muqaranan bi-l-Qanun al-Wadi* [Islamic Criminal Legislation Compared to Positive Law]. Vol. 2, 10th ed. Beirut: Al-Resalah Foundation, 1989.
- Ouamara, Zohour. "Matha Ya'ni Tajahul al-Quwwat al-Amniyya wa al-'Askariyya fi Dustur Sa'id?" [What Does Ignoring the Security and Military Forces in Saied's Constitution Mean?], Legal Agenda Tunisia, Republic of the Individual or the Non-Republic, no. 2 (September 2022).
- Philonenko, Alexis. « Rousseau Jean-Jacques 1712-1778, Contrat social 1762. » In *Dictionnaire des œuvres politiques*, edited by François Chatelet, Olivier Duhamel, and Evelyne Pisier, 3rd ed., 1042–1058. Paris: PUF, 1995.
- Presidency of the Republic. *Report of the Committee on Individual Freedoms and Equality*. Tunis, 1 June 2018.

- Quermonne, Jean-Louis. « Régime politique ». In *Dictionnaire constitutionnel*, edited by Olivier Duhamel and Yves Mény, 887–88. Paris: PUF, 1992.
- Qusbaya, Radhiya, and Abdelrahman Raddad. "Maqsad Hifz al-'Ird: Tahrir al-Mafhum wa Tahqiq al-Rutbah" [The Objective of Honour Preservation: Conceptual Clarification and Hierarchical Realisation]. *Al-Ihyaa* 20, no. 25 (June 2020): 97–134.
- Qutb, Sayyid. *Fi Zilal al-Qur'an* [In the Shade of the Qur'an]. Vol. 3, parts 8–11, 32nd ed. Cairo: Dar al-Shorouk, 2003.
- Redissi, Hamadi. « Raison publique et laïcité islamique : la constitution tunisienne de 2014. » *Leaders*, 4 July 2014.
- Rousseau, Jean-Jacques. *Du Contrat social*. Tunis: Cérès Éditions, 1994.
- Rycx, Jean-François, and Gilles Blanchi. « Références à l'Islam dans le droit public positif en pays arabes .» *Pouvoirs*, no. 12 (1983): 57–70.
- Scigliano, Manuelita. « Modernité. » In *Encyclopédie de Science Politique*, edited by Hatem M'rad, 701–703. Tunis: ATEP, 2025.
- Sghaier, Mongi. « Étude 5: Région saharienne du Nefzaoua. » In *Dynamique des populations, disponibilités en terres et adaptation des régimes fonciers. Le cas de la Tunisie*, edited by Michel Picouet, 239–255. Paris: Comité international pour la coopération dans les recherches nationales en démographie, 2006.
- Shaaban, Tarek. "Nash'at al-Aradi al-Ishtirakiyya wa Muqaranatuha bi al-Nuzum al-'Aqariyya" [The Emergence of Collective Lands and Their Comparison with Property Systems], in *Higher Institute of Judiciary, Regional Meeting: Legal Status of Collective Lands*, Gafsa, 13 January 1996.
- Sherfi, Mohamed, Ali Mezghani, and Malik Ghazouani. *Al-Madkhal li-Dirasat al-Qanun* [Introduction to the Study of Law], 3rd ed. Tunis: Nirvana, 2023.
- Thabet, Amine. "Dustur 25 Julay 2022: Taqyim al-Masar al-Ta'sisi wa al-Dusturi al-Ri'asi" [Constitution of 25 July 2022: An Assessment of the Presidential Constituent and Constitutional Process]. In *The Kaïs Saied Project: Critical Approaches* (collective volume). Tunis: Centre for Strategic Studies on the Maghreb Publications, 2023.
- Tocqueville, Alexis de. *De la démocratie en Amérique*. I, Deuxième partie, 1835. Version numérique produite par Jean-Marie Tremblay. Collection *Les classiques de sciences sociales*, Bibliothèque Émile-Boulet de l'Université du Québec à Chicoutimi.
- Tunisian Association of Constitutional Law, ed. *Les dispositions générales de la Constitution : Actes du colloque de commémoration du cinquantenaire de la promulgation de la Constitution tunisienne du 1er juin 1959*, *Tunis, 23-24 janvier 2009*. Tunis, 2010: 33–36.

- Vandernoot, Pierre. « Regards du Conseil d'État sur une disposition orpheline: L'article 34 de la Constitution. » In *En hommage à Francis Delpérée, Itinéraires d'un constitutionnaliste*, 1599–1630. Brussels : Bruylant/Paris: L.G.D.J., 2007.
- Yacoub, Mahmoud. "Min Ajl Tajdid Ahkam al-Mawarith" [Toward the Renewal of Inheritance Rules]. In *Sixty Years of the Personal Status Code (1956–2016)*, edited by Mohammed Taher Ben Achour and Rashida al-Jalassi.
- Zaidan, Abd al-Karim. *Al-Madkhal li-Dirasat al-Shariah al-Islamiyyah* [Introduction to the Study of Islamic Law]. 6th ed. Beirut: Muassasat al-Risalah, 1982.