

The Ennahda Movement confronted to the constitutional drafting process: From Shariah to freedom of conscience

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It is normally said that the experience of government represents the biggest challenge for protest movements. In this sense the Tunisian Islamic movement - and specifically the Ennahda Movement - was subjected to a dual challenge: The challenge of the exercise of power within the tripartite alliance that it led after its victory in the National Constituent Assembly elections on 23 October 2011 and the challenge of the foundational phase: the writing of the constitution and the balances and compromises to which the Ennahda Movement was eventually compelled to resort within just over two years of this experience.

Between the flight of Ben Ali (14 January 2011) and the victory of Ennahda in the first free and democratic elections after the revolution (23 October) there was less than nine months. In this very short time span a banned and prosecuted movement moved from out of prison, exile and house arrest to ruling and establishing the second republic.

From Theoretical Review to Non-Complex Islamism

We can say today that the Ennahda Movement is the largest and most prominent beneficiary of the Tunisian revolutionary path in its beginnings. Not only because the revolution opened the wider field after the decision to ban the former ruling party (the Democratic Constitutional Rally) in the spring of 2011, but also because the revolution delayed the course of a painful political review that began in the Ennahda movement after the waves of repression suffered by the Islamic movement in the early nineties, which led to the imprisonment of thousands of its senior leaders, central figures and fighters while thousands of others took refuge in the diaspora. These reviews, which were launched in the middle of the last decade in the diaspora, as well as within the homeland after the majority of historic leaders came out of prison, meant that the Islamic movement had erred when it rushed into a process of arm-twisting with the Ben Ali regime, particularly in the legislative elections of 1989, in which the movement wanted to show signs of its strength and popularity. This accelerated the repressive policies against it and cemented the foundations of tyranny and exclusive rule after the promises of 7 November 1987 in respect of "responsible democracy."

The outcome of these reviews was the attempt by the Ennahda Movement to turn the page of the past with the Ben Ali regime and to create some formula of coexistence with him. But the former regime was the one who had been refusing any normalisation-with the Islamic movement. These revisions were the ones that also imposed on the Ennahda Movement a lot of retreats within what is known as the '18 October movement' and we saw local Islamic leaders very boldly move on ideological and political texts, contrary to what the movement adopted in its basic literature on the religious-political relationship and absolute equality between the sexes etc

This also explains the reluctance of the movement to actively contribute to the revolutionary movement that began on 17 December 2010 in the city of Sidi Bouzid. When a reporter from the BBC asked Professor Rashid Ghannouchi, the historical leader of the Ennahda, on 12 January 2011 about the reason for this reluctance, he replied that his movement has sent thousands of young people to prison and exile and that it is not ready to subject more of them to such futile torments.

The Tunisian revolution liberated the Ennahda movement from these revisions, which some of its leaders considered as blackmail by secular forces in opposition to Ben Ali. Shortly after a few weeks of the revolution we began to see what we might call “non-complex Islamism”. The movement that was ready for huge concessions in exchange for modest acceptance within the spectra of the democratic opposition, which was ready for more than that if the Ben Ali regime was even slightly endorsed. This historic willingness to compromise, to which we will return later in order to give it all the sociological and intellectual dimensions - this willingness is no longer topical for the Islamic movement.

The fear that gripped some of its leaders in the first few weeks following the flight of Ben Ali (see the dialogue with Hamadi Jebali, the Secretary-General of the Ennahda, in the magazine “Reality” on 24 February 2011) evaporated quickly leaving room for this sweeping non-complex Islamism which believed that the revolution only came to demonstrate the validity of its first approach and that it is now eligible to fill the vacuum left by the authoritarian regime as it expresses most the identity of the people and is the most responsive to the direction of history. This was confirmed by its president in a famous public meeting in the city of Mahdiyya on the Tunisian coast in the spring of 2011.

Within a few months we moved from a banned and prosecuted movement in prison, exile and house arrest and in a state of psychological readiness to make major concessions in exchange for partial acknowledgement to a movement that regained its ability to function and with huge ambitions going into the elections of 23 October 2011. The elections proved a complete and radical victory after a series of defeats and setbacks.

This psychological, organisational and political background is necessary to understand the nature of the behaviour of Ennahda before the drafting of the constitution and immediately after the National Constituent Assembly elections.

Identity “War”

We can say that the Islamic Movement was not united in terms of ideas and attitudes towards the challenge of writing the constitution, although it was united on two main objectives: adoption of public freedoms and preventing the return of despotism on the one hand and to include the requirements of the defence of the Arab-Islamic identity on the other.

The “identity war” did not begin raging within the National Constituent Assembly, but rather in the first few weeks after the revolution. While a part of the elite deemed that the opportunity to complete the secularisation of the state became available with the revolution, the majority of Islamists believed that the revolution only came to overthrow what they called destructive westernisation and secularism that was a descendant of the atheistic communist ideology.

The “identity war” witnessed two distinct points before the elections of 23 October 2011. The first was in the discussions that took place in the spring of 2011 about the first article of the Constitution of 1959 and whether the reference to Islam should be removed or rather be emphasised i.e. in clearer words, and whether the vague conciliatory format of 1959 should be replaced? “Tunisia is an independent state (...) whose religion is Islam (...)” in a format that either recognises that this religion is the religion of the Tunisian people or at least the majority of them and that the state does not have a religion; or that Islam is the state religion. Repressed Islamic voices, popular media expression, and the subject of identity became one of the core issues of the intellectual and ideological conflict in Tunisia after the revolution - a conflict that later overshadowed the writing of the constitution.

The second moment in the “identity war” was the strong and rapid climb of the various Salafist and radical currents beginning with external appearances (Afghan shirts, beards and veils) leading up to the proposal of a radical ideological identity.

Thus the conflict is no longer between supporters of the Arab-Islamic identity and its opponents, but between the true sincere Muslims and other hordes of infidels and hypocrites. The issues in respect of Islamisation of society and the application of Shariah law occupied an important area in intellectual and political scenes.

For the first time, Tunisians discovered that political Islam has multiple banners and the Ennahda movement has brothers, some of whom have become enemies after the emergence of Salafi violence.

The strong appearance of Salafi and radical currents (such as the Liberation Party) will impose a new reality for the Ennahda movement, especially after it discovers that most of their youth base is under the intellectual and religious influence of these radical currents.

A considerable portion of the Tunisian elite considered this diversity in political Islam to be merely an illusion and a distribution of roles, nothing more, and that all these radical currents are only subtle and hidden arms of the Ennahda movement. What made this view prevail further was the clear effort by the renaissance leaders at the time to contain all this Islamic “movement” and show favouritism for the extremists, rather than seeking to differentiate them.

However it must be kept in mind that the large number of Islamic “offerings” has highlighted the strong pressure on the Ennahda movement and has contributed, indirectly, to this “non-complex Islamism” that appeared with many renaissance leaders during 2011 and a significant period in 2012. The most important of these “brotherly pressures” is the insistence of these organisations and currents on the need for mention of the adoption of Shariah law and mention of the same in the constitution of the second republic.

Shariah “War”

We have previously mentioned that the Ennahda movement entered the test of drafting the constitution with two main ideas: Support of public freedoms and the establishment of an absolute parliamentary regime as a basic guarantee against the return of the regime of tyranny; Consolidation of the principles and values of the Arab-Islamic identity in the constitution and making religious texts - without specification - one of the most important references for the new constitution.

The Islamic movement prepared a first draft which it did not officially adopt containing these basic ideas. It contained a statement of adopting Shariah law as the main source of legislation.

This implicit requirement has been declared since the first day of the meeting of the National Constituent Assembly on 22 November 2011 by one of the most important leaders of the Ennahda movement, Mr Sadek Chourou, who had previously been its chairman for a short period.

Thus, since the beginning of the operations of the Constituent Assembly it became clear that Tunisia is entering a so-called “war” to include Shariah law in the constitution, and that this intellectual social conflict will be crucial in the modern history of Tunisia.

The Islamic Movement - only recently in power - was not sure about the actual content to include from Shariah law in the Constitution. It was pulled in several directions in this area. On the

far right there were voices being raised that it does not make sense for an Islamic Movement to not call for the application of its central slogan “Islam is the solution”, especially when it has a popular mandate for that purpose. Pragmatic political leaders largely avoided raising this topic as they deemed the burden of rule to be too heavy and that these debatable and broad matters should not be added to it.

The issue of Shariah was the first serious test for non-complex Islamism in Tunisia. What is the meaning of including Shariah law in the constitution with respect to them? The renaissance leaders did not dare to speak directly and clearly on the issue of application of Shariah law punishments - at least in media statements or official interventions with the delegates of the Ennahda block at the National Constituent Assembly.

The single intervention in which an indirect reference to the issue of Shariah law punishments came on the lips of the renaissance delegate was when he read the verse about banditry during his speech about social sit-ins and protests. That was at the beginning of 2012. Citing the Shariah law punishment for banditry (cutting off the hands and feet on opposite sides) raised a huge political and ideological controversy in Tunisia that showed that the tripartite alliance (troika) is not homogeneous and that the allies of Ennahda (El Mottamar and Ettakatol) will not side with them in the “Shariah Battle” - in particular the Ettakatol party and its Secretary General, Mr Mustafa Ben Jaafar, president of the National Constituent Assembly.

The Islamic movement sought to attribute matters and say that the inclusion of Shariah law in the constitution as the main source of legislation is only a matter of reinforcing the status quo and nothing else especially since the majority of Tunisian laws are derived from the provisions of Islamic jurisprudence, and that the inclusion of Shariah law in the constitution, is only a practical translation of its first consensual article which states that “Tunisia is an independent state (...) Islam is its religion and Arabic is its language (...)” Thus stipulating Shariah law in the constitution as the basic source of legislation is only an explanation and interpretation of the first article to ensure that it does not deviate from its original significance.

Here we return, once again, to the battle of the first article of the 1959 constitution (which was included in the 2014 constitution).

Notwithstanding the strong support by the network of Salafi associations and currents of various types on the issue of stipulating Shariah law in the Constitution and the desperate defence of the ideologues in the Ennahda movement, the huge media, political and social campaign against this draft forced the Ennahda movement after weeks of hesitation to announce that it will not include the adoption of Shariah law in the Constitution. But that does not at all mean retreat from the idea itself, but only on the means of communicating and applying it.

Battles on the Content of Shariah Law

As soon as we passed the “battle” to include Shariah law in the constitution following the speech by the head of the Ennahda Movement, Sahbi Atiq, in the spring of 2012, “many fronts” in different constitutional committees were opened about including some of the contents of Shariah, especially in the preamble and the chapters on general principles, rights and freedoms and amendment of the constitution.

A few months after the issue of inclusion of the Shariah, the issue of “complementarity” between the sexes came to occupy the forefront of intellectual and political dialogue playing out at the time.

In the Rights and Freedoms Committee, the Ennahda deputies on Wednesday 1 August 2012 passed a definition of the family based on “complementarity” between the sexes rather than equality. The wording that the Ennahda movement defended was: “The State shall guarantee the protection of women's rights and support their gains as a true partner with men in building the nation and their role within the family shall be complementary.”

Striking in all of these partial “battles” is the keenness of the Ennahda movement on hunkering down, beginning in all of these places and insisting on what it regards as a legitimate right and then quickly retracting and trying to promote that it did not retract, but its opponents are the ones who misunderstood.

Perhaps it can be considered that the issue of “complementarity” was typical in these partial battles fought by the Ennahda movement in the spring and summer of 2012 in order to bring back Shariah law through the window after it was taken out of the door.

On the issue of stipulating Shariah, Ennahda found before it a wide range of the political class and the overwhelming majority of media, intellectuals and civil society activists. This is what forced it to retreat quickly on this fundamental issue.

On the issue of “complementarity” the Ennahda movement, through its top commanders, sought to defend its position and considered “complementarity” as not being contradictory to equal rights, but only with equivalence between the sexes.

The leader of Ennahda sought before a gathering of businessmen and journalists in August 2012 to defend for the last time the concept of “complementarity” as a synonym for equality and not contradictory to it.

A few days after this the women of Tunisia came out in huge demonstrations on the occasion of the remembrance of the fifty-sixth anniversary of the issuance of the Personal Status Code (13 August 1956) and spoke in one voice to refuse the concept of “complementarity” and that the Tunisian woman is complete and not complementary. Here once again the Ennahda movement retracted and forcefully acknowledged the need to adopt the principle of equality between women and men within the family. But in contrast, feminist movements and modernist trends in general have not been able to include the idea of “equality in law”. This is a revolutionary idea which would lead - if adopted - to a radical review of all Tunisian legislation discriminatory against women.

So there is neither “complementarity” nor “equality in the law” but there is agreement on “equality before the law” which means that it is possible for there to be areas where the law is discriminatory without being unconstitutional.

A single partial battle was won by Ennahda in that they retained the death sentence in the Constitution. That was because this issue is not linked in the broader public opinion on the issue of the Shariah.

Thus 2012 did not pass until we saw the Islamic movement retreat from a general principle that the majority of its leaders at least did not mind being included in the constitution. This was the issue of regarding Islamic law as the main source of legislation and secondly the final abandonment of the idea of complementarity between the sexes within the family and replacing it with the concept of equality.

Battle of the Preamble: From Constants to Teachings

We do not know whether the Ennahda movement, and in particular its block of deputies, had a prior program for its various ideological battles or whether they interacted with developments in the country's status and the reactions that were caused by the stipulation on Shariah law in the Constitution.

We can say that after the Ennahda movement lost the ideological battle about the stipulation of Shariah law in the constitution it sought to "fortify" an understanding of the first article of the constitution starting with the preamble and ending with chapter 8 relating to amending the constitution.

The draft of 22 April 2013 or what is regarded as the second draft of the constitution includes in Paragraph 3 of the preamble the following: "Building on the constants and the open and moderate objectives of Islam (...)" Thus, the National Constituent Assembly and the political, cultural and media class witnessed weeks of conflict around three core concepts: Building, constants and objectives.

Here, it seemed clear that what the Islamic movement let go with the right hand what it wanted to take back with the left hand.

There is no doubt that the preamble has special constitutional status as it is not a clause of the constitution from which legislation and legal requirements arise but it indicates the spirit of the constitution and the mental and intellectual climate that prevailed at the time of its founding. Therefore the preamble is of utmost importance in the interpretation of various provisions of the constitution if there are any problems or differences in understanding them.

On this basis the Constitutional Court cannot tomorrow interpret the first article of the constitution, for example, in a manner that contradicts the preamble and its general spirit.

The intellectual and ideological conflict in those weeks within the dome of the Council and outside was centred in particular on the "constants." When the opinion and thought makers in Ennahda are asked about this concept they respond that "the constants of Islam" are those things that "definitive in their appearance and significance" meaning that they are categorical Quranic texts i.e. those that cannot tolerate interpretation besides what the apparent wording offers and they are not abrogated by any other verse; as well as all the texts of the prophetic Sunnah that are established from the Prophet and whose meanings are definitive as well. In other words, the Ennahda movement in one sentence, "Building on the constants of Islam," has inserted all religious texts as a fundamental reference and a foundation for understanding and applying all the clauses of the constitution of the second republic.

Once again Ennahda backs down after strong objection to this wording even within the troika itself and replaces it in the third draft of the constitution, or what is known as the 1 June 2013 draft, to move from constants to teachings "Building on the teachings and the open and moderate objectives of Islam."

What should be noted here is that the concept of "objectives" did not raise much controversy in Tunisia, firstly, because of its relative obscurity and, secondly, because of the doubt in its paternity: Does it belong to the so-called moderate Zaytuna school prior to the Ennahda Movement and the emergence of political Islam or is it an Islamist concept adopted by the Ennahda movement since the eighties in its basic ideological document (Fundamental Vision of the Islamic Tendency Movement in 1986) in what it called the objective understanding of Islam? This explains the survival of the term "objectives" in the final version of the Tunisian Constitution.

The concept of teachings in turn did not receive much criticism despite its generality and vagueness, but was considered an open non-ideological concept contrary to “constants.” The main problem remained with the concept of “building” or rather “building on.” This concept reflects the basic ideological keenness of political Islam and one of its main preoccupations, which they call ‘rooting’ i.e. returning all “branches” of private and public life completely to a Shariah “root” just as the scholars of Islamic legal theory did with the laws of Islamic jurisprudence.

The operation of “rooting” was expressed by the Ennahda movement as “building on” within the constitutional phrasing. The majority of jurists, politicians and intellectuals were alerted to the seriousness of phrase “building on” because there is a level of legitimacy higher than the text of the constitution itself i.e. what we might call “a meta-constitution” that is the reference and source. Once again the Islamic movement backs down and comes with a “cordial” wording to remove this “meta-constitution” and substitute the words “building on” with “expressing the conviction of our people” i.e. moving from the level of the essence to that of describing the societal reality.

The Final Battle

We mentioned when we discussed the battle over the stipulation of Shariah law in the constitution that the Ennahda movement through its most prominent leaders sought to persuade the bases and the general spectrum of political Islam that its retreat was purely tactical; and that the first article was almost alone for the Islamisation of the system of government; and that it was not important to add a second article explicitly stating that Shariah law is the main source of the constitution. Instead what was important was the proper application of the first article, which provides - according to the Ennahda Movement - that the state religion is Islam.

However the intellectual leadership of the Islamic movement is well aware that the constitutional Tunisian jurists, since 1959, do not share this view at all and the overwhelming majority of them consider that intent of the founding fathers in 1959 was not to add Islam to the state as a legal standard but to add it to Tunisia as a description of the religious sociology of its people. Then when the view of the majority of political parties was to retain the first article of the Constitution of 1959 in that condition it was in this same hermeneutical vein and was not at all on the basis that Islam is the state religion.

The Ennahda movement through its General Rapporteur on the Constitution, Mr Habib Khadr, sought to embalm its own understanding in the text of the constitution and proposed this wording in the 1 June 2013 draft constitution in Chapter Eight entitled Amendment to the Constitution: “No amendment to the Constitution may bring prejudice to...” Article 141 mentions six principles deemed essential and not subject to amendment. At the top it placed: “Islam, being the religion of the state.” Thus the Ennahda Movement believed that it could resolve the battle of the first article to their advantage, especially since its first “secular” ally, the Ettakatol party, did not mind this wording as this draft was signed by Mr. Mustapha Ben Jaafar, president of the National Constituent Assembly, and the Secretary General of the Ettakatol party, who stated, at a press conference that provided what was then considered the final draft of the Constitution, being one of the best constitutions possible. This article also found support from some opposition parties, led by the Republican Party. In other words, we had before us a wording that enjoys a comfortable majority in the National Constituent Assembly. The Ennahda Movement at the time deemed that it cannot give up more than what it did and that the only possible reading of the first article is to deem Islam as the state religion and not to deem it only as the religion of the vast majority of Tunisians.

It could be argued that without the suffocating political crisis in the country following the assassination of deputy Mohammed Brahman on 25 July 2013 on the fifty-sixth anniversary of the proclamation of the Republic, which was exacerbated by the murder and the slaughter of eight

soldiers on the Chambi Mountains on 29 July 2013 at the hands of the terrorist jihadist group entrenched there, the Uqba bin Nafi Battalion, - if it were not for these tragic events and the resulting intervention of the quartet sponsoring National Dialogue (the Tunisian General Labour Union, Federation of Industry and Commerce, National Association of Lawyers and the Human Rights League) and all the government and founding tracks that followed it, this wording would have been maintained, perhaps, and that would have created huge problems in the future when interpreting the constitution and applying legal provisions in accordance with this version.

It can be said, then, that the Islamic movement won the battle of the first article in the National Constituent Assembly up until the stifling crisis in the summer of 2013 following the agreements that took place under the auspices of the quartet. This “temporary” win turned into further retraction in terms of deleting Article 141 in the draft constitution of 1 June 2013 in its entirety and a point was added to the first article as well as to a few other articles stating that, “this article may not be amended.” But despite all of this the ideological wing of the Ennahda Movement represented, this time, by the deputy Sadek Chorou, sought to register a point in the so-called substitution time, when he asked for the floor in the deliberations of the People's Congress for the defence of the final wording of the first article and repeated to ~~the ears of~~ Tunisians the classical Islamic definition that rules that Islam is the state religion. Although the deliberations of Congress have no legal value, we know very well that these deliberations are fully recorded and may be referred to later to come to know the intentions and purposes of the founders. This is what Mr Sadek Chourou was aiming for so that the Ennahda Movement and its ideological wing would not throw in the towel without shooting the last arrow.

Side Islamisation Battles

Legal “Islamisation” battles were not only confined to battles for the drafting of the constitution and the associated conflicts and retreats but also extended to seeking to change the legal arsenal. This was done through the proposal of symbolic drafts beginning with the law for criminalisation of attacks on sanctities and ending with the Endowments regulation and the Law of Mosques and the Zakat House.

The most important and the most dangerous of these drafts was the bill submitted by the Ennahda block at the National Constituent Assembly on 1 August 2012 concerning the criminalisation of infringement on sanctities.

To understand the temporal and political framework in which this draft appeared we must go back to the month of June 2012 and the violent events that took place after what were considered as paintings offensive to Islam were displayed in Abdelliya in La Marsa. At the time hundreds of elements belonging to the various fundamentalist currents, especially the jihadi ones, demonstrated in several neighbourhoods in the greater Tunis province as well as in the city of Sousse where there was an attack on the court and the security headquarters that claimed the life of a Salafi youth after clashes with security forces.

The Ennahda Movement, backed by its allies in the Troika, the Ettakatol and El Mottamar parties, considered at the time that these incidents of violence would not have occurred if the feelings of the Muslims in the Abdelliya gallery were not “provoked” and that to avoid such violence a law criminalizing “attacks on sanctities” must be issued.

After a month and a half the Islamic movement acted on their statement and a group of deputies of the National Assembly Constituent Assembly submitted a draft law for that purpose. In a note explaining the reasons that “infringement on sanctities” was not only limited to what took place on the international scene, the Islamic movement explained that what “was done by some

Danish newspapers” by “publishing cartoons of the Holy Prophet”, was in fact occurring with “the aspects of infringement on sanctities at the domestic level [in] several [ways]” In the note we find five examples of this “infringement” including the cinema film Persepolis that was shown by the Nessma channel just before the October 2011 elections. The crux of the matter is found in the fifth example: “In June 2012 a painting exhibition was held in the Abdelliya palace in the suburb of La Marsa and included some drawings in mockery of sanctities.”

The important thing in this bill, in addition to its including a provision that takes away freedom (two years imprisonment) for any person who “infringes on sanctities” which will be doubled “in the case of repetition”, is the definition of sanctities: “.. Sanctities mean Allah Almighty, His messengers, His books, the tradition of His final messenger, the Kaaba, mosques, churches and synagogues.” We repeat here what we had published in the “Al-Maghreb” newspaper on 3 August 2012 where we wanted to highlight the ideological dimension of this renaissance definition of sanctities: “The definition by Ennahda of sanctities is a definition derived from, a Sunni Muslim reference, the definition of faith as settled in Islamic orthodoxy based on the famous prophetic tradition in which Jibril came down in the form of a human being and asked the Messenger of Allah about Islam, faith and goodness.

Faith then is belief in Allah, His angels, His scriptures, His messengers, the last day and predestination both good and evil. These are the six pillars of Islam, which are found in all books on Islamic religious fundamentals.

The Ennahda draft directly borrows from here the first, third, and fourth pillar and ignores the angels, the last day and good, and evil predestination. Perhaps Ennahda’s argument is that these truncated pillars are there out of the necessity of faith in the messengers and books but it is more likely that this truncation is due to aesthetic considerations. That is because bringing the angels and good and evil predestination in particular into a text will raise a number of eyebrows. Thereafter the draft adds to the foundations of faith in Islam, the tradition of the messenger, the honoured Ka’ba, mosques, churches and synagogues.

The text is broad on an important issue, which is the “tradition of the final messenger of Allah.” What does this mean? Is it his biography or the statements and actions transmitted from him or the collection of what is called books of hadith? Are the books of hadith sanctified here? Do these refer to the books of authentic traditions which are the six compilations of hadith that have been accepted by Sunni scholars as collections that on the whole contain authentic traditions attributed to the messenger of Allah, or only the authentic traditions contained in these books? And according to which conditions, those of the earlier scholars or the later traditionalists?

We do not want to go into details about the science of tradition but it is established that if this large collection of statements attributed to the messenger of Allah is meant by sanctified in the bill this will create huge problems before such a vast amount of textual legacy. Will the judiciary be the one to decide when defining the nature of this sanctity and what is deemed an infringement of it? Then the draft specifically mentions the honoured Ka’ba and no other places of worship - whereas sanctity in Islam applies to three places, which are the honoured Ka’ba, the prophetic mosque in Madina and Al-Aqsa mosque.

What is important in this “definition” of sacred submitted by the Ennahda Movement is that it injects Islamic jurisprudential reference into statutory law and that this reference is complicated and different in part, which makes it impossible for a judge to decide on. Will we then resort to a “Shariah court” that will tell us what is sacred in a specific situation and how will we interpret this legal provision and apply it to corporeal issues?”

We also find this effort of legal Islamisation clearly in the two bills that the Ennahda Movement submitted: the first under the name "The Endowments Bill" in November 2013 i.e. towards the end of the Troika government, and the second the "Mosques Bill" in February 2014 i.e. after the Ennahda Movement's final departure from rule and after the almost unanimous ratification of the Constitution of the Second Republic on 27 February 2014. In both bills there is a clear Islamist spirit that seeks a smooth application of Shariah law and its original name. It is enough that we put forward Article 9 of the Mosques Bill to prove this effort where we find that the mosque assumes a "devotional, educational, scientific, cultural and social mission." i.e. the mosque space becomes something that contains the bulk of individual and public activities of the society, which is in line with the Islamic Brotherhood's traditional ideology that "Islam is a comprehensive system of life." This bill goes further to make the mosque a space that is almost beyond the authority of the society when Article 12 acknowledges that "freedom of expression is guaranteed to the mosque leader and lecturer by this law." There is no doubt that freedom of expression is one of the fundamental rights of a human being whatever his position in society, but what is feared in such cases is that the mosque's activity will be extended without checks and balances and the determination of the content presented in it will be left solely to the conscience of the mosque leader and lecturer and those in charge of the mosque and no-one else.

It is needless to recall that all these side-attempts for legislative Islamism have failed, since the Ennahda Movement did not find sufficient majority within the Constituent Assembly to pass them and they remained only as "milestones" on the Islamist bill that did not give effect during these three years to anything but the postponement of the recognition of its failure.

There is a saying reported from the second Caliph Omar ibn al-Khattab in which he says: "Allah limits with authority what He does not limit by the Qur'an." We find strong application of this statement in the strategies by which Ennahda dealt with the philosophy of human rights and the relationship between the religious and the political in the complex path to formulate the Tunisian Constitution.

There are two types of renaissance concessions in the constitutive path. One type was before the political crisis in the summer of 2013 and another type after that - before the political crisis, which erupted as we mentioned above, following the assassination of deputy Mohammed Barahimi on 25 July 2013. The renaissance concessions were linked to the major topics of political Islam beginning with the issue of stipulation of Shariah law in the Constitution to the issue of complementarity between the sexes in the family, which is the topic most raised in the democratic public opinion in Tunisia. But in this initial phase the Ennahda Movement adhered to its special reading of the first clause of the Constitution on the relationship between religion and the state. In fact, as we have seen, the Islamic movement has been able to penetrate some modernist parties on this particular issue including those that were fiercely opposed to it politically.

We can say for sure that without the political crisis that almost crippled the country in the summer of 2013, the Ennahda Movement would not have been compelled to give up more, especially on this particular core point. This clearly means that the dialectic of "the Quran and the Ruler" has greatly influenced the priorities of the political leadership of the Ennahda Movement.

We are not only before an ideological party and also not before a classical political party. The shifts in positions within a party like the Ennahda Movement are not only governed by the laws of self-evolution and nor by a dialectic that could be considered a cultural violation between it and the intellectual and political currents opposed to it. i.e. The evolution in positions is not subject to the requirements of the intellectual and theoretical dialogue but mainly subject to the constraints of practical reality, or to be more precise to its susceptibility to be subject to the constraints of this reality.

This means that the real ladder of priorities within the Islamist movement is not its declared ideological or political discourse, but what it sees as its vital interests. In other words, the Ennahda Movement has produced, for over more than four decades since it was founded, an elite leadership of a few thousand. These elites have about thirty years of partisan commitment and have suffered throughout most of this period from internal repression, prosecutions, prison and torture or emigration and displacement. These central, regional and local leaders have become willing to do a kind of “historic trade-off” between them and their ideological opponents i.e. and all the modernist and leftist families and the subject of this “trade-off” is mutual recognition in the Hegelian sense of the word. Recognition of existence in exchange for concessions of some of the symptoms that has plagued this existence even if they appear to be material like the issue of Islamic rule and the Islamisation of the state and society.

The essence of what this “historic trade-off” represents in the course of writing the constitution is the move from the desire to stipulate Shariah law in the Constitution as the basic source of legislation to adopting the principle of “freedom of conscience.”

The Constitution of the Second Republic included in Article 6 the principle of “freedom of conscience” in these words: “The State protects religion, guarantees freedom of belief and conscience and exercise of religious practices, guarantees the neutrality of mosques and places of worship from partisan instrumentalisation.

The State commits to spreading the values of moderation and tolerance, protecting sanctities and preventing attacks on them, just as it commits to preventing *takfeer* [calling another Muslim an unbeliever] and incitement to hatred and violence.”

This article itself expresses the essence of the political and social climate over the course of writing the constitution in respect of the religious issue and the relationship between religion and universal values and, in turn, its place in society. We see in it what could be regarded as a mix of concepts that do not have a common thread such as the protection of religion or the “freedom of belief and conscience” - as if they are two different issues. Then we find “protecting sanctities” and “preventing *takfeer* and incitement to hatred and violence.” In reality these conceptual contradictions between “freedom of conscience” and “protecting sanctities” are only the result of mutual compromises and concessions between the various components of the political and intellectual arena.

The concept of “freedom of conscience” was not present in what was called the second draft of the constitution in April 2013 where we find at the time in Article 4: “The state protects religion, guarantees freedom of belief and practise of religious rituals, protects sanctities, and ensures the impartiality of places of worship away from partisan use.”

At first it may appear that there is no difference between “freedom of belief” and “freedom of conscience.” However the context of thought and spirit are very different in what is contained in the second draft of April 2013 and the third draft of June 2013, since we find in it the addition of the famous second article: “Tunisia is a civil state that is based on citizenship, the will of the people, and the supremacy of law.” This is the article that was finally approved in the constitution. Article 6 of the June 2013 draft kept the same wording as Article 4 of the April 2013 version but with the addition of “conscience” and the wording became “guarantees freedom of belief and conscience.” This clearly means what we have stated above that the concepts of “belief” and “conscience” are not synonyms and that we have moved from two differing conceptual spaces. The one space regards “freedom of belief” as being in solidarity with the freedom of religious practice, which is the freedom of religious belief, nothing else. The change that took place between these two drafts was the result

of the so-called “Guesthouse” consensus which took place at the time under the auspices of the Presidency of the Republic. The Ennahda Movement made additional concessions to split the ranks of its opponents as some of them, such as the Republican Party and the Democratic Alliance Party, agreed to participate in this conciliation. Freedom of conscience was stipulated at the insistence of the Mr Moncef Marzouki, the President of the Republic at that time, and the Ennahda Movement accepted this addition. It was clear to those who followed these dialogue sessions, which did not last long, that the “freedom of conscience” intended was exactly what appears in Article 18 of the Universal Declaration of Human Rights: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Interestingly, after the Ennahda Movement accepted the inclusion of “freedom of conscience” since the June 2013 draft it did not want to engage in an ideological debate about the meaning of this freedom at all. The debate became heated on the occasion of the beginning of the discussion of the constitution, article by article, at the end of the 2013. Official religious and social authorities sought to drop this article due to its contradiction of the requirements of the first article in an Islamist reading stating that Islam is the state religion. But the leaders of the Ennahda Movement did not make a move and did not respond to this demand, preferring an overall political reading that gave priority to the requirements of national reconciliation over these issues of debate.

Conclusion

It can be said that the Ennahda Movement has undergone two difficult tests during recent years: The test of authority, in general, and the test of writing the constitution, in particular.

The test of writing the constitution housed all the intellectual dialogue that divided the Tunisian society after the revolution. The Islamic movement believed that the relative victory in the 2011 elections (37% of the vote and 42% of the seats in the National Constituent Assembly) had given it a popular mandate for the Islamisation of the state and society, or so the most ideological currents within the Islamist movement thought.

Among these original intentions was the subject of stipulating Shariah law in the Constitution as the main source of legislation and its central theme. The constitution in its final form was a very long intellectual and conceptual distance. A distance that was covered thanks to the many concessions by the Ennahada movement—concessions that sometimes touched the essence of the draft of political Islam.

Were these concessions the result of the intellectual conviction that the idea of political Islam has become impossible? Or were they tactical concessions dictated by the constraints of governance and the sharp political crisis that the country has witnessed since the summer of 2013?

Perhaps the truth lies in between the two. We’re not presented with fixed identities but with fluid conceptual and intellectual climates and perhaps we are here before the beginning of a course that is more than that - a course that has completed and ended.