

Fall 9-1-2007

Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation

Mounira M. Charrad

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>

 Part of the [Comparative and Foreign Law Commons](#), [Law and Gender Commons](#), [Law and Politics Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Mounira M. Charrad, *Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation*, 64 Wash. & Lee L. Rev. 1513 (2007), <https://scholarlycommons.law.wlu.edu/wlulr/vol64/iss4/11>

This Article is brought to you for free and open access by the Washington and Lee Law Review at Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington & Lee University School of Law Scholarly Commons. For more information, please contact lawref@wlu.edu.

Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation

Mounira M. Charrad*

Abstract

Starting in the 1950s and ever since, Tunisia has implemented gender legislation expanding women's rights in family law. The ground breaking phase occurred with the promulgation of the Code of Personal Status in the mid-1950s during the formation of a national state in the aftermath of independence from French colonial rule. Another major phase occurred in the 1990s with citizenship law reforms as embodied in the Tunisian Code of Nationality. As a result of these two major phases, Tunisia has been at the forefront of "woman friendly" legislative changes in the Arab-Muslim world and is widely recognized as such. At a time when issues of women's rights are not only highly debated, but sometimes violently contested in Muslim countries, the Tunisian case requires examination. This Article documents the two major phases of reforms in favor of women's rights in Tunisia and outlines the conditions that permitted or encouraged the continuity over the last half century. The first wave of reforms in the 1950s transformed the legal construction of gender roles within the family. The second wave in the 1990s redefined the conditions for the transmission of Tunisian citizenship. In painting social change in broad strokes, I analyze the initial and pioneering phase of the 1950s as a reform resulting from the actions of a newly formed national state interested in building a new society at the end of colonial rule. By contrast, the role of women's agency came into play in Tunisia

* Associate Professor of Sociology, Affiliate, Center for Middle Eastern Studies, Affiliate, Center for Women's and Gender Studies, University of Texas-Austin. Ph.D. in Sociology (Harvard University); undergraduate degree (Sorbonne, Paris, France). An earlier version of this Article was presented at the Symposium on Gender-Relevant Legislative Change in Muslim and Non-Muslim Countries, Lexington, Virginia, March 30-31, 2007, jointly sponsored by the Frances Lewis Law Center of the Washington and Lee University School of Law and the Islamic Legal Studies Program of Harvard Law School. I wish to thank Penny Andrews, Zaina Anwar, Louise Halper, Ziba Mir-Hosseini, and Adrien Wing for their valuable comments. I appreciate the careful editing of Kim Herb and Megan Reed of the Washington and Lee Law Review. Lisa Manning of the Washington and Lee School of Law confirmed all French translations used in this Article.

starting in the 1980s and became more robust in the 1990s. The evidence suggests that different political configurations can be conducive to reform in different periods.

Table of Contents

I. Introduction	1514
II. How Tunisia Compares with Other Arab Countries	1515
III. The Initial Step: Code of Personal Status of 1956	1518
IV. The Second Major Wave: Reforms of 1993	1522
V. Conclusion	1526

I. Introduction

Beginning in the 1950s and continuing thereafter, Tunisia has implemented gender legislation expanding women's rights in several areas, especially in family law. A steady stream of reforms has followed the first and ground breaking phase, which occurred in the mid-1950s, at the time of the formation of a national state in the aftermath of independence from French colonial rule. The promulgation of the Tunisian Code of Personal Status¹ in 1956 constituted a radical shift in the interpretation of Islamic laws with regard to the family and set a stage for further developments. Another major phase occurred in the 1990s with reforms of citizenship law as embodied in the Tunisian Code of Nationality.² As a result of these two major phases, Tunisia has been at the forefront of "woman friendly" legislative changes in the Arab-Muslim world and is widely recognized as such.³

When we consider reforms of family law, three key questions come to mind. What is the substance of the new laws, and what rights do they confer to women? What are the socio-political conditions that make the reforms possible or encourage policy makers to make them? Once new laws are promulgated, how are the provisions put into practice, and what effects do they have on the lives of individual women? At

1. CODE DU STATUT PERSONNEL [CPS] [Code of Personal Status] (1956) (amended 1993 & 2007) (Tunis.).

2. C. DE LA NATIONALITÉ TUNISIENNE [C. DE LA NATIONALITÉ] [Code of Tunisian Citizenship] (1963) (amended 1984) (Tunis.).

3. See FREEDOM HOUSE, WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: CITIZENSHIP AND JUSTICE 25 (Sameena Nazir & Leigh Tomppert eds., 2005) (comparing the status of women in different Middle Eastern and North African countries in five thematic categories).

a time when issues of women's rights are not only highly debated, but also sometimes violently contested in Muslim countries, the Tunisian case requires examination. The consistency in gender legislation over half a century is itself a remarkable development. This Article documents the two major phases of reforms in favor of women's rights in Tunisia and outlines the conditions that permitted or encouraged the continuity over the last half century. While the third question is beyond the scope of this Article, the discussion focuses on the first two questions.

The first wave of reforms transformed the legal construction of gender roles within the family.⁴ The second wave redefined the conditions for the transmission of Tunisian citizenship.⁵ The evidence suggests that different political configurations were conducive to reform in different periods and that a careful analysis of the political forces at work is necessary to develop an understanding of each particular reformist phase. In painting social change in broad strokes, I see the initial and pioneering phase of the 1950s as a reform from above resulting from the actions of a newly formed national state interested in building a new society at the end of colonial rule.⁶ By contrast, the role of women's agency came into play in Tunisia starting in the 1980s and became more robust in the 1990s.⁷ From the 1980s to today, women's rights advocates have contributed to the making of gender legislation either through direct involvement in the committees preparing the laws or by indirectly putting pressure on the power holders, neither of which was present in the 1950s.⁸

II. How Tunisia Compares with Other Arab Countries

Scholars and activists have agreed on the extent to which the Tunisian Code of Personal Status has expanded women's rights when compared to the situation ante and

4. See MOUNIRA M. CHARRAD, STATES AND WOMEN'S RIGHTS: THE MAKING OF POSTCOLONIAL TUNISIA, ALGERIA, AND MOROCCO 219 (2001) (noting that the 1956 Tunisian Code of Personal Status changed the definition of family from a group built on ties of male relatives to a conjugal unit with prominent spousal ties).

5. See V.M. Moghadam, *Country Reports: Tunisia*, in WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: CITIZENSHIP AND JUSTICE, *supra* note 3, at 295, 297 ("[T]he Code de Nationalité was amended in 1993 to allow mothers more rights to transfer their citizenship to their children.").

6. See CHARRAD, *supra* note 4, at 218–19 (2001) (noting reforms in family law during the 1950s undertaken by Tunisia's newly constituted central government). On the political nature of gender legislation, see generally Mounira M. Charrad, *Contexts, Concepts and Contentions: Gender Legislation in the Middle East*, 5 HAWWA: J. WOMEN IN MIDDLE E. & ISLAMIC WORLD 55 (2007).

7. See Moghadam, *supra* note 5, at 304–07 (noting the increase of women's participation and activism in government, particularly since the 1990s).

8. See *id.* at 307 ("The number of women's organizations increased from one in 1956 to twenty-one in 2001, with many groups exerting influence at the national level.").

to developments in other parts of the Arab-Islamic world. For example, in November 2006 the Library of Congress in Washington, D.C. organized a symposium to commemorate the fiftieth anniversary of the promulgation of the Code of Personal Status.⁹ During the symposium, Justice Sandra Day O'Connor described Tunisia as a model for other countries in the Islamic world regarding gender legislation.¹⁰ In advocating the Tunisian example for Palestinian women's rights in the future and in considering countries with a Muslim majority, Adrien Katherine Wing writes: "Along with Turkey, Tunisia has taken the most secularized approach to women's rights in majority-Muslim countries."¹¹ Referring to the Arab world, Lilia Labidi remarks that "the [CPS] has been a beacon and a source of hope for other women's movements and governments in the region."¹²

In a similar vein, V. M. Moghadam notes: "Tunisia's 1956 personal status code, the *Code du Statut Personnel*, afforded women full and equal rights and remains one of the most progressive family laws in the Arab world today."¹³ A Tunisian woman journalist declared: "The dispositions of the Code are revolutionary relative to the laws of personal status in countries similar to ours."¹⁴ A Tunisian woman active in politics echoed the statement: "The Code of Personal Status is a cutting edge body of legislation that many countries envy. I just came back from a meeting in an Arab country and I realized that, as soon as people speak about Tunisia, they speak about the Code of Personal Status. It is an excellent thing."¹⁵

In an extensive survey of women's rights in the Arab World, Freedom House compared countries on several dimensions related to gender.¹⁶ It ranked Tunisia number one regarding women's legal rights.¹⁷ The following table shows that Tunisia

9. Webcast: Tunisia—Celebrating Fifty Years of Women's Emancipation (United States Library of Congress, 2006), available at http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=4007 (last visited Feb. 5, 2008).

10. See *id.* (remarks of Sandra Day O'Connor, former Associate Justice of the U.S. Supreme Court) (explaining that Tunisia has provided a model of women's rights for other Islamic countries).

11. Adrien Wing & Hisham Kassim, *The Future of Palestinian Women's Rights: Lessons from a Half Century of Tunisian Progress*, 64 WASH. & LEE L. REV. 1551, 1552 (2007).

12. Lilia Labidi, *The Nature of Transnational Alliances in Women's Associations in the Maghreb: The Case of AFTURD and ATFD*, 3 J. MIDDLE E. WOMEN'S STUD. 7, 7 (2007).

13. Moghadam, *supra* note 5, at 295.

14. Mounira M. Charrad, *Cultural Diversity Within Islam: Veils and Laws in Tunisia*, in WOMEN IN MUSLIM SOCIETIES: DIVERSITY WITHIN UNITY 63, 74 (Herbert L. Bodman & Mayereh Tohidi eds., 1998).

15. *Id.*

16. See Sameena Nazir, *Challenging Inequality, in WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: CITIZENSHIP AND JUSTICE*, *supra* note 3, at 1, 1 ("This survey presents detailed reports on the state of women's rights in 16 countries and one territory.").

17. See *id.* at 25 (depicting Tunisia ranking highest among the surveyed countries in four

ranks highest with its score of 3.6 out of 5 in the categories of nondiscrimination and access to justice and 3.4 in autonomy, security, and freedom of the person. The first category assesses women's equality under the constitution, protection from gender-based discrimination, citizenship rights, equality in the penal code and criminal laws, and women's legal identity. The second category refers to family laws and equality within marriage, freedom of religion, freedom of movement, and freedom from gender-based violence.¹⁸

Final Ratings Chart¹⁹

	Nondiscrimination and Access to Justice	Autonomy, Security, and Freedom of the Person	Economic Rights and Equal Opportunity	Political Rights and Civic Voice	Social and Cultural Rights
ALGERIA	3.0	2.4	2.8	3.0	2.9
BAHRAIN	2.2	2.3	2.9	2.1	2.8
EGYPT	3.0	2.8	2.8	2.7	2.4
IRAQ	2.7	2.6	2.8	2.2	2.1
JORDAN	2.4	2.4	2.8	2.8	2.5
KUWAIT	1.9	2.2	2.9	1.4	2.8
LEBANON	2.8	2.9	2.8	2.9	2.9
LIBYA	2.3	2.1	2.3	1.2	1.8
MOROCCO	3.2	3.2	3.1	3.0	3.0
OMAN	2.0	2.1	2.7	1.2	2.1
PALESTINE	2.6	2.7	2.8	2.6	2.9
QATAR	2.0	2.1	2.8	1.7	2.5
SAUDI ARABIA	1.2	1.1	1.4	1.0	1.6
SYRIA	2.7	2.2	2.8	2.2	2.3
TUNISIA	3.6	3.4	3.1	2.8	3.3
UAE	1.7	2.1	2.8	1.2	2.3
YEMEN	2.4	2.3	2.3	2.6	2.1

of the five measured categories; Tunisia is tied for third in the category of political rights and civic voice for women).

18. See *id.* at 1–14 (providing a detailed discussion of these categories).

19. *Id.* at 25.

III. *The Initial Step: Code of Personal Status of 1956*

Promulgated in the aftermath of independence from French colonial rule, the Code of Personal Status (CPS) redefined relationships within the Tunisian family. The particular historical conditions during the emergence of the Tunisian state in 1956 help explain the reformist policy. I have discussed these conditions in detail in previous work.²⁰ It suffices here to give an overview of the 1950s to show the continuity in gender legislation between then and the 1990s. The CPS was part and parcel of a larger state building program that aimed at developing a modern centralized state and at marginalizing tribal or kin-based communities in local areas.²¹ The newly formed national state was able to make radical reforms of family law in part because a modernizing faction faced no political challenger at the critical moment when it took the reins of power in 1956.²² Defeated in factional conflicts during the anti-colonial struggle, the political groups that could have spoken for a conservative interpretation of Islamic law and blocked the reforms had lost all political leverage at that particular time.²³

The CPS represented an aggressive top-down reform.²⁴ The executive branch of government under President Bourguiba²⁵ initiated it immediately after the achievement of national sovereignty, at a time when electoral politics did not exist, and then, he presented it for ratification to a supportive national assembly controlled by members of the winning Bourguiba faction.²⁶ The CPS was not a victory of feminism.²⁷ It was the victory of a government strong enough to place a claim on Islam and enforce a reformist interpretation of the

20. See generally CHARRAD, *supra* note 4, at 209–15 (describing the emergence of the independent state).

21. See *id.* at 212 (discussing the CPS in the context of other reforms that contributed to the weakening of tribal solidarity).

22. See *id.* at 209 ("Bourguiba's faction remained essentially unchallenged in its position of power for several years.").

23. See *id.* at 210 ("[T]he remaining tribes in Tunisia and the religious establishment no longer had a voice in politics after independence.").

24. See *id.* at 219 (discussing the changes ushered in by the CPS and its origin as a top-down reform).

25. Bourguiba was President of the Republic of Tunisia from 1957 to 1987. See generally Sophie Bessis, *Le Féminisme Institutionnel en Tunisie* [Institutional Feminism in Tunisia], 9 CLIO (1999), available at <http://clio.revues.org/document286.html> (last visited Nov. 29, 2007) (on file with the Washington and Lee Law Review).

26. See CHARRAD, *supra* note 4, at 210–12 (discussing Tunisian political conditions and process at the time the CPS was promulgated).

27. See *id.* at 219 ("The CPS was *not* a response from the state to pressures from a women's mass protest movement.").

Islamic tradition. Like other world religions, Islam offers many possible interpretations and systems of meaning.²⁸ In Islamic texts, arguments exist both for and against legal innovation. Members of the 1956 government introduced the CPS as a new phase in Islamic innovation, similar to earlier phases in the history of Islamic thought.²⁹ Rejecting dogmatism, they emphasized, instead, the vitality of Islam and its adaptability to the modern world.

Although it is tempting to interpret the reforms of the 1950s as feminist, the temptation must be resisted because this would amount to reading motives into the 1950s as a result of the debates of the 1980s and 1990s. When women were politically active in the 1950s—and some highly educated women were—they defended nationalism rather than a feminist cause centered on issues of women's autonomy and gender justice.³⁰ The reforms were prompted by a nationalist agenda to build a new sovereign nation equipped with a modern state.³¹ There can be several discourses of contestation and liberation in a given country with a different discourse occupying center stage at different times. During struggles of national liberation—as in Tunisia in the early to mid-1950s—feminism tends to take a back seat to nationalism.³²

In brief, the CPS reformed marriage, divorce, custody, and to some extent, inheritance.³³ On all of these dimensions, it expanded women's rights by eradicating some of the most patriarchal arrangements of the legislation previously in force. In one of the boldest moves in the Arab-Islamic world,

28. See generally CLIFFORD GEERTZ, *ISLAM OBSERVED: RELIGIOUS DEVELOPMENTS IN MOROCCO AND INDONESIA* (1971) (observing that Morocco and Indonesia, although both Islamic societies, have produced strikingly different religious styles and spiritual climates). For example, the Islamic conception of life came to mean activism in Morocco, although the same concept emphasized aestheticism in Indonesia. *Id.*

29. See Charrad, *supra* note 14, at 70 ("Members of the 1956 government presented the code as the outcome of a new phase in Islamic thinking, similar to earlier phases of interpretation (*ijtihad*) that have marked the evolution of Islamic legal thought throughout its history.").

30. See CHARRAD, *supra* note 4, at 218 ("On a smaller scale than in the Algerian war, Tunisian women participated in the anti-colonial struggle, although they fought for national liberation rather than for women's causes.").

31. See *id.* at 220 ("Initiators of the CPS stated that their primary objective was to encourage the development of a modern nation-state.").

32. See *id.* at 218 ("Although a few public figures [in Tunisia] expressed their interest in seeing change in family law, most leaders of the nationalist movement from the 1930s to the 1950s, like their Moroccan and Algerian counterparts, considered that nothing should be done until the end of colonization.").

33. See *id.* at 224–31 (discussing in detail the reforms made by the CPS to family law). On the substance of the Code of Personal Status, see generally ALYA CHERIF CHAMARI, *LA FEMME ET LA LOI EN TUNISIE [WOMAN AND THE LAW IN TUNISIA]* (2001).

especially in 1956, it abolished polygamy.³⁴ It radically transformed divorce by eliminating the husband's right to repudiate his wife and allowing women to file for divorce.³⁵ It made divorce a matter for the courts.³⁶ It gave women and men the same rights and obligations with respect to both initiating a divorce and paying its cost to the other party.³⁷ It also established the principle of alimony³⁸ and increased women's rights to child custody, while maintaining men's advantage through guardianship.³⁹

The best known aspect of the CPS is the outright abolition of polygamy.⁴⁰ Even though in Tunisia, as in most of the Arab-Islamic world, polygamy could only be practiced by men able to support two or more wives and their children, polygamy was nevertheless a constant threat for women. Tunisia is the only Arab-Islamic country to make a second marriage null and void, as well as to make any attempt to take a second wife, while already married, punishable with a fine and imprisonment.⁴¹

Although regulations on divorce may appear, at first glance, less dramatic than those on polygamy, they have far reaching implications on gender roles and family dynamics. They contribute at least as much as the reform of polygamy to transforming the legal construction of the family. The *Shari'a*, or Islamic law, was in effect in Tunisia prior to the reforms.⁴² A comprehensive ethical and legal system embedded in the original texts of Islam, including the *Qur'an*, the *Shari'a* gives a man the right to divorce his wife at will, even though it depicts divorce as abhorred and only tolerated by God.⁴³ Although the *Shari'a* constitutes a common legal and ethical umbrella for the Islamic

34. See CHARRAD, *supra* note 4, at 227 ("The [CPS] outlawed polygamy altogether.").

35. See *id.* at 225 ("The wife and husband were equally entitled to file for divorce.").

36. See *id.* ("A divorce could now take place only in court.").

37. See *id.* at 226 ("The [CPS] gave men and women equal rights and responsibilities in regard to divorce.").

38. See *id.* at 225 ("[A] judge would determine whether compensation should be given by one spouse to the other and what the amount ought to be.").

39. See *id.* at 226–27 (discussing child custody procedures and the privileges retained by men following the reform).

40. See *id.* at 227–28 (describing Tunisian lawmakers intent to "suppress polygamy once and for all").

41. See *id.* ("An attempt at marrying again, while one was still married, was now punished with imprisonment of a year and a fine of approximately five hundred dollars.").

42. See Mounira M. Charrad, *Repudiation Versus Divorce: Responses to State Policy in Tunisia*, in *WOMEN, THE FAMILY AND POLICY: A GLOBAL PERSPECTIVE* 51, 54 (E.N. Chow & C.W. Berheide eds., 1994) (detailing divorce law in Tunisia prior to the reforms).

43. *Id.*

world as a whole, different countries and regions historically developed their own interpretations and schools of law.⁴⁴

Prior to 1956, the Maliki school of Islamic law applied to the overwhelming majority of the Muslim population in Tunisia.⁴⁵ In part for reasons of political expediency, the French colonial state had left Islamic family law untouched.⁴⁶ In the Maliki school, a repudiation required only the presence of two witnesses and no judicial intervention for the termination of marriage by the husband. Furthermore, the wife had no judicial recourse. She could turn to her family or community to put pressure on the husband not to repudiate her. But that is a different order of intervention from the role of a judicial authority. By contrast, a woman could appeal to a religious judge and ask for a divorce only on highly limited and specific grounds.

The CPS abolished the man's unilateral right of repudiation by establishing the principle of equal divorce rights and obligations for men and women. It introduced the necessity of judicial intervention in all cases: "No divorce shall take place save before the court," reads Article 30.⁴⁷ The CPS also makes it possible for women to get a divorce and gives them the same rights and obligations as men in this respect.⁴⁸ It states that the party not desiring the divorce, man or woman, should get compensation.⁴⁹ Presenting a new conception of divorce, the CPS requires the party wanting the divorce to go to court, go through a session of reconciliation, reflect on the situation, and consider the possibility of having to make a payment to the other spouse.⁵⁰ A new law, introduced in 1981, addressed post-divorce issues. It increased a

44. See, e.g., CLIFFORD GEERTZ, *ISLAM OBSERVED: RELIGIOUS DEVELOPMENT IN MOROCCO AND INDONESIA* 16–19 (1971) (discussing the distinctions in religious development between Morocco and Indonesia); CHARRAD, *supra* note 4, at 31 ("Four major legal schools have developed within the dominant Islamic Sunni tradition.").

45. See CHARRAD, *supra* note 4, at 31 ("The school called *Maliki* has historically predominated in the *Maghrib*.").

46. See *id.* at 114 ("French colonial authorities knew that moves on family law quickly inflamed anti-colonial feelings and could lead to widespread violence.").

47. CPS art. 30 (1956) (amended 1993 & 2007) (Tunis.); see also CHARRAD, *supra* note 4, at 225 ("The CPS changed regulations on divorce in fundamental ways. . . . A divorce could now take place only in court.").

48. See CHARRAD, *supra* note 4, at 225 ("The husband and wife were equally entitled to file for divorce, and they could do so by mutual consent.").

49. *Id.*

50. See *id.* ("The Majalla stated in this respect: 'The court cannot pronounce the divorce until it has carefully looked into the causes of the conflict opposing the spouses and failed in its attempt to reconcile them.'").

mother's custody rights by making her automatically the guardian of a child in case of the father's death, something that had not been true earlier.⁵¹

While it is undeniable that women made immense gains through the CPS, the limitations of the new family law should not be overlooked. The CPS granted women considerable autonomy from husbands and male kin.⁵² At the same time, however, it maintained gender inequality by leaving a woman's share of inheritance as half of that of a man's, by granting fathers greater rights regarding guardianship of children, and by requiring that a wife should obey her husband.⁵³

In sum, relative to Maliki law previously in effect, the CPS brought major changes that expanded women's rights, even though it did not eliminate gender inequality in family law. By requiring judicial intervention in divorce, abolishing polygamy, and increasing women's custody rights, the legal reforms embodied in the CPS lessened the prerogatives of men in marriage and gave more protection to women in the family. This was pioneering legislation in the Arab World in the 1950s.

IV. *The Second Major Wave: Reforms of 1993*

The second major wave of reforms occurred in 1993⁵⁴ under the government of President Ben Ali who succeeded President Bourguiba in 1987.⁵⁵ The remarkable difference between the two waves of reform resides in the role of women's activism in the latter.⁵⁶ In contrast to what happened in the 1950s, women's associations emerged and the feminist discourse came to the

51. See *id.* at 55 (describing the judicial decision making process with respect to guardianship in those cases where the father has died); see also generally, CHAMARI, *supra* note 33.

52. See Charrad, *supra* note 42, at 224–31 (discussing changes in this regard brought in by the CPS).

53. CPS (1956) (amended 1993 & 2007) (Tunis.); see also CHARRAD, *supra* note 4, at 56 (stating that "the CPS systematically makes [the father] the child's guardian after divorce, even when the mother has custody and thus takes daily care of the child"); Charrad, *supra* note 42, at 224–28 (explaining that a woman only receives half the inheritance share of a man and a wife was still obligated to obey her husband).

54. LAURIE A. BRAND, WOMEN, THE STATE AND POLITICAL LIBERALIZATION: MIDDLE EASTERN AND NORTH AFRICAN EXPERIENCES 212–13 (1998).

55. *Id.* at 191.

56. Neila Zoughlami, *Quel Feminisme dans les Groupes-Femmes des Annees 80 en Tunisie* [What Kind of Feminism in Women's Associations During 1980s in Tunisia?], XXVII ANNAIRE DE L'AFRIQUE DU NORD 443, 448–51 (1989) (discussing women's mobilization of the late 1980s).

forefront of public debates in the 1980s and 1990s. This was a period when women's rights advocates made their voices heard.

One of the greatest changes of 1993 concerns women's citizenship rights as defined in the transmission of nationality to their children.⁵⁷ I use the terms "citizenship" and "nationality" interchangeably in the following discussion. A consideration of nationality rights raises the question of the conditions for membership in the community of citizens. The Tunisian *Code de Nationalité* was promulgated in 1957, revised in 1963, and revised again in 1993.⁵⁸ As with other codes of citizenship, its purpose is to delineate the conditions for membership in the community of citizens within the nation-state.⁵⁹ Like the codes of many countries in the world, it combines elements of *jus sanguinis*, the right of blood, and elements of *jus soli*, the right of soil, in the attribution of nationality rights. Whereas *jus sanguinis* confers nationality through blood descent, *jus soli* means that people born within the national territory are nationals.⁶⁰

Unsurprisingly, in Tunisia, as in other Maghribi countries, the patrilineage has historically had primacy as a determinant of nationality in that membership in the political community of the nation-state flows directly from male descent or patrilineality.⁶¹ *Jus sanguinis* through fathers is unconditional. The Tunisian code states: "Is Tunisian: . . . the child born of a Tunisian father . . ."⁶² Since paternal filiation serves in all cases as a source of nationality rights, fathers have a definite advantage. A Tunisian father thus automatically passes nationality to his children regardless of whether the children were born on Tunisian national territory or abroad. A child whose father and grandfather were born in Tunisia also is Tunisian.⁶³

The reforms of 1993 made mothers a source of *jus sanguinis*. For the first time a Tunisian woman could pass her nationality to a child born abroad, regardless of the nationality of the child's father: "Becomes Tunisian, . . . [if he or she meets all conditions imposed by the Code and makes the request] within one year before reaching the age of majority, a child born abroad from a

57. The discussion of the 1993 provisions draws on Mounira M. Charrad, *Becoming a Citizen: Lineage Versus Individual in Tunisia and Morocco*, in *GENDER AND CITIZENSHIP IN THE MIDDLE EAST 2000*, at 74 (Suad Joseph ed., 2000).

58. C. DE LA NATIONALITÉ (1963) (amended 1984) (Tunis.).

59. Charrad, *supra* note 57, at 74.

60. *Id.*

61. *Id.* at 75.

62. C. DE LA NATIONALITÉ art. 6 (1963) (amended 1984) (Tunis.).

63. *Id.* art. 7.

Tunisian mother and a foreign father.⁶⁴ Widely applauded in Tunisia and elsewhere, the 1993 provision has granted a critically important citizenship right to women. In introducing matrilineal descent as a legitimate and sufficient reason for *jus sanguinis* regardless of *jus soli*, the provision of 1993 challenges the special status of patrilineality as the source of membership in the political community. Calling into question the privileges of the patrilineage, the provision is an important step toward allowing women to become equal citizens in the nation-state.

The conditions that surrounded the reforms of 1993 were significantly different from those that prompted the CPS in the 1950s. In the 1990s, women's associations played a major role in creating a climate in which women's rights and women's issues were prominent.⁶⁵ The reforms of 1993 are best understood within this context. Ever since the achievement of national sovereignty in 1956, the country had invested heavily in education, including the education of women, thus creating a new segment of educated women in the population.⁶⁶ Partly as a result, a woman's movement developed starting in the late 1970s and increasingly in the 1980s.

During the academic year 1978–1979, a group of students created a club for the study of women's conditions and named it the Club Tahar al Haddad, after the Tunisian legal scholar who was a pioneer in discussing the conditions of women in the 1930s.⁶⁷ The charter of the Club Tahar al Haddad included the following objectives: to show women that they were still often treated as unequal in practice despite the existence of new formal rights in the law; to support women and encourage them to participate actively in the economic and cultural development of the country; and to direct women's struggle not against men as such, but against social practices that place power in the hands of men.⁶⁸

The creation of the Club Tahar al Haddad was a monumental step towards the further development of women's associations in the country. It grew into a forum where women academics, lawyers, journalists, and other professionals met regularly for discussions and often heated debates. They called themselves

64. *Id.* art. 12.

65. See BRAND, *supra* note 54, at 220–46 (describing the emergence of women's associations and their interaction with the state during the 1980s and early 1990s in Tunisia).

66. See CENTRE OF ARAB WOMEN FOR TRAINING & RESEARCH, ARAB WOMEN'S DEVELOPMENT REPORT 2001: GLOBALIZATION AND GENDER—ECONOMIC PARTICIPATION OF ARAB WOMEN 132 (2001) (describing Tunisia's narrow gender education gaps, progressive legislation, and improving employment opportunities for women).

67. Zoughlami, *supra* note 56, at 444.

68. See *id.* at 445 (describing the written goals of the club).

"the daughters of Tahar al Haddad" and developed a sense of solidarity. What unified these women was a passion for the issues addressed in their meetings, ranging from national politics to personal issues.

Several other women's organizations emerged from this period onward. In 1983, a women's section was formed within the main trade union, the Union Generale de Travailleurs Tunisiens (or General Union of Tunisian Workers).⁶⁹ The mandate of that section was to call attention to any concern that might be specific to women workers. A group calling itself NISSA, and publishing a magazine of the same name, released its first issue in 1985.⁷⁰ The magazine addressed many themes, such as international solidarity among women or women's unpaid "invisible" work. One theme figured prominently: The ongoing defense of the Code of Personal Status and the necessity for Tunisian women to remain vigilant against the danger of losing the fundamental rights they had gained in family law.⁷¹

More associations developed in the late 1980s.⁷² Most, if not all, declared their unrelenting commitment to defend the CPS. They became the watchdog of gender legislation. The Association des Femmes Tunisiennes pour la Recherche et le Development (AFTURD) (Association of Tunisian Women for Research and Development) included mostly women academics.⁷³ It organized workshops and conferences, in addition to launching research projects studying women.⁷⁴ Created in 1989, the Association Tunisienne des Femmes Democratres (ATFD) (Tunisian Association of Women Democrats) combined an agenda for the society at large with a focus on women's conditions.⁷⁵ Other women's groups came into existence in major political parties and in more

69. *See id.* (describing how this section of the union focused on feminist labor issues and called itself the Women at Work Commission).

70. *See id.* at 447 (describing how NISSA was created, managed, and illustrated by this small group of women from diverse backgrounds).

71. *Id.*

72. *See* Labidi, *supra* note 12, at 16 (stating that such organizations as the Tunisian Association of Mothers, the Association for the Promotion of Women's Economic Projects, the Association of Women's Activity for Sustainable Development, and Women in Science developed during this time period).

73. *See id.* at 15 (describing the AFTURD as "composed principally of individuals working in various professions in the public sector (journalism, secondary school and university teaching, engineering, medicine, law, etc.)").

74. *See id.* at 16–17 (describing AFTURD's research activities).

75. *See id.* at 15 (stating that "even before the ATFD had been granted legal status, the organization was invited to join in the signing of a National Pact—a moral contract among the various political and social forces in the country at that time").

informal venues such as religious groups, small leftist networks, and the business community.⁷⁶

All these associations served to focus attention on women's issues. While some might have been more vocal than others, together they generated a sense that, not only should the CPS be protected, but that women's issues had to remain at center stage on the agenda of national politics. Furthermore, this was a period when Islamic fundamentalism appeared as a growing political threat in Tunisia and internationally. The Tunisian government was inclined to reach out to women's rights advocates as one source of support.

V. Conclusion

This Article has discussed two major waves of gender legislation that have expanded women's rights, one regarding family matters and the other regarding citizenship. Even though women have made immense gains through those reforms, important dimensions of gender inequality in the law remain to be addressed in Tunisia. During a visit in the summer of 2007, I heard the discourse of women's rights advocates now focusing on three particular areas of concern. If they remarry after a divorce, women who had custody of their children can lose it because of the remarriage itself. Issues of domestic violence remain insufficiently addressed in legislation. Finally, inheritance continues to be unequal between men and women—who generally inherit half as much as men in similar family situations.

We can draw some lessons from the Tunisian experience. It shows that different socio-political configurations may be conducive to legislation expanding women's rights. The first wave of such legislation took place in a period of nation building when a primary objective of the nationalists was the creation of a modern state in the newly sovereign country. Occurring in the absence of a feminist movement, reforms of family law in the 1950s were part of a broad program of social transformation pursued by a nationalist movement holding the reins of power. In the second phase of the 1990s, women's voices were heard. The proliferation of women's associations created a general climate of visibility for women's issues. Furthermore, because women already had significant legal rights in the CPS, they could turn their attention to other matters or refinements of the original CPS. The second phase of reforms cannot be understood except in continuity with the previous phase.

76. See Zoughlami, *supra* note 56, at 449–52 (noting that women's groups had permeated many sectors of Tunisia's modern urban society by the late 1980s).

The Tunisian experience also suggests that "woman friendly" reforms matter a great deal, even when they are top-down and even when they are initiated by power holders in the absence of feminist pressures. They are important because, even if they fail to have the intended effect on jurisprudence, which they may or may not for different groups, they nevertheless generate a new climate in which the next set of debates will take place. Further, a woman friendly gender policy made in the absence of pressures from below, as in the 1950s in Tunisia, may contribute to the emergence of a social movement. It may give it a powerful rallying cause, as in the 1980s and early 1990s, when women's rights advocates defended the rights gained in the 1950s and had a say in the reforms of the early 1990s.

The issue of continuity should also be considered from the perspective of the power holders and their inclination to make reforms in different periods. After the initial step had been taken and reforms to opponents had been silenced in the aftermath of independence, the Tunisian state had greater leverage for further reforms because it did not have to confront the kind of anti-reformist opposition that often arose in other Muslim countries. Once Tunisia became identified with woman friendly legislation earlier than other countries in the Arab-Islamic world, it became a matter of national pride and international recognition to continue on that path.

Even though a return to the situation ante is always possible in principle, it would entail considerable social and political costs, both nationally and internationally. The two waves of major reforms of the 1950s and 1990s propelled Tunisia to the forefront of gender legislation in the Arab world. One can reasonably expect that it will retain its place for the foreseeable future.

